

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

Appeal No. 289-01

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

ELIZABETH V. CORDOVA, Appellant,

v.

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

INTRODUCTION

For purposes of these Findings and Order, Elizabeth V. Cordova shall be referred to as "Appellant." The Department of Parks and Recreation shall be referred to as the "Department." The Career Service Authority shall be referred to as the "CSA." The City and County of Denver shall be referred to as the "City". The Rules of the Career Service Authority shall be abbreviated as "CSR" with a corresponding numerical citation.

A hearing on this appeal was held August 22, 2001, before Robin R. Rossenfeld, Hearing Officer for the Career Service Board. Appellant was present and was represented by Mark A. Walton, Esq., Walton & Walton, LLC. The CSA and City were represented by Mindi L. Wright, Esq., with Nicole Lucero-Holub serving as the advisory witness on behalf of the CSA and City.

The Hearing Officer has considered the following evidence in this decision:

The following witnesses were called by and testified on behalf of the Appellant:

Appellant, Maureen Van Norden, William G. Peterson, Jeff Hansen, Barbara A. Mathis,

The following witnesses were called by and testified on behalf of the CSA:

Nicole Lucero-Holub, Steve Adkison, Sandra S. Klawonn,

The following exhibits were offered and admitted into evidence on behalf of the Appellant:

Exhibits A – L, N-Q, S - U

The following exhibits were offered and admitted into evidence on behalf of the Agency:

Exhibits 3, 7 – 10, 16

The following exhibits were admitted into evidence by stipulation:

Exhibits A- E, I, K, O – Q, 3, 7, 9, 16

The following exhibits were offered but not admitted into evidence and therefore not considered in this decision:

None

NATURE OF APPEAL

Appellant appeals the classification decision reclassifying her as a Purchasing Technician. She is requesting that she be reclassified as a Staff Assistant. She is also asking that the Hearing Officer order the Department of Parks and Recreation to comply with CSR §7-60 regarding work assignments outside of job classification.

ISSUES ON APPEAL

Whether the CSA properly classified Appellant as a Purchasing Technician or should she have remained classified as an Administrative Assistant or reclassified to Staff Assistant?

Whether the Hearing Officer has the jurisdiction to require Appellant be compensated for working outside her classification?

Does the doctrine of equitable estoppel apply to this matter?

PRELIMINARY MATTERS

The parties submitted written closing arguments on September 6. The CSA also filed a response to Appellant's closing argument on September 14. These documents were considered by the Hearing Officer in reaching her decision.

FINDINGS OF FACT

1. Appellant is employed in the Finance/Administrative Division of the Department of Parks and Recreation. She has worked for the City since 1989. She was originally a Clerk Typist III. By August 1993 she had been promoted several times, the last time to Senior Secretary. During the 1995 JAJE conversion, Appellant was reallocated to Administrative Assistant, and was placed under the supervision of Barbara Mathis, Staff Assistant.

2. According to Appellant, Ms. Mathis was responsible for reviewing her work, but that most of her assignments actually came from the Director of Finance.

3. Appellant and Ms. Mathis were responsible for handling requisitions for

purchases, tracking encumbrances, maintaining and reconciling information about capital inventory, maintaining files, and working with the auditors. Appellant was also responsible for bus and parking passes for the Riverpoint facility.

4. Ms. Mathis suffered from health problems and was increasingly absent after 1995. She was absent for any time ranging from a few days up to three months.

5. In order to ensure that the work was done, Ms. Mathis and Appellant organized the duties so that they each were able to provide backup for the other. (See, Exhibit, F, G, H) Eventually, due to Ms. Mathis's extended absences, Appellant assumed all of Ms. Mathis's duties except supervising herself. According to both Appellant and Ms. Mathis, Appellant's assumption of Ms. Mathis's duties became more "permanent" rather than intermittent by 1999.

6. Appellant's PEP's and PEPR's were never modified to show any change of responsibilities. (Exhibits K, S, T, U)

7. Ms. Mathis took a leave of absence effective January 31, 2000. She subsequently retired from the Department in or about June 2000.

8. The Department posted for a replacement for Ms. Mathis. However, the position has remained vacant, except for a two-week period at the end of December 2000, and Appellant has performed Ms. Mathis's duties as well as her own since February 2000.

9. In February 2001, some of Ms. Mathis's duties were redistributed to Division of Finance employees other than Appellant.

10. Several of Appellant's witnesses (Maureen Van Norden, William G. Peterson, Jeff Hansen) testified that they received no reduction in service during Ms. Mathis's absences or since her departure as Appellant assumed her duties.

11. The Department never requested Appellant receive compensation for her assumption of duties outside her title as required by CSR §7-68.

