

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

Appeal No. 27-03

DISMISSAL ORDER

IN THE MATTER OF THE APPEAL OF:

DEPUTY SHERIFF SARGEANT JERRY DURAN, DEPUTY SHERIFF SARGEANT DONNA DURAN, DEPUTY SHERIFF SARGEANT WILLIAM WALTERS, DEPUTY SHERIFF SARGEANT ANTHONY SULLIVAN, AND THE FRATERNAL ORDER OF POLICE ON BEHALF OF THEM AND AS WELL AS DEPUTY SHERIFF SARGEANTS JANE AND JOHN DOE(S),

v.

Agency: Department of Safety, Denver Sheriff Department, and the City and County of Denver, a municipal corporation.

Appellants filed this appeal of a grievance on February 26, 2003. They are seeking a review of the promotional examination results for the Deputy Sheriff Captain list. An Order to Show Cause was issued on May 8, 2003, because it was unclear to the Hearing Officer whether she had jurisdiction to consider this matter or grant the remedy requested. Appellants filed a response to the Order to Show Cause on June 2. The Agency responded on May 23.

This appeal involves Appellants' request for the review and invalidation of examination and certification for the position of captain with the Sheriff's Department.¹ The Hearing Officer's specific ability to review examination and certification is limited by CSR §19-10 a) 2) to actions by the Personnel Director, as provided by CSR §3-40, *et seq.* CSR §3-42 permits an applicant for promotion or employment who has been disqualified due to cheating or other misconduct to petition the Personnel Director to reconsider the disqualification. There is no provision within the Rule for the Personnel Director to review any other decisions relating to employment and promotional tests. Since this appeal does not concern disqualification, the Hearing Officer does not have jurisdiction under CSR §19-10 a) 2) to consider this appeal.

¹ Appellants grieved this matter to Captain Mesa and then to Undersheriff Fred J. Oliva, not to the Career Service Personnel Director. However, this case concerns actions by the Career Service Authority in evaluating a promotional exam, not the actions of the Sheriff's Department. Therefore, there is no factual basis to assert jurisdiction under CSR §19-10 d). The Hearing Officer will deal solely with whether there is a jurisdictional basis to review the actions of the Personnel Director under CSR §19-10 a).

Appellants apparently concede that the Hearing Officer does not have jurisdiction under CSR §19-10 a) 2) as they do not address this provision. Instead, they argue that the Hearing Officer has jurisdiction under CSR §§19-10 a) 1) and 3). While the Hearing Officer finds that that her jurisdiction over examinations is limited to that granted by CSR 19-10 a 2), she will address the arguments of the Appellants that she has jurisdiction under these two provisions.

Appellants claim that the action of the Personnel Director violated his personal discretion or judgment in authorizing three separate assessment panels. [CRS §19-10 a) 3)]. They also argue that the use of three panels violates Career Service Rules §§3-11 and 3-23 and City Charter §C5-25, thereby providing jurisdiction pursuant to CSR §19-10 a) 1).

The Hearing Officer rejects the argument that the use of three separate panels is an abuse of the Personnel Director's personal discretion or judgment. Because CSR §3-23 permits the use of multiple panels, without any restrictions, the fact that the Personnel Director permitted their use, without a showing that his decision to do so was based upon an improper motive or bias, is not an abuse of his discretion or judgment. There is no such allegation in this case. The Hearing Officer lacks jurisdiction under CSR §19-10 a) 3).

In arguing that the Hearing Officer has jurisdiction under CSR §19-10 a) 1), Appellants claim that the use of multiple panels violates §§3-11 and 3-23 and City Charter §C5-25. This argument also fails.

Appellants maintain that, while CSR §3-23 permits the use of multiple panels, not requiring each candidate to meet with each panel is not proper. This restrictive interpretation of CSR §3-23 is wrong. The Rules clearly permit the use of multiple panels. The purpose behind multiple assessment panels is to permit the assessment of more candidates faster and more completely than could be handled by only one panel. It is not to give candidates the chance to improve their scores by re-interviewing with multiple panels. To interpret this Rule as requiring every candidate meet with every panel would defeat the purpose of permitting multiple assessment panels when there are large pools of candidates. The Hearing Officer will not interpret the Rule as so as to obviate its need.

Since there is nothing inherently impermissible in the use of three assessment panels, Appellants need to show that their due process and equal protection rights were violated by the use of multiple assessment panels. In other words, Appellants would need to show that one or more panels treated the candidates before them differently than did the other panels, thereby resulting in different scoring criteria.

In this case, Appellants claim there was a recalculation of their scores due to discrepancies between raters. According to the Agency, the reevaluation of the rating was due to a computer error. For the purposes of this decision, the Hearing Officer will assume that the Appellants' statement is correct.

Discrepancies in the original scoring alone do not establish a fundamental problem in the multiple panel system. Instead, it tends to show otherwise. The fact that the Career Service re-rated the assessments and issued "Corrected Examination Results" shows that the candidates were not ultimately treated differently depending on which panel assessed them. Therefore, Appellants' rights were not harmed by the use of three assessment panels.

Appellants also argue that the City Charter was violated in that the "best-qualified" persons (presumably themselves) were not selected for promotion. This issue does not really have to do with multiple panels, since employees frequently complain that others whom they think are less qualified than they were placed on a promotional list and they were not. Just because Appellants disagree with the final list does not mean the City Charter was violated.

In order for the Hearing Officer to exercise jurisdiction, the aggrieved employees must have the right to a review of individual examination results by a Hearing Officer and that Hearing Officer must also have authority to fashion a remedy. This is not the case here. The Career Service Board made this clear when it limited the Hearing Officer's jurisdiction over examinations only to disqualifications. The Board has not given the Hearing Officer the power to conduct what would be, in essence, an assessment panel of all the candidates and determine who is the "best qualified." Therefore, the Hearing Officer has no authority to review the Deputy Sheriff Captain promotional list, as requested by Appellants. This case must be dismissed for lack of subject matter jurisdiction.

ORDER

The Hearing Officer lacks jurisdiction under CSR 19-10 a) to consider this appeal. It is DISMISSED with prejudice.

Dated this 30th day of June 2003.



Robin R. Rossenfeld
Hearing Officer for the
Career Service Board