

ORDER DISPOSING OF SEVERAL MOTIONS and RESPONSES 9/24/13

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IN THE MATTER OF THE APPEAL OF:

DARRELL S. BOONE, Appellant,

vs.

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

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This order disposes of the following pleadings:

1. Agency's "Partial Motion to Dismiss for lack of Jurisdiction," filed September 5, 2013.
2. Appellant's Response to Agency's motion, above, filed September 6, 2013.
3. Appellant's "Motion Requesting an Extension of Time to File a Motion for Discovery past the Current Deadline of September 10, 2013," filed September 9, 2013.
4. Agency's Response to Appellant's motion, above, filed September 10, 2013.
5. Appellant's "Motion to Compel the Agency to Answer Interrogatories Fully," filed September 16, 2013.
6. Agency's Response to Appellant's motion, above, filed September 23, 2013.

1 and 2. Agency's "Partial Motion to Dismiss for lack of Jurisdiction," filed September 5, 2013, and Appellant's Response. The Agency seeks to dismiss certain remedies requested by Appellant as beyond the jurisdiction of the Hearing Office.

As a starting point, the Hearing Office is empowered to do one of three things following a hearing: affirm, modify or reverse the agency action leading to the appeal. CSR 19-55. Inherent in the modification and reversal options is the power to restore a successful appellant to his or her status quo ante, to the greatest extent that is reasonably practicable. Thus, an appellant dismissed for lying, but who then prevails at hearing, is owed back wages, benefits, and removal of the improper personnel record entry, all as the restoration of the direct effects of the improper termination. However, restoring an appellant to his or her status quo ante does not include remedies not directly related to the Agency action. Thus, requests for apologies, attorney fees, or changes in policy do not directly restore the deprivations caused by the Agency's actions and are beyond the scope of the limited jurisdiction of the Hearing Office. In that context, the following analysis applies to the first two pleadings.

a. Attorney Fees. Appellant withdrew this request in his responsive pleading. This motion is moot.

b. "Correct unreasonable orders and directives especially if it affects health and well-being and especially if the orders and directives are in violation of the Rules, the City Charter, the Denver Revised Municipal Code, Executive Orders, and other applicable legal authority."

Because this request inadequately identifies what orders and directives are implicated and does not identify how such directives or orders falls within Hearing Office jurisdiction, this requested remedy is dismissed.

c. "Provide a conducive work environment especially." This request falls outside the remedies within the jurisdiction of the Hearing Office and is therefore dismissed.

d. "Trusting and safe environment respecting me as a professional." This request falls outside the remedies within the jurisdiction of the Hearing Office and is therefore dismissed.

e. Correct any and all misinformation, assessments, and communication about me that was or will be disseminated to others including all documents in my personnel file. To the extent that the Hearing Office is empowered to require the removal of negative entries in an appellant's personnel file that were directly related to the agency's action, the Appellant has stated a request for a remedy within the jurisdiction of the Hearing Office. To that extent, the Agency's motion is denied. Appellant's request to "correct any and all misinformation about me that was or will be disseminated to others" is unenforceably vague and speculative and is therefore dismissed.

f. Equal and fair treatment for all employees. This requested remedy falls beyond the scope of the Hearing Office jurisdiction and is also unenforceably vague. For those reasons, this requested remedy is dismissed.

3.-6. Request for enlargement of time to file discovery motion, motion to compel and responses thereto. Appellant requested additional time to file a discovery motion. As cause, Appellant stated he had insufficient time to view video supplied by the Agency, in part due to Agency's delay in providing it, and therefore Appellant had insufficient time to prepare interrogatories related to such video. The Agency objected, stating Appellant already requested the maximum amount of discovery permitted by the Career Service Rules, and that he has already viewed the video in question. Through no fault of either party, no order entered regarding this motion and response. It is unclear to what extent this dispute remains at issue, i.e. whether the video in question is part of Appellant's discovery motion filed August 9, 2013, and whether he has had an opportunity to view it. Therefore, the parties should contact the Hearing Office forthwith to schedule a brief telephone conference with respect to this motion and response, in order to determine what, if any of the motion remains and for entry of an order disposing of the same. The parties are reminded discovery is limited to five narrowly tailored interrogatories and 10 requests for production, absent good cause. CSR 19-45. Orders regarding Appellant's motion to compel and the Agency's response thereto will depend on the result of the aforementioned telephone conference.

DONE September 24, 2013.

  
Bruce Plotkin  
Career Service Hearing Officer

I certify that on September 24, 2013, I delivered a correct copy of this Order to the following, in the manner indicated:

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