

COLORADO CAREER SERVICE BOARD,
CITY AND COUNTY OF DENVER, STATE OF COLORADO
Appeal No. 62-09A.

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

RONNIE SANDERS,

Appellant-Petitioner,

vs.

DENVER PARKS AND RECREATION, THE CAREER SERVICE AUTHORITY and the
City and County of Denver, a municipal corporation,

Agency-Respondent.

This matter is before the Career Service Board on Appellant's petition for review. The Board has reviewed and considered the full record before it, and **AFFIRMS** the Hearing Officer's Decision of September 24, 2010, on the grounds outlined below.

I. FINDINGS

We decide this appeal as a companion to *In Re Hamilton*, Nos. 100-09 A. and 107-09 A., and adopt the reasoning of that decision. In *Hamilton*, we found that the merit-based personnel system established by the Denver City Charter includes the right not to be displaced by the abolishment of a position occupied by a career service employee and the creation of a new position with substantially the same duties and responsibilities.

The difference here, however, is that Appellant's abolished position as a Safety Supervisor and the new position of Safety Administrator do not have substantially the same duties and responsibilities. The most notable differences are the lack of supervisory and administrative duties in the newly created position, and the addition of new responsibilities, including city-wide short and long term security strategic planning. The Hearing Officer's finding that the two positions were not substantially the same is supported by the evidence in the record and not clearly erroneous.

Further, Appellant has not presented new and material evidence that was unavailable at the time of the hearing. Although Appellant discovered after the hearing that Mr. Stewart's limited position as Safety Administrator was extended for an additional period of time, this fact is not material for purposes of this appeal.¹

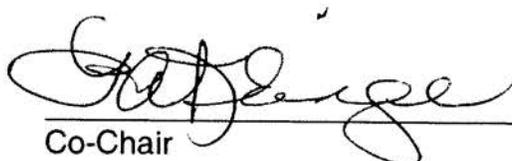
Finally, we agree with the Hearing Officer that Appellant failed to demonstrate that his lay-off was in retaliation for filing a grievance over a "needs improvement" PEPR, particularly when Mr. Patterson readily agreed to remove the rating given to Appellant by his former supervisor, and the Agency delayed the lay-off for several months in order to address Appellant's concerns and give him additional time to seek other employment opportunities.

II. ORDER

IT IS THEREFORE ORDERED that the Hearing Officer's Decision of September 24, 2010, is **AFFIRMED**.

SO ORDERED by the Board on February 3, 2011, and documented this
17th day of February, 2011.

BY THE BOARD:



Co-Chair

Board Members Concurring:

Patti Klinge,
Colleen M. Rea,
Felicity O'Herron
Tom Bonner

¹ In reviewing whether a newly created position is substantially similar to an abolished one, the hearing officers should focus on the duties and responsibilities to be performed by incumbents of both. Although classification and pay grade may have some relevancy to this inquiry, we note that in *Hamilton* the functions of Project Manager 1 in Public Works and Senior Architect in General Services were substantially the same, even though the pay grades were 813 and 816 respectively. In the present case, however, the fact that Appellant's abolished position was unlimited and the newly created position is limited in time is not relevant to the inquiry regarding similarity of job functions.