

HEARING OFFICER, CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER,  
COLORADO

Appeal No. 139-02

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**ORDER OF DISMISSAL**

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IN THE MATTER OF THE APPEAL OF:

**CARLOS HULL**, Appellant,

Agency: DEPARTMENT OF AVIATION, DENVER INTERNATIONAL AIRPORT, and  
THE CITY AND COUNTY OF DENVER, a municipal corporation.

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This Order concerns Appellant's appeal he filed with the Career Service Authority on July 23, 2002. Appellant appeals a grievance he filed in response to a job announcement by another agency, which job announcement allegedly describes the duties of Appellant's position. The announcement evidently references a job bearing a different title and in a higher pay grade than Appellant's. That job has subsequently been filled by another person.

Appellant cites CSR Rule 9, "Pay Administration" as the CSR rule violated in this case. On his appeal form he has checked the box indicating "Classification Decision" as the basis for his appeal.

On August 16, 2002 the hearing officer issued an Order to Show Cause why this matter should not be dismissed for lack of jurisdiction. The basis for the Show-Cause Order was primarily that the Hearings Office apparently lacks jurisdiction over the underlying issues Appellant challenges.

Appellant timely responded to the Show-Cause Order on August 22, 2002. Having reviewed Appellant's Response, and being fully advised in the premises, she now finds and orders as follows:

***1. The appeal of a grievance as a basis for jurisdiction.***

Appellant first argues that the hearing officer has jurisdiction over his case as an appeal of a grievance under CSR 18-12 4. and 19-10 d). Those rules set forth as follows in relevant part:

CSR Rule 18-12 Grievance procedure

...4. Filing with the Career Service Authority: If the employee still feels aggrieved after receipt of (the second-level grievance) decision... and the grievance concerns an alleged violation of the Charter provisions relating to the Career Service, ordinances relating to the Career Service, or the Career Service Rules, and the employee wants to pursue the grievance further, the employee must appeal to the Hearings Officer of the Career Service Board in accordance with the provisions of **Rule 19 APPEALS**. The period of time shall be computed in accordance with subparagraph 19-22 a) 2.

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#### Section 19-10 Actions Subject to Appeal

An applicant or employee who holds career service status may appeal the following administrative actions relating to personnel.

...d) Grievances resulting in rules violations: Any grievance which results in an alleged violation of the Career Service Charter Amendment, or Ordinances relating to the Career Service, or the Career Service Personnel Rules...The appeal form must state with specificity which career service charter amendment, ordinance or career service rule(s) are alleged to have been violated. An appeal may be dismissed if the appellant fails to cite the alleged rule violation(s).

It is well settled that while an employee may elect to grieve nearly any agency action, he may not create jurisdiction over an issue over which the Hearings Office otherwise lacks jurisdiction by grieving the action and then appealing the grievance. *See, In the Matter of Patricia Beer and Jan L. Obert*, Appeals Nos. 318-01 and 319-01 (Dismissal entered 12/18/01)

Therefore, CSR rules 18-12 and 19-10 d) cannot be used to boot-strap jurisdiction over an issue. Instead, the underlying violation must be one over which the hearing officer has jurisdiction. *Id.*

#### ***2. Hearing Office Jurisdiction over the issue of Harassment and Discrimination.***

Appellant next argues that the hearing officer has jurisdiction over this case as one of Harassment and Discrimination. Appellant did not check the box marked "Discrimination" on his appeal form. However, he did cite the Equal Pay Act of 1963, 29 U.S.C. sec.206 (d) in his Grievance, and attached a copy of the Act thereto.

