

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

Appeal No. 115-03

DISMISSAL ORDER

IN THE MATTER OF THE APPEAL OF:

YASMINE CHAPMAN, Appellant,

v.

Agency: Career Service Authority and the City and County of Denver.

Appellant filed this grievance appeal on July 18, 2003. Because it was unclear whether the Hearing Officer had subject matter jurisdiction to hear it, an Order to Show Cause was issued on July 28, 2003. Appellant responded on August 8 and 18, 2003. The Agency chose not to respond.

According to the documentation attached to the Notice of Appeal, Appellant is grieving a proposed reorganization that Appellant claims was created in order to effectuate a future reallocation, non-disciplinary demotion or a lay-off. She also alleges age and sex discrimination and harassment.

The issue of the Hearing Officer's subject matter jurisdiction over the questions raised is fundamental to any case. The Hearing Officer's subject matter jurisdiction is extremely limited. The Hearing Officer may not act in excess of her jurisdiction. In other words, if the Hearing Officer is not given the specific power to hear an issue on appeal and grant the requested relief, she must dismiss the matter.

The Hearing Officer does not have jurisdiction to review reorganizations or other management decisions unless they violate a specific Rule, Charter provision, or Municipal Ordinance. While Appellant has listed many Rules and Charter provisions she claims have been violated, these Rules and Charter provisions are not relevant to reorganizations. For instance, CSR §2-10 b) and Charter provisions §§9.1.1 and 9.1.4 concern the creation and general powers of the Career Service Board; CSR §§3-12 and 13 testing prospective employees; CSR §3-31 the promotional policy; CSR §§ 5-72 and 5-74, Rule 7 and Charter provision §9.2.1 classification plans; Rule 8 and Charter provision §9.2.1 pay rates; Rule 14 lay-offs; Rule 15 the Code of Conduct; Rule 16, Discipline.

Even reading Appellant's recitation of the facts most liberally in favor of Appellant, she has not stated a violation of any of the Rules or Charter provisions she cites which would give the Hearing Officer the authority to review the reorganization. Appellant's pay, status and tenure have not been affected. She has not been laid-off or demoted. She has not been denied a promotion. This case merely involves a reorganization that Appellant does not like.

The only Rule cited by Appellant in her long list which might create a cognizable claim, CSR §5-62, sets out the rights of Career Service employees. However, this Rule does not limit an

agency's right to conduct a reorganization nor does it confer a right upon the Career Service employee to challenge one. Therefore, there is no claim under this Rule, either.

Another problem with this case is that a tribunal has no jurisdiction to consider hypothetical or moot issues. Appellant's claims her status will be affected by the reorganization and she will be demoted or laid-off at some future date. These are not claims ripe for review. Should Appellant be demoted or laid-off, she will then have the opportunity to challenge those decisions. Until then, the effect of the reorganization is upon Appellant's pay, status, or tenure is hypothetical. The Hearing Officer lacks power to review it now.

Appellant raises violations of CSR Rule 7 and asks the Hearing Officer to order a position audit. Since March 2000, an employee's right to seek the Hearing Officer's review of classification decisions has been severely restricted. Prior to March 2000, employees could seek review of reclassification decisions after administrative review of such decisions by the Personnel Director. Since March 2000, the Hearing Officer does not have jurisdiction to review any classification decisions, including an agency's refusal to request a position audit. Therefore, the Hearing Officer cannot order a position audit.

Appellant did not raise sex and age discrimination in her grievance before the Agency. Discrimination cannot be asserted as part of a CSR §19-10 d) grievance appeal because it was waived below. This means that Appellant must raise the discrimination claims independently of the denial of her grievance. This has two consequences, both of which are fatal to this appeal.

The Hearing Officer has the power to hear a direct appeal of a discrimination claim pursuant to CSR §19-10 c). However, the appeal must be filed with the Hearing Officer within ten days of the alleged discriminatory act. CSR §19-22 a). In this case, Appellant is claiming that Mr. Nimmer's July 1, 2003 decision was discriminatory.

This appeal was not filed with the Hearing Officer until July 18, more than ten days later. Therefore, the Hearing Officer cannot consider an independent discrimination appeal under CSR §19-10 c) because it is untimely.

Similarly, Appellant's recitation in her response to the Order to Show Cause about things that occurred in 1999, 2000, 2001, and 2002 are also untimely.

The other way the Hearing Officer might have jurisdiction to consider Appellant's claims is under a theory of (continuing) discrimination as a violation of under CSR §15-100, *et seq.* However, this also fails in this case.

CSR §19-10 f) gives the Hearing Officer jurisdiction over CSR §15-100, *et seq.* In order for the Hearing Officer to have jurisdiction under these provisions, the employee must comply with the requirements of CSR §15-104 and request an investigation of the alleged harassment or discrimination. If, at the conclusion of that investigation the employee is still dissatisfied, she may appeal the investigation results to the Hearing Officer.

Appellant has not complied with these requirements. She states in her response to the Order to Show Cause that, on some unspecified date, she spoke with Stacy Schalk about the alleged discrimination. Despite voluminous attachments in support of her other claims, Appellant does not have a final report, or even a memorandum from Ms. Schalk, stating that an investigation will not be conducted. Because Appellant has the burden of proof that she has complied with the requirements of CSR §15-100, *et seq.*, and that her request to the Hearing Officer for review of

investigation is timely, something Appellant has failed to do, the Hearing Officer cannot exercise jurisdiction under CSR 19-10 f).

Based upon the foregoing, the Hearing Officer concludes that she lacks the subject matter jurisdiction to hear this case. It is DISMISSED with prejudice.

Dated this 19th day of November 2003.



Robin R. Ressenfeld
Hearing Officer for the
Career Service Board

CERTIFICATE OF MAILING

I hereby certify that I have forwarded a true and correct copy of the foregoing DISMISSAL ORDER by depositing the same in the U.S. mail, this 19th day of November 2003, addressed to:

Yasmine Chapman
3031 So. Reed Street
Denver, CO 80227

Susan J. Tyburski, Esq.
1800 Gaylord Street
Denver, CO 80206

I further certify that I have forwarded a true and correct copy of the foregoing DISMISSAL ORDER by depositing the same in interoffice mail, this 19th day of November 2003, addressed to:

Office of the City Attorney
Employment Law Section

Kelly Brough
Career Service Authority

