

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

Appeal No.09-13A(Interlocutory)

IN THE MATTER OF THE APPEAL OF

MARK GIBBS,
Appellant/Respondent,

vs.

DEPARTMENT OF AVIATION,
and the City and County of Denver, a municipal corporation,
Agency/Petitioner.

ORDER ON PETITION FOR INTERLOCUTORY REVIEW

In this matter, the Hearing Officer issued a Show Cause Order requiring Appellant Mark Gibbs to show why his Whistleblower claim should not be dismissed. After considering responses by the Appellant and the Agency (which included the submission of affidavits and other materials outside of the initial pleadings), the Hearing Officer determined that Appellant had met his burden and had alleged sufficient facts to allow his Whistleblower claim to proceed to hearing. Accordingly, he dismissed the Rule. The Agency disagreed with the Hearing Officer, and filed a Petition for Interlocutory Review pursuant to CSR 19-61E¹, challenging the jurisdiction of the Hearing Officer to hear the Whistleblower claim.

The submission of affidavits and other materials outside of the pleadings essentially turned this matter into a summary judgment motion; and the Hearing Officer, determining that Appellant had raised sufficient factual matters to warrant a hearing on the merits of the Whistleblower claim, denied entry of summary judgment against the Appellant. Generally, denial of a summary judgment motion is not appealable. *Lombard v. Colorado Outdoor Educ. Center, Inc.*, 187 P.3d 565, 573 n. 6 (Colo.2008); *Bowling v. Rector*, 584 F.3d 956, 963 (10th Cir.2009).

We find that the Agency, in its Petition, has not raised any jurisdictional issue. Instead, we believe the Petition simply raises issues of fact. The Agency believes that the Appellant did not raise sufficient facts to allow his Whistleblower claim to proceed to hearing. The Hearing Officer found to the contrary. Because the Hearing Officer basically determined that there were

¹ Under CSR 16-60 Grounds for review, generally, CSR 19-61E states: E. Lack of jurisdiction: The Hearing Officer does not have jurisdiction over the appeal. A party may file an interlocutory appeal on this ground and if such interlocutory appeal is filed, the appeal before the Hearing Officer shall be stayed until the Board decides the interlocutory appeal.

disputed issues of material fact concerning the Whistleblower claim, and because his initial factual determinations at this stage of proceedings do not implicate any jurisdictional issue, we dismiss the Agency's interlocutory petition and remand this matter back to the Hearing Officer for further proceedings.

SO ORDERED by the Board on September 5, 2013, and documented this 3rd day of October, 2013.

BY THE BOARD:



Chair (or Co-Chair)

Board Members Concurring:

Colleen M. Rea, Esq.

Michelle Lucero, Esq.

Bob Nogueira