Again, it is well settled that an employee cannot create jurisdiction over a case simply by uttering the words "harassment" or "discrimination." There must be some basic statement of facts tending to make a colorable claim that the action complained of was taken against the employee "because of race, national origin, sexual orientation...[& etc]." *See, CSR 19-10 d); In the Matter of Martha Douglas*, Appeal No. 317-01 (Order entered 3/22/02). Similarly, the Equal Pay Act prohibits "discrimination" against individuals by the establishment of disparate wages "on the basis of sex..." *See, 29 U.S.C. sec. 206 (d).*

It is apparent from Appellant's assertions in the documents that the individual who was hired into the position announced at a higher pay grade is a female. However, Appellant has provided no set of facts tending to suggest that he is being discriminated against *because of* his membership in a protected class. Appellant has suggested no tendency by the Agency against whom he brings this action to compensate women at a higher rate than men. He has proffered no set of facts suggesting the Agency (which is separate from his own) who solicited for this position, chose a woman in an attempt to achieve a higher pay rate for her than for Appellant because of her gender status. On the contrary, it is apparent that the position in question is in an entirely separate Agency (Denver Police Department) than the one in which Appellant is employed (Denver International Airport.). Therefore, the two positions operate in completely separate, unrelated agencies supervised by different individuals.

In short, there is no suggestion anywhere in Appellant's documentation that the Agency's determination to treat the pay of these two individuals differently was *on the basis of, or because of,* Appellant's sex. The fact that he happens to be of the opposite sex is, in isolation, insufficient to be considered a colorable claim of discrimination. Appellant has therefore failed to articulate a colorable claim of discrimination.

### ***3. The hearing officer lacks jurisdiction over the underlying issue of pay.***

Appellant posits that the CSR rule violated here is Rule 9, governing pay administration. He also checked the box marked "Classification Decision" on his appeal form.

The hearing officer's jurisdiction is a creature of statute. She only has so much authority as has been expressly granted by the Career Service Rules. No such grant of authority over Appellant issues has been shown here.

Section 19-10, Actions Subject to Appeal, sets forth the kinds of actions appealable to the Hearings Office. Pay issues are listed nowhere in the rule. Furthermore, there is no authority elsewhere in the CSR rules granting jurisdiction over pay rate decisions in general. On the contrary, prior case law specifically establishes the Hearings Office lacks such jurisdiction. *See, In the Matter of Tamara Watkins*, Appeal No. 186-00. Citing In the Matter of Molly Austin-Flaherty, Appeal No. 23-00, Hearing Officer Rossenfeld held in Watkins that no authority exists under the CSR Rules granting Hearings Office jurisdiction to hear matters that concern compensation rates or decisions. Rather, that power lies "solely in the City Council and the Career Service Board itself."

As stated in the Order to Show Cause, Hearing Officer Rossenfeld's conclusion is underscored by the language of CSR Rule 9, "Pay Administration:"

#### Section 9-10 - Policy

The policy of the *Career Service Board* in recommending pay for employees in the career service is:

- a) To provide like pay for like work...

\* \* \*

(Emphasis added.) Similarly, under CSR Rule 8, "Compensation," the relevant portions read:

Section 8-20 Pay Adjustments

B. Establishment of pay for individual classes: ...In most circumstances, the pay for an individual job classification shall be determined based upon a Denver Metropolitan area survey of comparable jobs. If the pay rates in the Denver metropolitan area are inadequate to attract qualified candidates *pursuant to criteria proposed by the Career Service Board and approved by the City Council*, the pay rate for those classifications may be equal to the generally prevailing rates in either the region or the nation.

In the event survey data are inadequate or inappropriate for statistical analysts, pay for an individual classification will be determined based on internal relationship comparisons to other City and County of Denver job classifications...

\* \* \*

(Emphasis added.)

Furthermore, it is not clear that Appellant has requested a review of his current classification by the Career Service, the only forum available for issues such as this one. Therefore, despite that Appellant checked the box marked "Classification Decision" on his appeal form, there has apparently been no "classification decision" relevant to Appellant's specific complaint in this case. Finally, even if there had been, recent changes in the CSR rules have eliminated the Hearings Office jurisdiction over classification appeals. See, In the Matter of the Appeal of Liz Abromeit, et al, Appeals Nos. 105-01 through 216-01 (Decision entered 12/31/01).

For these reasons, the hearing officer lacks jurisdiction over these underlying issues in Appellant's appeal as well

**ORDER**

WHEREFORE, this appeal is DISMISSED for lack of jurisdiction.

Dated this 8<sup>th</sup> day of September, 2002.

  
Joanna Lee Kaye  
Hearing Officer for the  
Career Service Board