

ORDER REGARDING OUTSTANDING PRE-TRIAL ISSUES

IN THE MATTER OF THE APPEAL OF:

RUSSELL LUXA, Appellant,

vs.

DEPARTMENT OF PUBLIC WORKS,
and the City and County of Denver, a municipal corporation, Agency.

1. Appellant's Subpoena Request:

On February 9, 2012, Appellant filed a motion requesting a subpoena for the production of documents from a City agency which is not a party to this appeal. Appellant requested that the Hearing Office order the City's IT Services department to produce all emails sent between Lesley Thomas, Roxane Stuber, and Mitch Kumar regarding Appellant, sent between May 1, 2011 and August 31, 2011. The Agency objected, but agreed to produce all of the requested documents.

2. Pre-hearing statements:

The deadline for submitting Amended Pre-hearing Statements was February 14, 2012. Only the Agency submitted an Amended Pre-hearing Statement, in which it identified three "will call" witnesses and seventeen "may call" witnesses. Appellant's Pre-hearing Statement identified three "will call" witnesses and ten "may call" witnesses. The witness lists seem to contain duplication in testimony, and in proposed exhibits as follows.

a. Witnesses

The Agency lists three witnesses from Jacobs Global Building who will provide testimony, the description of which is identical. The Agency also identified two HR employees as new witnesses in its Amended Pre-hearing Statement. Since the Agency already listed Ms. Roxane Stuber as a "will-call" witness, and Appellant listed her as a "will call" witness, additional testimony from HR seems duplicative. The Agency also identified two new witnesses - Dominic Vaiana and Joseph Cordts - whose testimony appears to be duplicative of each other and of testimony from other witnesses.

In light of the apparent duplication of some exhibits, it appears some of the Agency's testimony may become unnecessary to prove duplicate exhibits, possibly including testimony from Gary Gutterman, MD, Jeff Steinberg, and Trude Delgado.

Appellant designated three witnesses to present similar or identical testimony: Steve Forvilly, Corrina Luhan, and Patty Abeyta. It also appears the proffered testimony of three

proposed witnesses is irrelevant to the issues in this appeal, specifically the testimony of Chris Weimer, Bill Miles, Gary Gutterman, MD.

b. Exhibits

Appellant listed nine exhibits that are duplicative of Agency exhibits: B, D – F, L, O, Q, S, and T. The parties must confer to stipulate to the admissibility of the remaining exhibits and file a final list of stipulated exhibits, as well as a list of exhibits which remain at issue for hearing.

3. Appellant's Request for Attorney Fees:

Appellant indicated on his appeal form that part of the remedy he seeks is attorney's fees, however, the Hearing Office does not have authority to grant an award of attorney's fees. In re Muller, CSA 48-08, 2 (CSB 3/10/09).

ORDERS

1. The parties are ordered to confer to eliminate redundant witnesses in accordance with the findings, above, or to specify why any witness identified above as redundant is essential.

2. The parties are to revise their exhibits according the specifications, above.

3. The parties are ordered to submit revised and stipulated lists of witnesses and exhibits consistent with this Order, along with any subpoena requests, by February 21, 2012.

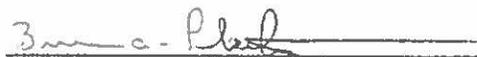
4. Based on the Agency's representation that it will produce the documents requested by Appellant, Appellant's request for a subpoena duces tecum is DENIED as moot.

5. The Agency must identify, for each alleged rule violation, the specific conduct upon which it will rely to support each violation.

6. The Appellant is ordered to withdraw those of his exhibits which duplicate those of the Agency, then re-letter his remaining exhibits sequentially.

7. Appellant's request for attorney's fees is DENIED and dismissed as outside the jurisdiction of the Hearings Office.

DONE February 16, 2012.


Bruce A. Plotkin
Career Service Hearing Officer

I certify that, on February 16, 2012, I delivered a correct copy of this Order to the following:, in the manner indicated:

Mr. Russell Luxa, russellluxa@comcast.net	(via email);
Marilee E. Langhoff, Esq., Marilee@langhofflaw.com	(via email);
Denver City Attorney's Office, dlefilings.litigation@denvergov.org	(via email);
HR Services, HRServices@denvergov.org	(via email).

