

CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER, COLORADO

Appeal No. 71-10 A.

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**FINDINGS AND ORDER**

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IN THE MATTER OF THE APPEAL OF:

**PHYLISS COMPTON,**

Appellant/Petitioner,

vs.

**DEPARTMENT OF SAFETY, DENVER SHERIFF'S DEPARTMENT,** and the City and County of Denver, a municipal corporation,

Agency/Respondent.

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This matter is before the Career Service Board following its order to show cause why this appeal should not be dismissed for lack of appellate jurisdiction. The Board has reviewed the full record before it and **DISMISSES** this appeal on the grounds outlined below.

**I. BACKGROUND**

Following Appellant's dismissal, a career service hearing began on March 10, 2011. The Agency introduced exhibits into evidence and called witnesses to testify. Although the Agency had not concluded its case in chief, the parties negotiated a verbal settlement agreement during a recess in the proceedings. Based on this verbal agreement, Appellant, who was represented by counsel, moved to dismiss her appeal with prejudice and the Hearing Officer granted her request. The Order of Dismissal, dated March 11, 2011, states that Appellant acknowledged receiving the advice of counsel, acknowledged that she understood the consequences of dismissing her career service appeal with prejudice, "including future claim and issue preclusion for all matters currently and potentially under appeal for this case" and that Appellant's acknowledgement was knowing and voluntary. **Exhibit 1.**

On March 17, 2011, Appellant signed and executed a written settlement agreement, which was also signed by Manager of Safety Malatesta and approved by the attorneys who represented the parties during the hearing. **Exhibit 2.** However, on March 25, 2011, Appellant filed a motion to reinstate her appeal, claiming that she did

not fully understand the terms of the settlement agreement (even though she acknowledged that she reviewed the agreement with counsel), and claiming that paragraph 5 of the settlement agreement gave her the right to revoke the entire agreement (even though paragraph 5 states that the right to revoke applies only to potential claims under the Age Discrimination in Employment Act). In essence, Appellant asked the Hearing Officer to set aside a contract that she had executed with the advice and consent of counsel and reinstate the appeal that she had dismissed with the advice and consent of counsel. On March 31, 2011, the Hearing Officer denied Appellant's motion to reinstate her appeal. **Exhibit 5.** Appellant then filed a petition for review with the Board. **Exhibit 6.** On July 7, 2011, the Board ordered Appellant to show cause why this appeal should not be dismissed for lack of appellate jurisdiction and both parties have responded to the show cause order.

## II. FINDINGS

In her petition for review, Appellant seeks "equitable relief on the grounds of mistake." **Ex. 6, par. 10.** Specifically, Appellant asks the Board to set aside the contract she signed and allow her to reinstate the appeal she dismissed. **Opening Brief, p. 5.** However, the Career Service Board does not have the broad equitable powers that a court possesses; it has only the authority that is granted by the Denver City Charter, City ordinances and corresponding career service rules. *See, Howes v. Colo. Div. of Ins.*, 65 P.3d 1008, 1025 (Colo. 2003). Although Appellant seeks Board review under CSR 19-61 (B) (erroneous rule interpretation), 19-61 (C) (policy setting precedent), and 19-61 (D) (the Hearing Officer's decision is not supported by the evidence), she has failed to demonstrate that the Board has jurisdiction under any of these provisions and correspondingly, she has failed to demonstrate any grant of authority to the Career Service Board to set aside a contract entered into by the parties outside the career service appeals process.

First, Appellant contends the Hearing Officer's denial of her motion involves an erroneous interpretation of the career service rules. In support of this contention, Appellant offers only a conclusory statement that the Hearing Officer erroneously interpreted CSR 19-55. This rule, however, provides that the Hearing Officer shall issue a decision in writing affirming, modifying, or reversing the action which gave rise to the appeal within 45 days after the close of the hearing. We can find no place in the record any interpretation of CSR 19-55 by the Hearing Officer, nor does this rule have any relevancy to the facts of this case, where Appellant voluntarily dismissed her appeal with prejudice after negotiating a verbal settlement with the Agency and then moved to reinstate that appeal after signing a written settlement agreement.

