

**HEARINGS OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**

Appeal No. 130-05

DECISION

IN THE MATTER OF THE APPEAL OF:

GLENN J. SCHULTZ,
Appellant,

vs.

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

I. INTRODUCTION

The Appellant, Glenn J. Schultz, appeals the Agency's November 1, 2005 denial of his grievance. A hearing concerning his appeal was conducted on February 17, 2006, by Bruce A. Plotkin, Hearings Officer. The Appellant represented himself. The Agency was represented by Mindi Wright, Assistant City Attorney, with Ms. Leslye Bilyeu, Director of Human Resources at the Agency, serving as advisory witness. Agency Exhibits 1-8 were admitted without objection. The Appellant offered no additional exhibits. The Appellant testified on his own behalf.

The Appellant claims his supervisor wrongly signed a pay authorization on his behalf, assessing two hours as vacation time. He requests an order to convert "two hours of vacation time back in lieu of compensated time," and an order to warn his supervisor "against future misconduct of inappropriateness and bad ethical and moral conduct."

II. ISSUES

The following issues were presented for appeal:

1. whether the Appellant has stated claims for which the Hearings Officer may grant relief;
2. whether the Agency violated specified Career Service Rule, City Charter

Amendment, or city Ordinance related to the Career Service Rules;

3. whether the Agency unlawfully retaliated or harassed the Appellant in matters related to his appeal.

III. FINDINGS

The Appellant is employed by the Denver Zoo (Agency) as a Maintenance Technician. His immediate supervisor is Art Benton. The Appellant submitted leave slips for the pay period from September 1, 2005 through September 15, 2005, the accuracy of which is in dispute. The same day, the Agency's Payroll Clerk, Claudia White, determined the Appellant's time slips for September 9 were short two hours for the pay period. The Appellant was not at work at the time so, in order to submit a timely and accurate payroll so that pay would not be held up, the Appellant's supervisor, Art Benton, completed a two-hour vacation leave slip on behalf of the Appellant. [Exhibit 1]. That two-hour time slip is the basis of the Appellant's complaints.

On September 28, 2005, the Appellant did not dispute the inaccuracy of his time slip, but requested Benton and White to change only how the two hours of leave would be recorded. He requested the two hours be changed from vacation pay to compensated time pay, or sick leave. White replied the leave slips were already processed, and could therefore not be adjusted. [Exhibit 5]. In addition, at hearing, the Appellant acknowledged he did not have two hours of sick leave available which could have been applied in place of vacation for 9/9/05.

Under Career Service Rule (CSR) 18-12, the Appellant presented his first-step grievance to Benton on October 7, 2005. Benton denied the grievance on October 17, 2005. On October 25, 2005, the Appellant submitted his second-step grievance to Clayton Freiheit, President and Chief Executive Officer of the Denver Zoological Foundation. Freiheit denied the grievance on November 1, 2005. This appeal followed on November 10, 2005.

The Appellant's harassment and retaliation claims derive from the same allegations. The Appellant stated he was harassed on three occasions: (1) two co-workers, with whom the Appellant shares office space, prevented him from using his desk and computer, and placed a "no trespassing, violators will be shot" sign over the desk. The Appellant stated Benton required them to remove the sign immediately after the Appellant's complaint. [Appellant testimony]. (2) The second incident, according to the Appellant, occurred following an argument November, 2005. The Appellant stated a co-worker shoved him into a fence, injuring his back. He complained to Benton, and thereafter the Appellant claimed "he [Benton] assigned me the worst jobs," "he's following me to see when the completion dates are," and "a week later he [Benton] installs a camera above our office, one he hears and monitors, so that any future misconduct he could catch me with, he could fire me." The Appellant claimed the third

incident of harassment occurred shortly after the first two, when "Three days later, on 11/23/05, he gives me a memo I can't feed my squirrels, or I'm breaking company policy."

With respect to co-worker harassment, the Appellant's admission that his supervisor immediately dealt with his complaint constitutes a failure to establish an harassment claim under CSR 15-100 et seq. Regarding the installation of a camera, the Appellant admitted the camera is not trained specifically on him and may also monitor other workers [Appellant cross-examination], and no written complaint was made, in conformance with the requirements of former CSR 19-10 f) and 15-100 et seq. As for the squirrel feeding memorandum, the Appellant admitted signs posted throughout the zoo prohibit the feeding of animals and apply to him as well. The Appellant therefore failed to establish a claim for harassment.

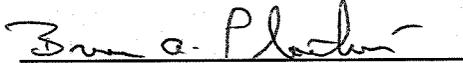
The Appellant's retaliation claims were based upon the same allegations as immediately stated above. As with his harassment claims, the Appellant was required to, but admittedly did not, pursue his remedies under former CSR 19-10 f) and 15-100 et seq., and therefore did not establish a claim for retaliation.

At the conclusion of the Appellant's case, the Agency moved to dismiss all the Appellant's claims. The following principles apply to the Agency's motion: statements in the Appeal must be viewed in the light most favorable to the Appellant; all Appellant's assertions of material facts must be accepted as true; and the Motion to Dismiss must be denied unless it appears beyond doubt that the Appellant cannot prove that the facts, as he alleges them, would entitle him to relief. Dorman v. Petrol Aspen, Inc., 914 P.2d 909, 911 (Colo. 1996), In re Martinez, CSA 176-03 (6/28/04). Even in the light most favorable to the Appellant, for reasons established above, The Appellant failed to establish a prima facie case for his claims.

IV. CONCLUSION AND ORDER

The Appellant failed to establish a prima facie case for any of his claims, so that he could not prove that the facts, as he alleges them, would entitle him to relief. Therefore, the Agency's Motion to Dismiss was granted in its entirety. Accordingly, the appeal is DISMISSED WITH PREJUDICE.

Done this 27th day of February, 2006.


Bruce A. Plotkin
Hearings Officer
Career Service Board