12. On November 16, 2000, Appellant received a PEPR evaluation for the period ending August 15, 2000. Jungoak Haddock, Accounting Supervisor and Appellant's acting supervisor, wrote:

Liz did an excellent job assuming the expanded responsibilities of the purchasing section of the department during this evaluation period. For much of this period, the Staff Assistant (supervisor) position has been vacant. In spite of this vacancy, Liz has been managing Parks & Recreation purchasing providing all the support to the field, management, other City agencies and outside entities in addition to performing duties as an Administrative Assistant. Liz is well organized and thorough in her work and has made a significant contribution to the efficiency and effectiveness of the purchasing section of the Department. She participated in discussions and decision-making related to purchasing issues while maintaining a high standard within her own area of responsibility. Liz has made a (sic) progress in being cooperative and

supportive toward her co-workers, field personnel, and me personally as her interim supervisor. In addition, Liz has completed the encumbrance balance reconciliation to the City Aspen records for all divisions and established an aspen location table. Currently, Liz is working on another major project reconciling Parks & Recreation inventory, which is essential for the Aspen fixed asset module inventory conversion. Completing these projects while performing her duties was truly an exemplary accomplishment. As a result, Liz earned a rating of outstanding for this evaluation period.

(Exhibit 8, p. 4)

13. Appellant was awarded a merit increase in pay as a result of her PEPR evaluation of "outstanding" for the year ending August 15, 2000.

14. On January 31, 2000, Appellant submitted a Request for Classification Consideration. She wrote that the reason for her request was "Identical duties of the Staff Assistant have been assigned to the Administrative Assistant." Ms. Haddock signed the Request "for Barb M." (Exhibit A)

15. In the Request, Appellant described her primary duties as follows:

Prepare/process contract justification forms and tracking forms, track contract through City system until contracts are executed. 50%

Prepare/process purchase requisitions. Track requisitions through Purchasing until an encumbrance number has been assigned. 50%

Prepare/process change orders for expenditure contracts, amendments to contracts, and for reconciliation on contracts and encumbrances. 50%

Reconcile all encumbrance balances against the Auditor's encumbrance balances including rejected documents and inventory control. 50%

(Exhibit A)

During the field audit conducted by Nicole Lucero-Holub (see below), the percentages for the above duties were modified to equal 100%. They were changed to 10%, 35%, 35%, and 20%, respectively. (Exhibit A)

16. On September 27, 2000, Ms. Lucero-Holub conducted a field audit of Appellant's position in response to Appellant's request for reclassification. She warned Appellant that the field audit could result in any of three alternatives: reclassification upwards, reclassification downwards, or a determination that Appellant was properly classified as an Administrative Assistant.

17. Ms. Lucero-Holub not only met with Appellant for an hour and a half, but she also talked with Ms. Haddock and Fred Weiss, Director of Finance. She also reviewed Appellant's PEPR. Before the Classification Audit Report (Exhibit 3) was finalized, Ms. Lucero-Holub gave Appellant the opportunity to review the information and make corrections, changes and additional comments to her findings.

18. Ms. Lucero-Holub was never told that Appellant was performing Ms. Mathis's "exact duties;" Appellant indicated that she was performing "similar duties." Further, Ms. Haddock and Mr. Weiss told Ms. Lucero-Holub that the assignment of the Staff Assistant duties was only temporary.

The incumbent reports directly to the Staff Assistant in the Purchasing Section. The Staff Assistant is currently vacant and the in process of being filled. The preceding Staff Assistant was on a leave of absence from April 2000 through June 2000 and resigned effective July 1, 2000. The incumbent has been acting on behalf of the Staff Assistant during her absence....

(Exhibit 3, p. 2)

19. Ms. Lucero-Holub compared Appellant's predominant duties (i.e., those most important to the position based upon priority, frequency of performance and impact of error) with Administrative Assistant, Staff Assistant and Purchasing Technician. She found, in relevant part:

Administrative Assistant (803-A)

The general statement of duties for the Administrative Assistant job class is to "perform administrative duties for cabinet member, deputy directors of large charter department, directors of divisions within large charter departments, and directors of independent agencies or agencies under the Mayor." Classification is determined by ascertaining the level and organizational reporting relationship of the incumbent's supervisor. In this instance the incumbent's immediate supervisor is not at the appropriate level in the organization to utilize the Administrative Assistant classification. Nor is the incumbent performing the predominant secretarial or clerical duties of an Administrative Assistant.

Staff Assistant (805-A)

The general statement of duties for the Staff Assistant job class is to coordinate payroll, budget, purchasing, personnel, information or report processing to assist organizational staff. The field audit revealed the incumbent directly reports to a Staff Assistant and the Staff Assistant is responsible for administering the incumbent's PEP. The field audit as well as the Accounting Supervisor's comments in the findings, also indicates that the contract duties the incumbent is performing are temporary duties, as a result of the Staff Assistant vacancy. The contract duties the incumbent performs are clerical in nature in that she reviews, verifies, processes and track the contracts through the approval process. Once the contracts are approved and distributed to all parties, the contracts are monitored by the Contract Compliance Analyst. Due to the temporary duties and responsibilities as well as the reporting relationship to the Staff Assistant, Staff Assistant class would not be appropriate for the incumbent.

