

ORDER DENYING APPELLANT'S MOTION FOR SUBPOENAS DUCES TECUM

IN THE MATTER OF THE APPEAL OF:

JAMES NAPOLI, Appellant,

vs.

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

A telephone conference was held in this case on January 5, 2011, regarding Appellant's motion for subpoenas duces tecum and other pre-hearing matters. The Agency was represented by Assistant City Attorney Andrea Kershner. The Appellant was represented by Jacob E. Martinez, Esq.

Appellant's motion sought to have the Agency produce the personnel records of Appellant's co-workers who had been disciplined for violations of the Career Service Rules similar to those allegedly violated by the Appellant. While the inquiry is relevant to Appellant's claim regarding degree of discipline and to his discrimination claim, the issue was Appellant's failure to seek that documentation timely through the discovery process.

Based upon Appellant's motion for enlargement of time, the most recently-issued pre-hearing order extended the deadline for the parties to request discovery informally and to file motions for discovery by November 24, 2010. [Order Granting Continuance and Extension of Deadlines, 11/2/10]. Appellant did not file a discovery motion. Instead he seeks to have the Agency produce co-worker's personnel files via subpoena which could have been produced through now-expired informal or formal discovery. The distinction is not merely technical. By permitting documents to be acquired by subpoena which were not sought during discovery, discovery deadlines for the production of documents would be rendered meaningless. Such a substitution for discovery would prejudice opposing parties' ability to prepare timely responses, and, if opposed, would cause probable delays to the hearing.

Good cause may excuse the untimely filing of a request for discovery. Appellant's distinction between the Agency and the Career Service Authority for purposes of producing the records he sought was not persuasive. For reason stated here and above, Appellant's motion for subpoenas duces tecum is DENIED. Appellant may inquire as to the information he seeks at hearing by cross or direct examination of witnesses.

In addition, the parties' representatives were directed to confer for possible stipulations as to exhibits and facts prior to hearing.

DONE January 6, 2011.



Bruce A. Plotkin
Career Service Board Hearings Officer

I certify that, on January 6, 2011, I delivered a correct copy of this Order to the following in the manner indicated:

Mr. James Napoli, mjj122803@msn.com	(via email);
Jacob E. Martinez, Esq., jmartinez@newelldecker.com	(via email);
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