

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

Appeal No. 82-05

ORDER DISMISSING APPEAL

IN THE MATTER OF THE APPEAL OF:

MARIA BLEA,
Appellant,

vs.

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

This matter is before the Hearings Officer following his August 17, 2005 Order to Show Cause, addressed to the Appellant. Both parties have now responded. Having considered those responses and being otherwise informed in this matter, the Hearings Officer now finds and orders as follows.

In his Order to Show Cause the Hearings Officer found he may lack jurisdiction to consider this appeal. It appeared Appellant sent an e-mail to the Personnel Director of the Career Service Authority requesting that the Personnel Director extend the time for her to remain on the lay-off referral list for one year. Career Service Rule (CSR) 4-33 allows the Personnel Director to extend the life of the lay-off list if it is in the best interests of the City to do so. The Personnel Director determined that it was not in the best interests of the City to extend the life of the lay-off list.

The Hearings Officer found although Appellant may be dissatisfied with the Personnel Director's decision not to extend the life of the lay-off list, that dissatisfaction does not impart jurisdiction upon the Hearings Officer to consider this appeal, without some showing that the decision violated CSR 4-33, which in pertinent part, reads as follows:

4-33 Lay-off Referral List

- C. List Life: Eligible candidates will be listed for one year unless removed for cause. This list may be extended for one year if the Personnel Director determines it is in the best interest of the City to do so.

The Appellant responded the Director's act in denying the Appellant's request to remain on the eligibility referral list for an additional year was a discretionary act under CSR 19-10 A. 3), and therefore within the jurisdiction of the Hearings Officer.

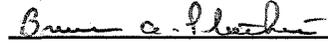
The Hearings Officer is charged with the interpretation of the Career Service Rules. The fundamental responsibility in interpreting a rule is to find and give effect to the promulgator's intent. The plain meaning of the rule will control unless the regulatory language can lead to more than one reasonable interpretation. In re Martinez, 78-02 (5/22/02). Read together, the two rules at first seem to conflict. CSR 19-10 A. 3) allows the appeal of a discretionary act by the Director. The Director's decision whether to extend the life of the referral list under CSR 4-33 C. is clearly a discretionary act, subject only to the Director's subjective determination whether such extension would be in the best interest of the City. However, if the Director's discretionary act, whether to extend the life of the referral list, may be appealed to determine whether the decision was arbitrary or capricious, an objective test, then the Director's decision is no longer discretionary, as it is subject to review based upon objective standards.

In order to give effect to CSR 4-33, it must be harmonized with CSR 19-10 A. 3). The Hearings Officer concludes the specific charge left to the Director's discretion in CSR 4-33 C, whether to extend the life of the referral list, must overcome the broad standard in CSR 19-10 A. 3), that the Director's discretionary acts are subject to review on appeal. This construction is consistent with traditional canons of construction that specific rules prevail over more general ones. See, e.g. United States v. Cowboy, 694 F.2d 1228, 1234 (10th Cir. 1982). Moreover an interpretation of CSR 4-33 C which concludes the Director's sole discretion to decide whether to extend the life of the referral list is subject to subjective review, would mean the Director does not have the discretion clearly intended by the rule. Such a result is inconsistent with established principles of construction of rules. See, e.g. In re Draper, CSA 189-02, 6 (4/1/03) ("the hearing officer should give effect to each word and construe each provision in harmony with the overall statutory design, whenever possible. However, interpretations which yield absurd results are disfavored."). For these reasons, the Hearings Officer rejects the Appellant's contention that the Director's decision under CSR 4-33 C. is subject to review based upon an arbitrary and capricious standard.

Finally, even if the Director's decision were subject to an arbitrary and capricious standard, the Appellant fails to state how that decision was arbitrary or capricious. The Appellant merely concludes "[t]he Personnel Director's refusal to allow Appellant Maria Blea to remain on the eligibility list was an abuse of his discretion, or if it was arbitrary, capricious or contrary to law."

For reasons stated above, the Hearings Officer concludes the Appellant has failed to show cause why her appeal should not be dismissed for failure to state a claim upon which the Hearings Officer has jurisdiction to grant relief. Therefore, the Hearings Officer orders this appeal to be DISMISSED WITH PREJUDICE.

DONE this 31ST day of August, 2005.



Bruce A. Plotkin
Hearing Officer for the
Career Service Board