HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO
Appeal No. 82-09

ORDER ON MOTION TO DISMISS

IN THE MATTER OF THE APPEAL OF:

MARIA C. BANE, Appellant,

vs.

CAREER SERVICE AUTHORITY, WORKFORCE MANAGEMENT DIVISION, and the City and County of Denver, a municipal corporation, Agency.

On October 21, 2009, the Agency filed a motion to dismiss this appeal for lack of jurisdiction. Appellant submitted her response to the motion that same day.

Procedural Background

This pro se appeal is directed to an involuntary demotion, and attaches a notice of layoff and offer of a demotion in lieu of layoff to Senior Personnel Analyst, as well as Appellant's written acceptance of that offer. [Appeal, Atchs. 19 – 21.] Appellant also alleges that the demotion was retaliation for reporting unlawful harassment on July 28, 2009.

In support of its motion to dismiss, the Agency argues that the Hearing Office has no jurisdiction over the claim as made by Appellant for two reasons: 1) the appeal incorrectly cited "involuntary demotion", and struck the words, "with an attendant loss of pay" as the basis for jurisdiction; and 2) the Hearing Office lacks jurisdiction to grant the requested relief - transfer to another supervisor. "Involuntary demotion with an attendant loss of pay" is a type of progressive discipline that may be imposed under CSR § 16-50 B. 4., and is appealable under § 19-10 A.1.c. Appellant's response clarifies that she intended to appeal her Sept. 15, 2009 demotion in lieu of layoff, and requests as relief that the Hearing Office reverse that demotion.

Analysis

1. Demotion Appeal

Appeals in this administrative forum are designed to permit career service employees to challenge adverse personnel actions under the Rules. In support of

that purpose, the administrative process is both expedited and simplified. Dismissal is inappropriate where a fair reading of the appeal makes the basis for jurisdiction apparent. See In re Williams, CSA 53-08 (Order 8/18/08); C.R.C.P. 8(a) ("A pleading which sets forth a claim for a relief . . . shall contain: (1) If the court is of limited jurisdiction, a short and plain statement of the grounds upon which the court's jurisdiction depends; (2) a short and plain statement of the claims showing that the pleader is entitled to relief".) Pro se litigants must be held to less stringent standards than those applied to pleadings drafted by lawyers. Erickson v. Pardus, 551 U.S. 89 (2007), citing Haines v. Kerner, 404 U.S. 519 (1972).

Moreover, "a hearing officer is not bound by appellant's statement of remedies on the appeal form, but must determine by an examination of the appeal documents whether there is a remedy within the jurisdiction of the rules that would be appropriate if the agency action is overturned." In re Williams, supra. Appellant's response clearly requests reversal of the demotion in lieu of layoff, and the Hearing Office has jurisdiction over such appeals under CSR § 14-49. Therefore, the appeal presents the issue of her demotion in lieu of layoff under § 19-10 A.1.e.

2. Retaliation Appeal

The Agency also argues that there is no jurisdiction for the retaliation claim because Appellant admits she suffered no loss of pay after her demotion from Human Resources Specialist, pay grade 811, to Senior Human Resources Professional, pay grade 809. [Agency Motion to Dismiss, Exh. 2-3.]

The Career Service Rules require that a demotion in lieu of layoff set pay at the same level received before the demotion, or the last step of the new classification, whichever is lower. § 9-33 B. Here, pay was set at the same level as Appellant received in her former classification, in accordance with this rule. Since the right to appeal demotions in lieu of layoff under § 14-49 must be read to be consistent with the pay provisions governing them in § 9-33 B, it is apparent that layoff demotions need not cause a loss of pay in order to be appealable.

The Agency has submitted the analysis of Mountain States Employer's Council, which found that Appellant was demoted from pay grade 811 to 809. In her former position, Appellant's top pay would have been $95,590. The top salary for pay grade 809 is $83,640. The reduction in pay grade and limitation on future pay render the demotion an adverse employment action under Burlington Industries Inc. v. Ellerth, 524 U.S. 742 (1998).

ORDER

Based on the foregoing findings and conclusions, it is hereby ordered:

1. The Agency's motion to dismiss the appeal of Appellant's demotion in lieu of layoff is denied.

2. The motion to dismiss the retaliation claim is also denied.

DONE this 26th day of October, 2009.

Valerie McNaughton
Career Service Hearing Officer