The field audit also revealed incumbent's predominant duty is to perform purchasing functions (55%). The incumbent primarily reviews, verifies

and processes purchase orders or requisitions and invoices and organizes/maintains inventory files. The class concept for the Staff Assistant is that an individual must be performing some combination of duties in areas of payroll, budgeting, purchasing, personnel, information or report processing to assist organizational staff. The incumbent performs a few of the duties on the Staff Assistant class specification, these include job responsibilities (JR's) # 3, "coordinates purchasing for operating supplies and equipment, works with purchasing department on bid and vendor selection for acquisition of goods and services, tracks purchasing and repair invoices, monitors condition and operation of equipment and maintains contracts for equipment repair." Although, the incumbent is not actually responsible for "coordinating" the purchasing the incumbent actually reviews, processes and tracks the requisitions. The incumbent only has signing authority on the requisition if the item has already been budgeted. Final signing authority on all purchases is done by the Appointing Authority and the Budget and Management Office.

The incumbent also performs some of #10, "provides professional and clerical support for supervisor..." The incumbent is responsible for acting on behalf of her supervisor while the supervisor is out of the office. She also is responsible for providing her supervisor and the Accounting Supervisor with secretarial support as requested, and back-up support for the Director's assistant. In summary, this classification is not comparable nor is it appropriate for the incumbent's predominant duties.

Purchasing Technician (614-T)

The general statement of duties for the Purchasing Technician job class is to review purchase request forms and inventory levels, researches current City bids for acquisitions of parts, supplies and services. Based on the findings the incumbent spends 55% of her time performing purchasing duties and responsibilities. She spends 35% of her time preparing and processing requisitions and 20% of her time performing the annual encumbrance reconciliation for purchasing and contracts which include a report of her findings to be submitted to her supervisor. The incumbent's duties are consistent with JR (job responsibility)

#1, "organizes purchase request data, provides advice to requisitioning departments, and reviews requisitions for accuracy prior to processing internal purchasing forms."

#2 – "some positions may prepare purchase orders."

#5 – "verifies parts or supply numbers to ensure ordering numbers correspond, make corrections as needed."

The incumbent spends 35% of her time performing job responsibilities (JR's) #1, 2 & 5, preparing, processing and reviewing/verifying requisitions.

#7 – "some positions utilize a computer database to identify and resolve pricing, receiving and issuing discrepancies to ensure balancing of the inventory. Reconciles inventory balances to a variety of (sic) reports and support documents."

#11 – "some positions run cyclic inventory reports on a monthly basis and ensures proper computer inventory for current and

projected usage.”

The incumbent utilizes a database for tracking requisitions and contracts and is responsible for the maintenance of the database. The incumbent also spends 20% of her time performing the annual department encumbrance reconciliation. Throughout the year the incumbent is responsible for assisting with inventory and inventory control. She also coordinates the annual inventory with the field personnel.

#10 – “some positions maintain files and review all adjustments made or requested by other user for completeness and accuracy. Makes necessary changes to maintain the integrity of the system.”
The incumbent is responsible for filing and maintenance of original purchasing documents and invoices.

The JR's relate to the duties that a Purchasing Technician would perform. The incumbent primarily reviews, verifies and processes purchase orders/requisitions and invoices and organizes/maintains inventory files. In summary, the incumbent's predominant duties are commensurate with the Purchasing Technician classification.

(sic; italics in original) (Exhibit 3, pp. 5-6)

20. Based upon the above analysis, Ms. Lucero-Holub concluded that Appellant's position should be reallocated from Administrative Assistant to Purchasing Technician.

21. Appellant's pay grade and step were changed from grade 803-A, step 19, to grade 614-T, step 0. Her monthly pay rate remained at \$3,362. However, as a result of the “downgrade” after the reclassification audit, the PEPR evaluation for the year ending August 15, 2000, was deemed “not to exist” and Appellant has had to repay the merit pay she was awarded for her outstanding performance and extra work under the “non-existent” PEPR.

22. Appellant was sent her Classification Notice on January 10, 2001. (Exhibit B) She requested administrative review on January 18. (Exhibit C) The reclassification to Purchasing Technician was affirmed by Sandra S. Klawonn, Team Manager, by a letter dated June 3 and served on Appellant on June 4. (Exhibit D) This appeal was filed with the CSA Hearing Officer on June 14, 2001. (Exhibit E)

22. Appellant never filed a grievance against her supervisors at the Department of Parks and Recreation for assigning her work duties above her job title for more than 30 days and/or for their failure to request permission from the Personnel Director to continue such assignment after 180 days, violations of CSR §7-68.

