HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO
Appeal Nos. 32-09; 41-09

ORDER DENYING APPELLANT'S MOTIONS FOR REHEARING OR TO QUASH HIS TESTIMONY

IN THE MATTER OF THE APPEAL OF:

GLENN SCHULTZ, Appellant,

vs.

DENVER ZOOLOGICAL FOUNDATION, INC.,
and the City and County of Denver, a municipal corporation,
Agency.

On September 17, 2009, the Appellant filed a document with the Career Service Hearings Office which is deemed to contain two motions: Appellant's motion for re-hearing or, in the alternative, to quash his testimony at hearing on 8/21/09. For reasons which follow, the motions are DENIED.

1. Motion for re-hearing.

The Appellant requests a rehearing prior to the issuance of a decision in this matter. The request is not ripe for review and is outside the jurisdiction of the Hearing Officer. It is not ripe because no decision has issued.[1] Jurisdiction of the Hearing Officer is limited to affirming, modifying or reversing the Agency action that gave rise to the appeal. CSR 19-55.

2. Motion to quash Appellant's testimony at hearing.

The Appellant requests to quash his own testimony at hearing, because (1) opposing counsel refused to provide an important document, (2) his own attorney lied, and (3) he (the Appellant) was ill and not himself ("erratic levels of concentration and speech communication").

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[1] If the motion were granted before a decision issued, and the decision reversed the Appellant's termination, the Appellant could find himself in the curious position of giving the Agency a second chance to prove the allegations against him. In theory, if the Appellant's testimony rebutted Agency evidence, the removal of his testimony would leave only the Agency's testimony

3. Conduct of opposing counsel. First, the Appellant states opposing counsel refused to speak with him directly the day before hearing. As the Appellant was represented by legal counsel and did not have consent of Appellant's counsel, opposing counsel properly refused to speak directly with the Appellant under the Colorado Rules of Professional Conduct, rule 4.2.

Conduct of Appellant's counsel. Next, the Appellant claims, in essence, ineffective assistance of counsel. Unlike the context of criminal law, a claim of ineffective assistance of counsel may not form the basis of appeal in a civil matter.[2] The Appellant's remedy lies in a legal malpractice lawsuit against his attorney.

Appellant's inability to participate fully in his hearing. Finally, the Hearing Officer observed no behaviors which indicated the Appellant was unable to participate fully in his own case. Specifically: the Appellant did not make such a claim at any time during hearing; the Appellant did not ask for a continuance; the Appellant spoke frequently with, and passed notes to, his attorney during hearing in response to testimony of others; when the Appellant withdrew his appeal # 32-09 he was fully advised, including whether he had an opportunity to fully discuss the matter with his attorney and the Appellant replied in the affirmative with apparent full understanding; the Appellant testified on his own behalf at length, without difficulty, and cogently; the Appellant made no mention of distress, physical or mental infirmity at any time during hearing.

For reasons stated above, the Appellant's motions are DENIED in their entirety.

DONE September 17, 2009.

Bruce A. Plotkin
Career Service Hearing Officer

[2] Only immigration appeals have successfully applied the claim of ineffective assistance of counsel. *See, e.g.* Nelson, v. Boeing Co., 446 F.3d 1118, 1119 (10th Cir. 2006).