

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 48-08

ORDER DISMISSING APPEAL

IN THE MATTER OF THE APPEAL OF:

TIM MULLER, Appellant,

vs.

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

On April 3, 2009, the Appellant was directed to show cause why this appeal should not be dismissed as moot and for lack of jurisdiction. Both parties responded timely. I have considered the filings, the case file, and pertinent authority. I incorporate my findings from my Order to Show Cause, and now find and order as follows.

The Appellant claims that he is entitled to a hearing because the relief he requested, reversal of the decision to place him on administrative leave, has not been granted. The Appellant wishes to use the hearing officer's determination on the issues to invoke the sanction provision of the Whistleblower Protection Ordinance. § 2-109 (d), D.R.M.C.

The Career Service Board has clearly stated a hearing officer's jurisdiction is limited to "affirming, reversing, or modifying the actions which give rise to an appeal." CSR § 19-55 and Muller v Dept. of Parks and Recreation, CSA 48-08, 2 (CSB 3/10/09). It is undisputed the Agency returned Appellant to work and expunged from his personnel records the letter which placed him on investigatory leave. As the action giving rise to the appeal has been withdrawn, the issues are rendered moot.

Though a disciplinary action under D.R.M.C. § 2-109 (d) follows a hearing officer's reversal of an agency action in a Whistleblower Protection Ordinance claim, it does not follow that the agency's rescission of the action which was the basis of the employee's claim, leaves a justiciable claim. The Appellant has failed to cite any authority which indicates such jurisdiction is retained. The Appellant's claims, having been rendered moot by the Agency's rescission of its action against the Appellant, the Order to Show Cause is made final, and the Appellant's appeal is **DISMISSED WITH PREJUDICE**.

DONE April 15, 2009.


Bruce A. Plotkin
Career Service Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board for review of this decision, in accordance with CSR 19-60, 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 or by hand delivery as follows:

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