

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

Appeal No. 90-03

DISMISSAL ORDER

IN THE MATTER OF THE APPEAL OF:

KIM STEWART, Appellant.

Agency: Career Service Authority, and the City and County of Denver, a municipal corporation.

PROCEDURAL HISTORY

On June 16, 2003, Kim Stewart ("Appellant") filed an "Appeal to Hearing Officer" at the Career Service Hearings Office. The form indicates appeal of a grievance and of discrimination based on race, sex, disability and age. The remedy sought is "Proper investigation of the supervisors (sic) actions against me, reinstatement to my job without bias or harassment or retaliation." Because of several problems noted by the Hearing Officer with this Appeal, Appellant was ordered to show cause and address those problems by July 11, 2003. The Agency was given the opportunity to respond, if it so chose. It did not. Being fully advised of the matter, the Hearing Officer finds as follows:

Appellant attached two Grievance Forms to the completed appeal form. The first-step Grievance Form signed by Appellant and dated May 5, 2003, identified the action giving rise to the Grievance as "Harassment and Retaliation for filing a grievance appeal on March 26, 2003, and for filing a grievance for discrimination. Supervisors...called me into a meeting to discipline me..hand delivered their response from that meeting dated April 25, 2003. This response demonstrates harassment." Appellant also indicated that she received the "response" to her pre-disciplinary meeting on April 28, 2003. This apparently was an error since Appellant agreed in her response to the Order to Show Cause that the predisciplinary meeting was on April 10.

Appellant's supervisors denied the first-level grievance by letter dated May 15, 2003. The Grievance Form signed by Appellant and dated May 27, 2003, indicated that the second-level grievance was hand-delivered to the appointing authority on May 27, 2003, and the first page of the Grievance Form was also date-stamped "2003 May 27 P 3:46 Career Service Authority," indicating it was received on May 27, 2003. The narrative on the second-step Grievance Form differs from the first-step Grievance Form. On the first page of the second-step Grievance Form Appellant wrote, "My grievance was denied by...supervisors" and that she received notice, presumably of the denial of the first-level grievance, "on May 28, 2003" - the day *after* filing her second-level grievance. In her response to the Order to Show Cause, Appellant again stated that she filed the second-level grievance on May 27, 2003, without clarifying the reference to May 28. The Hearing Officer concludes that the May 28 reference was an error and will ignore it for the purposes of this Order.

DISCUSSION

The Hearing Officer can only adjudicate grievances that are filed in a timely manner. CSR §18-12 2. requires that grievances be filed with "the immediate supervisor within ten (10) calendar days after notification of the action which gives rise to the grievance."

Appellant has clarified that she is grieving Ms. Lujan and Mr. Nimmer's conduct during a predisciplinary meeting on April 10, 2003, not the issuance of a letter on April 25 stating that no discipline would be taken against her. The grievance process was commenced on May 5 when Appellant left copies of it on Ms. Lujan and Mr. Nimmer's office chairs. This was twenty-five days after the allegedly offending conduct that forms the basis of this grievance occurred.

Appellant filed her first-level grievance fifteen days too late. Her grievance was untimely from the start. Therefore, this appeal must be dismissed for her failure to comply with the requirements of CSR §18-12 2.

Appellant's second-level grievance was also untimely and would also require dismissal of this case.

Appellant delivered her first-level grievance on May 5. Mr. Nimmer and Ms. Lujan had until May 15 to respond. CSR §18-12 2. Since they did not respond by that date, Appellant had ten days - until May 26 (May 25 being a Sunday) - to file her second-level grievance. CSR §18-12 3. Instead of taking prompt action, she waited until she received the first-level response, which occurred on a date past the date her second-level grievance was due by operation of the Rules. The response from her supervisors did not revive the time for filing her second-level grievance because the time had already run out when she received their response on May 27. To find that it did revive an already extinguished right would mean that the time to move on to the second level would never ripen because an aggrieved party could argue that the first-level supervisor might respond at some distant point in the future. This is clearly against the reason behind ten-day statutes of limitation, *i.e.*, to ensure the prompt resolution of the grievance.

Appellant's right to file her second-level grievance ripened twelve days before she filed it. Once the initial ten-day response time had lapsed, Appellant was no longer permitted to wait for a response. She was required to move on to the next level.. She chose not to and waited until she received an untimely reply from her supervisors. The failure to exercise her rights in a timely manner requires dismissal of this grievance.

As an alternative form of jurisdiction, Appellant claims the Hearing Officer has jurisdiction under CSR §15-100, *et seq.* However, these provisions require an investigation of the harassment or discrimination claim by a supervisor or other appropriate official and then, if the aggrieved employee is not satisfied by that disposition, she may appeal to the Hearing Officer for review under CSR §19-10 f).¹ Appellant did not follow the requirements of CSR §15-100, *et*

¹ The Rules provide in relevant part:

§15-103 Action of Individual Experiencing Unlawful Harassment

Individuals who experience unlawful harassment are urged to:

- A. make it clear that such behavior is offensive to them and request that such behavior be discontinued;

seq., before seeking the Hearing Officer's review. Therefore, the Hearing Officer has no jurisdiction to consider the alleged violations of CSR §§15-100, 15-103 and 15-104.

The third alleged basis for the Hearing Officer's jurisdiction is CSR §19- 10-c). This provision permits the Hearing Officer to review discriminatory actions directly. Appellant's appeal is untimely under this Rule, also. In order to bring a direct discrimination appeal to the Hearing Officer, Appellant had to file her action within ten days of the allegedly discriminatory act. Whether Appellant is complaining of actions taken on April 10 (predisciplinary meeting) and/or April 28 (date of the letter), she had only until May 8, 2003, at the latest, to file a direct appeal. She did not do so. Therefore, this appeal is untimely under CSR §19-10 c).

Because the appeal is untimely, the Hearing Officer will not address the other issues as moot.

ORDER

For the foregoing reasons, this grievance appeal is DISMISSED in its entirety with prejudice.

Dated this 16th day of September 2003.



Robin R. Rossenfeld
Hearing Officer for the
Career Service Board

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- B. report such conduct to their supervisor...If the complaint involves the employee's supervisor...the employee may go to...the Career Service Authority Employee Relations Section.

§15-104 Investigation

The...Career Service Authority will immediately undertake effective, thorough, and objective steps concerning the allegation of harassment or discrimination. If an investigation is deemed necessary, it will be completed and a determination regarding alleged harassment will be made and communicated to the employee as soon as practicable...