

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 72-07

**ORDER ON MOTION TO COMPEL PAYMENT OF BACK WAGES
AND REQUEST FOR SANCTIONS**

IN THE MATTER OF THE APPEAL OF:

GLENN SAMPLE, Appellant,

vs.

DEPARTMENT OF HUMAN SERVICES, and the City and County of Denver, a
municipal corporation, Agency.

Appellant has moved to compel payment of back wages and has requested sanctions of attorneys' fees and costs. On July 22, 2008, the Agency responded to the motions. After consideration of the parties' pleadings and the record here, it is found and ordered as follows:

I. Background

This is an appeal of the Agency's termination of the probation of Appellant Glenn Sample issued on Oct. 10, 2007. By decision dated June 12, 2008, that termination was reversed by the Hearing Office. The Agency filed its Petition for Review of that decision on June 24, 2008. The petition did not request a stay of enforcement of the decision pursuant to CSR § 19-66 B.

Appellant now seeks an order compelling the payment of back wages plus interest. The Agency's response states that it has paid or will pay back wages from June 13 to July 19, 2008, and believes that no further back wages are due based upon Appellant's testimony that he did not make reasonable efforts to find other employment. Appellant replied that this mischaracterizes Appellant's testimony, but concedes that wages he earned while separated from the Agency should be offset from his back pay.

Appellant also seeks attorney's fees and costs as a sanction for the Agency's delays in paying back wages. Appellant argues that while the Career Service Rules do not refer to sanctions, they should be ordered where the Agency wrongfully withholds back wages based on false allegations.

II. Analysis

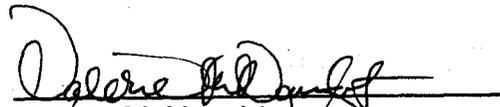
The Agency has the burden to establish the defense of failure to mitigate damages. In re Maes, CSA 180-03, 6 (6/20/08), citing Fair v. Red Lion Inn, 943 P.2d 431 (Colo. 1997). The evidence thus far submitted on the issue of back pay is insufficient to support findings and an order on the amount of damages. The parties are encouraged to engage in informal discovery and enter into stipulations for the purpose of narrowing the factual and legal issues.

The authority granted to hearing officers by the Career Service Rules to affirm, modify or reverse agency actions does not include the power to award attorneys fees or costs. CSR § 19-55; see also In re Stone, CSA 70-07, 1 (10/23/07).

Order

1. By August 11, 2008, the parties shall set this matter for hearing in the Hearing Office on the issue of back pay.
2. Appellant's motion for attorneys' fees and costs is denied.

Dated this 28th day of July, 2008.


Valerie McNaughton
Career Service Hearing Officer