CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO

Appeal No. 41-16A

DECISION AND ORDER

IN THE MATTER OF THE APPEAL OF:

DONNA LAWRENCE, Appellant,

v.

DEPARTMENT OF AVIATION, DENVER INTERNATIONAL AIRPORT, AIRPORT INFRASTRUCTURE MANAGEMENT, and the City and County of Denver, a municipal corporation, Agency.

Appellant, Donna Lawrence, filed complaints of discrimination, intimidation, harassment and retaliation against her supervisor. The Agency investigated those claims and in the process of that investigation, discovered acts of misconduct committed by the Appellant. The Agency issued Appellant a written reprimand for those acts of misconduct discovered during the investigation of the complaints she had made against her supervisor.

Appellant filed an appeal of that written reprimand, alleging that the issuance of the written reprimand amounted to an act of discrimination, intimidation and harassment, as well as retaliation for having filed the initial complaint. The discrimination, intimidation and harassment claims were dismissed by the Hearing Officer before hearing, limiting the subject of the hearing to whether the issuance of the written reprimand amounted to improper retaliation by the Agency in violation of Career Service Rules. The Hearing Officer determined that Appellant failed to prove, by a preponderance of the evidence, that her complaint against her supervisor was a contributing or motivating factor in the Agency's written reprimand issued against her. As a result, the Hearing Officer dismissed Appellant's appeal with prejudice and affirmed the issuance of the written reprimand.

Appellant has appealed the Hearing Officer's decision to this Board. The Board AFFIRMS the Hearing Officer.

Appellant[1] first argues that there is newly discovered evidence which would entitle her to a new hearing. Pursuant to Career Service Rule 19-61A, newly discovered evidence is, in fact, grounds for us to review a hearing officer's decision. That rule states:

> 19-61 Grounds for Petition for Review
>
> A party may petition that the Board review a Hearing Officer's decision only on the following grounds:
>
> A. New evidence: New and material evidence is available that was not available when the appeal was heard by the Hearing Officer;

Appellant urges us to overturn the Hearing Officer's decision because she has new evidence that was not presented at hearing. That evidence, however, consists of documentation of her own medical condition which was in existence some ten months prior to her hearing. This plainly is not evidence qualifying as new evidence under CSR 16-61A. In addition, as Appellant admits, the reason the evidence was not admitted into the record of the hearing was because her attorney chose not to. Appellant, therefor, actually appears to be making an argument that by failing to introduce this evidence and failing to raise arguments about her health, her counsel failed to competently represent her at hearing. This record, however, does not support any such argument, and, in any event, competency of counsel is not grounds for our review under Career Service Rules.[2]

Appellant next advances the theory that the Hearing Officer's decision sets bad precedent involving policy considerations that may have effect beyond this appeal and, therefore, should be reversed pursuant to CSR 16-61C. She claims that the Hearing Officer set bad precedent by issuing a decision (in his ruling on his Show Cause Order issued prior to Hearing) that allows retaliation as long as that retaliation does not affect an employee's benefits or status. The Hearing Officer's decision on the Show Cause Order did no such thing. In issuing his Order, the Hearing Officer was simply following our Rule 19-10A2(a)(i) which permits an appeal of a grievance only if an employee's pay, benefits or status is impacted by alleged Agency misconduct. The Hearing Officer, in his Show Cause Order, asked Appellant to demonstrate how her pay, benefits or status had been affected by the actions complained of in her grievance. All she could come up with in her response was her belief that the Agency's actions would "have a negative effect on promotions within DIA."[3] The Hearing Officer believed this unsupported claim to be too speculative to allow the appeal of the denial of her grievance to go forward. We agree with the Hearing Officer. The Appellant failed to allege sufficient facts to allow her appeal of her grievance to go to hearing.

The remainder of Appellant's argument on appeal appears to be nothing more than Appellant's belief that the Hearing Officer incorrectly found certain facts and relied on certain

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[1] While Appellant was represented by counsel before the Hearing Officer, Appellant has prosecuted this appeal *pro se*.

[2] We see nothing in the substance of the "new evidence" that would persuade us to overturn the Hearing Officer's decision or grant Appellant a new hearing.

[3] Appellant's brief, page 4.

evidence. Of course, we do not independently engage in fact finding and we do not re-weigh the evidence considered by the Hearing Officer. We have reviewed the record and find that all of the factual findings made by the Hearing Officer are supported by competent evidence. In addition, we find that all of the conclusions reached by the Hearing Officer, based on those facts, are reasonable. Ultimately, we agree with the Hearing Officer that Appellant failed to meet her burden of proof; that is, she failed to prove by a preponderance of the evidence that the Agency's issuance of the written reprimand was motivated by Appellant having filed a complaint against her supervisor.

To the extent that Appellant has raised any arguments not specifically addressed, we find those arguments to be without merit and insufficient to provide us with justification for overturning the Hearing Officer's decision.

Consequently, the Hearing Officer's decision is AFFIRMED.

SO ORDERED by the Board on February 16, 2017, and documented this 2nd day of March, 2017.

BY THE BOARD:

Co-Chair

Board Members Concurring:

Neil Peck

Patricia Barela Rivera