

ORDER ON APPELLANT'S REQUEST FOR SUBPOENA

IN THE MATTER OF THE APPEAL OF:

VERNON HOWARD, Appellant,

vs.

DEPARTMENT OF PARKS AND RECREATION,
and the City and County of Denver, a municipal corporation, Agency.

On April 12, 2011, Appellant filed a Third Request for Subpoenas to obtain a copy of security tapes for the Wellington E. Webb Municipal Office Building. The Agency objects to the request as untimely and not justified by good cause.

This is an appeal of the Agency's disqualification of Operations Supervisor Vernon Howard on June 16, 2010 based on its conclusion that Appellant was unable to perform the essential functions of his position. The evidence in this appeal was closed on April 7, 2011 after six days of hearing, and written closing arguments are due on April 20, 2011. In support of this request, Appellant argues that the tape is necessary to counter the testimony of three rebuttal witnesses regarding Appellant's physical appearance and use of a cane at his disqualification meeting at the Webb Building, and that he "had no reason to believe that the [videotape] would be needed until the final day of testimony, April 7, 2011."

ANALYSIS

A trial court in its discretion may permit a party who has rested to reopen a case for the purpose of presenting further evidence. Rocky Mountain Animal Defense v. Colorado Div. of Wildlife, 100 P.3d 508, 519 (Colo. App. 2004). The motion must be supported by good cause, including that it is necessary to the administration of justice and would not unfairly prejudice the other side. Allman v. State, 164 S.W.3d 717 (Tex.App. 2005). In addition, the evidence must substantially affect the outcome of the case. Bell v. Kristi, 938 S.2d 745 (La.Ct.App. 2006).

During its case in chief on Feb. 25, 2011, the Agency presented the testimony of ADA Coordinator Rita Murphey that in making her disability and reasonable accommodation determinations, she took into account that Vern Howard appeared to be uncomfortable and was having difficulty walking at the disqualification meeting. On Mar. 3, 2011, HR Supervisor Suzanne Iverson testified that Appellant was moving slowly with the aid of a cane, and appeared to be in pain on that day. During his case,

Appellant denied this evidence, but he sought no further discovery or subpoenas to counter the testimony based on surprise. Moreover, resolution of the core issue of this case does not depend on Appellant's physical condition on the date of the disqualification meeting.

ORDER

Based on the foregoing, Appellant's request for a subpoena for production of the security tapes at the Wellington Webb Building is DENIED.

DONE April 18, 2011.


Valerie McNaughton
Career Service Hearing Officer

I certify that on April 18, 2011 I delivered a copy of this Order to the following in the manner indicated:

Vern Howard, P.O. Box 200488, Denver, CO 80220 (via U.S. mail)
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