Next, Appellant contends that the written settlement agreement exceeded the terms of the verbal agreement and to allow the written agreement to stand would result in a negative policy setting precedent. We disagree. For purposes of this decision, we will assume the written agreement contains terms that were not discussed verbally, as Appellant suggests. But that does not change the fact that Appellant signed the written

agreement and her signature demonstrates her knowledge of and consent to its terms. Further, Appellant ignores the fact that the written agreement specifically provides that it is the sole and entire agreement of the parties and that it supersedes and replaces any and all oral agreements. **Exhibit 2, par. 8.** If Appellant did not agree with the terms of the written agreement, she was free to not sign it.<sup>1</sup> However, once Appellant signed the agreement, it became a binding contract and neither the Hearing Officer nor the Board has authority to undo a private contract negotiated by the parties.<sup>2</sup>

From a policy standpoint, the Board wishes to encourage the parties in a career service appeal to enter into settlement agreements whenever possible and correspondingly, to assure finality in those agreements. Here, Appellant's attempt to undo a settlement agreement that she signed with the advice and consent of counsel and her attempt to reinstate an appeal that she dismissed with the advice and consent of counsel would undermine these important policy considerations.

Finally, Appellant contends the Hearing Officer's denial of her motion to reinstate her appeal is not supported by the evidence, even though she acknowledges that the material evidence in this appeal is the signed settlement agreement. That agreement specifically provides for the dismissal of the original appeal, specifically states it is the sole and entire agreement of the parties, specifically states that the parties have reviewed the terms of the agreement and understand those terms, and specifically states that the parties have consulted with their attorneys before signing. **Ex. 2, par. 2, 8, 9, 10.**

In summary, Appellant has failed to demonstrate that the Board has jurisdiction to review the Hearing Officer's denial of her motion under CSR 19-61 (B), (C), or (D). However, even if the Board had jurisdiction to hear this appeal under one of these provisions, we would reach the same conclusion on the merits: the Hearing Officer's denial of Appellant's motion to reinstate her appeal is supported by the terms of the settlement agreement and the Board has no grant of authority to declare the parties' settlement agreement null and void, as Appellant requests. To the extent that Appellant believes her execution of the written settlement agreement was the result of mistake, duress, or any other reason, she may seek redress in a forum that has equitable powers to grant her equitable relief and that forum is a court of law, not the Career Service Board.

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<sup>1</sup> This appeal would have presented a much different issue if Appellant had refused to sign the settlement agreement because she disagreed with any of its terms. Under those circumstances, the Hearing Officer would have had to determine whether Appellant should be permitted to reinstate her appeal based on the parties' failure to reach a mutually agreed upon settlement.

<sup>2</sup> In deciding Appellant's motion to reinstate her appeal, the Hearing Officer certainly had the authority to review the written settlement agreement to determine whether it gave Appellant a right to revoke. The Hearing Officer correctly noted that paragraph 5 of the agreement provides Appellant with a limited right to revoke her release of any potential claims she may have under the Age Discrimination in Employment Act, but does not provide a right to revoke the entire agreement.

**III. ORDER**

**IT IS THEREFORE ORDERED** that Appellant's Petition for Review is **DISMISSED** on the grounds stated in the Board's findings.

SO ORDERED by the Board on August 4, 2011, and documented this  
18th day of August, 2011.

BY THE BOARD:

  
Acting Co-Chair

Board Members Concurring: Nita Henry, Michelle Lucero and Amy Mueller.

**CERTIFICATE OF DELIVERY**

I certify that I delivered a copy of the foregoing **Findings and Order** on  
August 10, 2011, in the manner indicated below, to the  
following:

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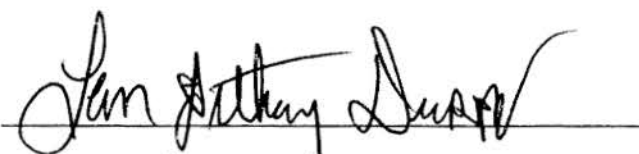
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Leon Duran