

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

Appeal No. 43-15A

---

**ORDER ON AGENCY'S INTERLOCUTORY APPEAL**

---

IN THE MATTER OF THE APPEAL OF:

**SUZANNE CULIN, Appellant,**

v.

**DEPARTMENT OF AVIATION, REVENUE MANAGEMENT, DEN REAL ESTATE  
DIVISION, and the City and County of Denver, a municipal corporation, Agency.**

---

Appellant Suzanne Culin was dismissed from her position with the Department of Aviation during an extended probationary period. She appealed that decision to a hearing officer. As grounds for that appeal she indicated her belief that her discharge involved discrimination or harassment based upon her sex. As "reasons" for her appeal, Appellant listed "discrimination based on gender," as well as "promissory estoppel."

The Hearing Officer issued a Show Cause Order against the Appellant requiring her to demonstrate why her promissory estoppel claim should not be dismissed for lack of jurisdiction. Subsequently, after briefing on the issues, the Hearing Officer issued an order dismissing Appellant's promissory estoppel claim. In doing so, however, the Hearing Officer determined that there were factual issues to be resolved concerning whether Appellant had, in fact, achieved Career status in her employment. The Hearing Officer also held that there existed a factual issue as to whether Appellant's probation was terminated because of performance issues or a failure to complete training. Finally,

she held that the record presented genuine triable issues of fact as to Appellant's termination during her extended probation and that said issue could proceed to hearing.

The Agency filed an interlocutory appeal of the Hearing Officer's decision alleging that she lacked jurisdiction to hear the issue of whether Appellant was terminated during her probationary period. We agree with the Agency that the undisputed facts of this record demonstrate that Appellant was terminated during her probationary period. Because Appellant was terminated during her probationary period, she had not attained Career status. Because she had not attained Career status, the Agency did not need cause to dismiss her and at hearing, the Agency will not bear the burden of proof to demonstrate just cause for the dismissal of Appellant.

The relevant undisputed facts are as follows: Appellant was hired on January 25, 2015. On July 9, 2015, during her initial six month probationary period, the Office of Human Resources (OHR) approved the Agency's request to extend Appellant's probationary period through January 25, 2016<sup>1</sup>. Appellant was made aware of the fact that to pass her probation, she was needed to successfully complete a regimen of required training which included coursework (See Letter of Offer of Employment, R.11). Per Career Service Rule (CSR) 6-20 E, "Failure to complete the required training shall result in the extension of probation until the required coursework is completed..." It is further undisputed that as of the time of her separation, Appellant had not completed all required coursework and that Appellant was aware of this fact<sup>2</sup>. She had only completed three of the six required courses, though she had signed up to take a fourth class.

---

<sup>1</sup> Career Service Rule 5-34E(1) does not specifically require the Agency to state a reason or to have cause to extend an employee's probation.

<sup>2</sup> Appellant, in her brief at page 2, admits that before the end of her initial six-month probationary period she had learned that she needed to take additional, required training.

Appellant was given notice of her failure to successfully pass probation on August 17, 2015.

Based on these undisputed facts, it is clear to us that at the time of her separation, Appellant was a probationary employee. She was a probationary employee because OHR had officially extended her probation. She was a probationary employee for the separate, additional reason that she had failed to complete required training. Consequently, she was a probationary employee as a result of a lawful decision made by OHR extending her probationary period and she was a probationary employee by operation of rule which automatically extended her probation.

Appellant first argues against the interlocutory appeal claiming that it is frivolous. In support of this claim, Appellant points out that regardless of the outcome of the interlocutory appeal, the Hearing Officer will properly exercise jurisdiction over Appellant's claim of discrimination and the reasons for her dismissal will, undoubtedly, be aired during the course of those proceedings. That observation is true, but it does not mean that the success or failure of the interlocutory appeal does not affect the parties' rights and obligations at hearing.

