

ORDER OF DISMISSAL

ROSALIO VILLALOBOS, Appellant,

v.

DENVER PUBLIC WORKS, SOLID WASTE MANAGEMENT,
and the City and County of Denver, a municipal corporation, Agency.

On June 8, 2016, Appellant was ordered to show cause why this appeal should not be dismissed on jurisdictional grounds. Specifically, Appellant was ordered to provide facts supporting his claim that his demotion was caused by the Agency's failure to send him a notice on Oct. 23, 2015 that his probation was being extended, and facts and argument supporting the timeliness of this appeal under CRS § 19-20 A. He failed to respond or request an extension within which to do so.

The appeal states two jurisdictional claims: 1) Appellant was involuntarily **demoted** by virtue of the Agency's April 19, 2016 notice that he failed to pass his promotional probation, and 2) the Agency's denial of his April 25, 2016 **grievance** violated a rule and negatively affected his pay, benefits or status. CSR § 19-10 A.1.c; A.2.b.i.

1. Demotion Claim

Appellant appears to claim that his failure to pass probation for Equipment Operator Specialist was in effect a demotion, since it resulted in his return to his original position of Equipment Operator. He claims that the former version of Rule 5 is applicable to this appeal, given the fact that his probation was extended a month before the rule was amended.¹ In essence, Appellant argues that the former rule required the Agency to send him notice that his probation was being extended, and its failure to do so means that the termination of his probation six months later was in effect a demotion.

Under Rule 5 in its previous form, promotional probationary status was separate from career status. CSR § 5-41 B., C. "A return from promotional probation may not be appealed except on the grounds of alleged discrimination or violation of the City's 'Whistleblower Protection' ordinance." Former § 5-63. Moreover, former § 5-53 did not require an agency to send an employee notice of an *extension* of probation, in contrast to an end of probation letter. See former § 5-53 C. Even if the former rule did require such a notice, the same version of the rule specifically states that the only grounds for appealing an end of probation is discrimination or whistleblower claims. The new rule eliminates a separate promotional probationary status. § 5-30, effective Nov. 18, 2015.

¹ CSR Rule 5 was substantially amended on Nov. 18, 2015. Appellant alleges that his probation was extended on Oct. 23, 2015.

2. Grievance Claim

In his grievance, Appellant alleged that the Agency's failure to give him an end of probation notification violated former Rule 5-53. As noted in the Agency's response, the Agency did inform him by letter dated Apr. 19, 2016 that he has failed to successfully complete probation. There is no indication in the record that his probation had been ended at any time previous to that letter. Appellant has provided no additional facts or argument in support of this claim. While the Agency conceded it did not notify Appellant in October that his probation had been extended, that extension, even if a rule violation, did not deprive Appellant of any pay, benefits or status. In fact, that action preserved his pay at the additional promotional level. On the record before me, there is no allegation of a violation of any Career Service Rule or other authority, as required to set forth a grievance appeal under the jurisdictional rule.

Order

Based on the foregoing findings and conclusions, the appeal is **dismissed with prejudice**.

DONE June 15, 2016.


Valerie McNaughton
Career Service Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board for review of this final order, in accordance with the requirements of CSR § 19-60 *et seq.*, within fifteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the decision's certificate of delivery. The Career Service Rules are available as a link at www.denvergov.org/csa

All petitions for review must be filed with the:

Career Service Board
c/o OHR Executive Director's Office
201 W. Colfax Avenue, Dept. 412, 4th Floor
Denver, CO 80202
FAX: 720-913-5720
EMAIL: CareerServiceBoardAppeals@denvergov.org

AND

Career Service Hearing Office
201 W. Colfax, 1st Floor
Denver, CO 80202
FAX: 720-913-5995
EMAIL: CSAHearings@denvergov.org.

AND

Opposing parties or their representatives, if any.