

ORDER DENYING APPELLANT'S MOTION TO REINSTATE APPEAL

IN THE MATTER OF THE APPEAL OF:

PHYLLIS COMPTON, Appellant,

vs.

DEPARTMENT OF SAFETY, DENVER SHERIFF'S DEPARTMENT,
and the City and County of Denver, a municipal corporation, Agency.

During the hearing for this appeal on March 10, 2011, the parties reached a verbal settlement. The Appellant was present and was represented by Nikea Bland, Esq., of Elkus and Sisson P.C. The Agency was represented by Jennifer Jacobson, Assistant City Attorney. The terms of the settlement were not made part of the record at that time. On the record, the Appellant acknowledged issue and claim preclusion as follows.

Hearing Officer: Do you understand that by withdrawing this appeal, you will no longer be able to bring this appeal or any of the claims in this appeal in the future, at least in this venue, in the Hearings Office?

Ms. Compton: Yes.

Appellant's counsel then advised the Hearing Officer that she fully advised the Appellant of the consequences of withdrawing her appeal. The Appeal was then dismissed with prejudice with the following statement.

Hearing Officer: The Appellant, having been fully advised, and the parties having represented that they have come to an agreement on all the outstanding issues in this case, then I will consider this appeal is withdrawn, and therefore the case is dismissed with prejudice.

The Appellant, through counsel, now wishes to rescind her agreement to the dismissal and have the case proceed to hearing. The Agency filed a timely objection. As cause, the Appellant cited the following reasons to reinstate her appeal.

1. Misinformed. The Appellant states she was not informed, at the time she agreed verbally to withdraw her appeal, that she would be unable to apply for future employment with any City Agency, and that she was dissatisfied with the release of any claims against the City. Appellant acknowledges that, when she subsequently reviewed the written agreement with her attorney, and despite both misgivings, "[n]onetheless, Ms. Compton signed the paperwork." If there was any misunderstanding or mistake about the nature of the settlement, Appellant was fully informed and had the advice of counsel at the time she signed the agreement, so this claim fails.

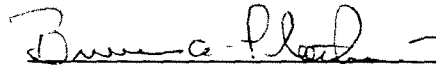
2. Reservation of right to sue. Next, the Appellant attached her settlement agreement and claims she reserved the right to revoke the agreement under paragraph 5 which provides a right to revoke the agreement within seven days, but only as it pertains to the

Age Discrimination in Employment Act, 29 U.S. C. 621 et seq. The rescission clause specifies ""Such revocation shall not affect the waiver or release of any rights or claims not arising under 29 U.S. C. 621 et seq." Therefore this claim fails as well, since any reservation of right to sue only under the ADEA is outside the jurisdiction of this venue. See also Woods v. Denver Dept. of Revenue, 1993 WL 763124 (D. Colo. 1993).

3. Agency's jurisdiction claim. The Agency claims the Hearings Office lacks authority to grant the relief requested by the Appellant, which it states to be interpretation of the settlement agreement. I respectfully disagree with the underlying premise. The powers conferred to the Hearings Office include such functions as are "necessary to implement and maintain a fair and efficient process for appeals." Jurisdiction was already established in the underlying appeal. That jurisdiction has not changed by Appellant's request to reopen the same issues for which jurisdiction was already established. Although jurisdiction is established, Appellant has failed to establish a basis to re-open her appeal.

In consequence of the forgoing, Appellant's motion is DENIED.

DONE March 31, 2011.



Bruce A. Plotkin
Career Service Hearing Officer

I certify that, on March 31, 2011, I delivered a correct copy of this ORDER to the following, in the manner indicated:

Deputy Phyllis Compton, c/o Nikea Bland, Esq.	(via email);
Nikea Bland, Esq., nbland@elkusandsisson.com	(via email);
City Attorney's Office at Dlefilng.litigation@denvergov.org	(via email);
Lili Tran, HR Services, Lili Tran, lili.tran@denvergov.org	(via email).