Presently, the parties dispute Appellant's Career status. As mentioned above, if Appellant does not have Career status, the Agency can terminate her employment without just cause and at hearing, the burden of proof would be on the Appellant, and not the Agency, to prove that her dismissal was the result of discrimination. If, on the other hand, Appellant had achieved Career status, then aside from Appellant being required to prove her claim of discrimination, the Agency would have the burden of proving that her dismissal was for just cause. Because of the dramatic affect our ruling

would have on the conduct of the hearing, we hold that the appeal is in no way frivolous.<sup>3</sup>

Since there is no dispute of material fact on the issue, and because of the operation of our rules, we hold that Appellant, at the time of her separation, had not attained Career Status. Consequently, at hearing the Agency is not required to prove that it had just cause to separate Appellant. The only issue that is ripe for hearing is the issue of discrimination raised by Appellant. The burden of proof will be on Appellant to prove that her separation was the result of unlawful or improper<sup>4</sup> discrimination.<sup>5</sup>

Appellant further argues, essentially, that there is a dispute as to whether she had passed probation because the Agency failed to follow certain rules concerning notice of her probationary status. While we agree with Appellant that the Agency appears to have failed to follow certain rules regarding notice, we do not agree that those failures raise an issue concerning Appellant's status. Per CSR 5-35A(1), the only way that Appellant could attain Career status is through "[s]uccessful completion of the employment probationary period, and the training programs required by this Rule 5.<sup>6</sup> Any lack of notice, any lack of meetings, any lack of warning does not translate into Appellant having successfully completed her probation period and her required training. We do not believe failure to meet notice requirements either undoes the lawfully granted

---

<sup>3</sup> We see no evidence to support the allegations made by the Appellant that this appeal was brought for any improper purpose.

<sup>4</sup> "Improper" meaning "contrary to our rules."

<sup>5</sup> To be clear, as a result of this ruling, we hold that the issue of whether Appellant's probation was terminated because of performance issues or a failure to complete training (Hearing Officer Order on Order Discharging Show Cause, p.2) is not an issue upon which the Agency would bear any burden of proof and further hold that such issue would only be relevant at hearing to the extent that any facts surrounding this issue could be seen as relevant to Appellant's obligations to meet her burdens on her discrimination claim.

<sup>6</sup> CSR 5-35A(2) allows an employee to attain Career status through reinstatement after layoff; a situation inapplicable to this matter.

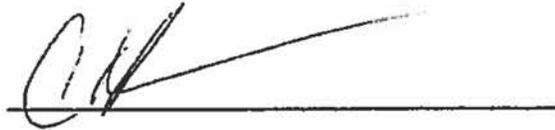
extension or the extension in effect by operation of rule, or that the notice failures grant Career status by default.

Appellant also argues that she was never informed that her job security was conditioned upon the completion of training classes. As noted above, Appellant's offer letter which was signed by Appellant, puts her on notice of this fact. See also, R.7, attachment to Appellant's initial appeal form. There is no dispute of material fact on this issue<sup>7</sup>.

For all of the above reasons, the Agency's interlocutory appeal is GRANTED. Appellant had not attained Career status at the time of her termination. This matter is remanded back to the Hearing Officer for the sole purpose of hearing Appellant's claim of discrimination.<sup>8</sup>

SO ORDERED by the Board on December 17, 2015, and documented this <sup>5<sup>th</sup></sup> day of February, 2016.

BY THE BOARD:



Chair (or Co-Chair)

---

<sup>7</sup> In addition, the automatic probation extension for failure to complete training is indisputably codified in Career Service rules, and Appellant, in dealings with this governmental entity, should know those rules and the limitations and conditions those rules may create. See. e.g., *Schultz v. City of Longmont*, 465 F.3d 433, 438 (10<sup>th</sup> Cir. 2006);

<sup>8</sup> Appellant's request for oral argument is denied.

**Board Members Concurring:**

**Gina Casias (Co-Chair)**

**Patti Klinge**

**Neil Peck**

**Derrick Fuller**