

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

Appeal No. 16-08

ORDER GRANTING MOTION TO DISMISS

IN THE MATTER OF THE APPEAL OF:

HELEN KEMP, Appellant,

vs.

DEPARTMENT OF AVIATION,

and the City and County of Denver, a municipal corporation, Agency.

The Agency has moved to dismiss this appeal. Appellant has not filed a response. Upon consideration of the motion and the entire file, the Hearing Office enters the following findings and order.

This is an appeal of Agency action resulting in Appellant's loss of 27 hours of accrued vacation leave. Appellant was on paid investigatory leave in November 2007 when she reached the maximum vacation leave accrual limit of 336 hours under CSR § 11-23 f). As a result, Appellant did not accrue another 27 hours of vacation leave beyond that maximum. As a result of Appellant's grievance, the Agency requested permission of the Personnel Director to allow accrual of those hours. [Appeal, p. 6.] The Personnel Director denied the request based on CSR § 11-23 f), which requires that an emergency request to exceed the maximum accrual hours must be based on workload. [Motion to Dismiss.] Here, Appellant alleges that she was denied an exemption because she did not receive her pay stubs showing she was at the maximum until her return to work.

Appellant did not respond or otherwise deny that her request for an exemption was not based on considerations of workload. Appellant merely argues that her appeal is based on an "inequality in the application and resulting consequences of rules 16-30 B and 16-30 C which do negatively impact my benefits and status." [Appeal, p. 2.] However, there is no contradiction between 16-30 B, which allows investigatory leave to be extended when necessary to complete the investigation, and subsection C, which allows an employee on investigative leave to use vacation leave rather than remain at home. Appellant has not alleged any inequality in application or results of these rules.

In addition, Appellant has not alleged how the extension of her investigative leave prevented her from requesting an exemption from the limits of § 11-23 f). Even if it had, the Agency took the only action permitted by the rules to prevent the Appellant's loss of vacation hours: it applied to the Personnel Director to exceed the maximum accrual stated in § 11-23 f). Since the request did not allege it was justified by workload, the only ground permitted under the rule, the appeal does not state that the denial violates § 11-23 f).

Order

Based on the foregoing findings, it is hereby ordered that this appeal is DISMISSED with prejudice for failure to state a claim upon which relief can be granted.

Done this 7th day of April, 2008.


Valerie McNaughton
Career Service Hearing Officer

I hereby certify that on April 7, 2008 a copy of this Order was sent to the following:

Helen R. Kemp, P.O. Box 7582, Denver, CO 80207 (via US mail)
City Attorney's Office, Litigation Section, dlefilng.litigation@denvergov.org (via email)
Jim Thomas, Department of Aviation, Jim.Thomas@diadenver.net (via email)



NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

A party may petition the Career Service Board for review of this decision in accordance with the requirements of CSR § 19-60 *et seq.* within fifteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the certificate of mailing below. The Career Service Rules are available at [www.denvergov.org/csa/career service rules](http://www.denvergov.org/csa/career%20service%20rules).

All petitions for review must be filed by mail, hand delivery, or fax as follows:

BY MAIL:

Career Service Board
c/o Career Service Hearing Office
201 W. Colfax Avenue, Dept. 412
Denver CO 80202

BY PERSONAL DELIVERY:

Career Service Board
c/o Career Service Hearing Office
201 W. Colfax Avenue, First Floor
Denver CO 80202

BY FAX:

(720) 913-5995

Fax transmissions of more than ten pages will not be accepted.