

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

Appeal No. 78-05

ORDER OF DISMISSAL

IN THE MATTER OF THE APPEAL OF:

GLENN J. SCHULTZ, Appellant,

Agency: Denver Zoological Foundation, and the City and County of Denver, a
municipal corporation.

On July 13, 2005, the Hearings Officer issued an Order to Show Cause in this appeal. Both parties timely filed their responses to the order. Upon review of the parties' responses and the pleadings herein, the following findings and order are issued:

This appeal of a grievance denial was filed on July 8, 2005 and alleges that Appellant's "meets expectations" 2004 performance review was motivated by disparate treatment retaliation, and harassment, in violation of CSR §§ 15-101 and 15-106.

The Career Service Rules permit employees to appeal the denial of a grievance of a work-related dispute if it concerns a city charter provision, ordinance or career service rule, and both grievance steps and the appeal are timely filed. CSR §§ 19-10 d) and 18-12. Here, Appellant does not dispute that his second step grievance was not filed within the time allowed. Therefore, the Hearings Office has no jurisdiction to hear the appeal of the grievance under § 19-10 d).

In addition, the rules allow a direct appeal only for "overall ratings of 'Below Expectations'". CSR § 19-10 e). Appellant has not responded to the order by showing that jurisdiction exists under that subsection, as it appears that Appellant's overall rating was in fact a "Meets Expectations". [Agency's response to Step 2 Grievance dated June 29, 2005, attached to appeal form.]

The rules also allow a direct appeal of actions resulting in discrimination under CSR § 19-10 c). Agency action may be reversed if it is the product of discrimination. In support of his allegation that Mr. Benton discriminated against him by his performance rating, Appellant alleges that Mr. Benton treated Appellant less favorably than co-worker Randy Dickson. Appellant does not assert that Mr. Dickson's national origin is different from Appellant's, and therefore Appellant has not asserted the disparate treatment was motivated by discrimination.

Appellant also asserts that his immediate supervisor, Gene Roybal, was biased against him based upon his national origin, German. However, Appellant states that Mr.

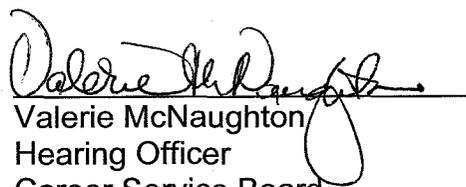
Roybal did not issue the performance evaluation. In fact, Mr. Roybal had previously rated Appellant as outstanding or exceeds expectations. Thus, Appellant has failed to show that he was adversely affected by Mr. Roybal.

In addition to his claim of disparate treatment, Appellant has alleged that the rating was given in retaliation for his previous appeal, In re Schultz, CSA # 156-04. This claim is not properly before me because Appellant failed to comply with the rules requiring the timely filing of a grievance. CSR § 18-12. Appellant's step 1 grievance indicates he saw his Performance Enhancement Program Review (PEPR) on May 18, 2005. Appellant had the option of filing a direct appeal based on a claim of discrimination within ten days of that date (May 30, 2005), or filing a grievance under Rule 18. Appellant chose to file a grievance. His failure to comply with the grievance procedure deprives the hearing officer of jurisdiction to hear the retaliation claim.

Finally, Appellant asserts that the evaluation constitutes harassment in violation of CSR § 15-102. Harassment itself is not directly appealable under the rules. It is only the "disposition by a supervisor or other appropriate official of a complaint of harassment" that is appealable. CSR § 19-10 f), emphasis added. Appellant did not make a harassment complaint to a supervisor or other appropriate official. Therefore, the harassment claim is premature.

For the foregoing reasons, the above appeal is hereby DISMISSED for lack of jurisdiction.

Dated this 15th day of
August, 2005.


Valerie McNaughton
Hearing Officer
Career Service Board