DISCUSSION AND CONCLUSIONS OF LAW

Applicable Denver City Charter and Career Service Rule Provisions

Both the Denver City Charter and the Career Service Rules concerning the creation of classifications within the system are relevant here. The Rules in effect at the time of Appellant's Request for Classification Audit provide:

Section 7-10 Charter Provisions (Denver City Charter, Section C5.26)

The charter provisions relating to the classification plan as follows: "The City Council annually shall by ordinance enact, after annual recommendations are made by the Career Service Authority, classification and pay plans for all positions in the Career Service, and for positions not in the Career Service, based upon the duties of the several positions..."

Section 7-20 Classification Plan

The classification plan comprises a schematic list of classes supported by written specifications setting forth the duties and responsibilities of each class and the qualifications necessary for appointment to a position of that class.

Section 7-40 Definitions

Section 7-41 Class

A class shall comprise one or more positions that are so nearly alike in the essential character of their duties and responsibilities that the same pay scale, title, and qualification requirements can be applied and they can fairly and equitably be treated alike under like conditions for all other personnel purposes. The same qualification requirements shall be applied to all positions in a class regardless of the agency in which the position is located.

Section 7-42 Class Title

The title of a class shall be the official title of every position allocated to that class for personnel purposes. Organizational titles may be used for other purposes.

Section 7-43 Class Specification

The class specification shall state the characteristic duties, responsibilities, and qualification requirements which distinguish a given class from other classes. The specification shall be descriptive, but not restrictive; that is, the class specification shall describe the more typical types of work which may be allocated to a given class, but shall not be construed to restrict the assignment of other duties related to the class.

Section 7-60 Administration of the Plan

Section 7-65 Purpose of Reallocation

Reallocation is intended to be used to recognize change in classification resulting from:

- a) Gradual change of duties: A gradual change in the level of duties and responsibilities, or
- b) Operational change of agency: A complete or partial reorganization affecting numbers of employees, significant additions of new equipment, or substantial changes in methods or procedures affecting numbers of employees, or
- c) Changes in classification plan: A classification study or maintenance review resulting in changed class specifications.

Reallocation is not an alternative to promotion or a substitute for disciplinary action.

Section 7-66 Reallocation of Positions

- a) Management responsibilities: The appointing authority is responsible for assuring that employees are assigned duties that are appropriate to their class. Where a significant change in the level or kind of duties and responsibilities is assigned to an agency or is to be assigned to an individual, except for a temporary period as described in Subsection 7-68 Temporary Assignment of Duties, or by the addition of duties and responsibilities that are incidental to the primary duties and responsibilities, such change shall be reported to the Career Service Authority for consideration of the effect on the classification of the position involved.
- b) Basis for reallocation of individual positions: Filled positions may be reallocated from one class to another class on an individual basis where all of the following conditions are found to exist:
 - 1) Significant changes have occurred in the level of duties and responsibilities of the position, rather than changes in the performance of the incumbent.
 - 2) Such change has been gradual, rather than resulting from assignments to a specific employee in a short period of time in accordance with Paragraph 7-68 a) Temporary Assignment of

Duties.

- 3) Such changes in duties and responsibilities are of a permanent nature and have been performed in the position for ninety (90) days or more.
- c) Request for review of individual position: The appointing authority, the Career Service Authority, or an incumbent may initiate a request for review of a position if permanent and significant change has gradually occurred in the duties and responsibilities. Such requests shall be submitted only during an open filing period from January 1 through January 31 of each year. Upon a finding that extraordinary conditions exist, the personnel director may waive this limitation. The appointing authority or incumbent shall use the request form prescribed by the Career Service Authority.
- d) Review of individual position: Following the open filing period, the Career Service Authority shall review the changes in the position to determine if the facts presented warrant further consideration, based on the position description and a current performance enhancement plan. Positions for related positions may be requested if needed.

* * *

- g) Report on classification decision: The Career Service Authority shall advise the appointing authority and all affected employees of the classification decision.
- h) Request for review of classification decision: The appointing authority or any affected employee who disagrees with a classification decision may, within ten (10) calendar days from the mailing of the classification decision, request a review of the decision by the Personnel Director. The request for review shall state all of the following:
 - 1) the specific reasons for disagreement;
 - 2) the title of the class specification involved; and
 - 3) the specific rule, ordinance, or charter provision violated; and
 - 4) the action sought.

The Personnel Director or his or her designee shall review the protest and shall inform the applicant of his decision. Any incumbent or appointing authority who is aggrieved by this action of the Personnel Director or the

designee may appeal in accordance with Rule 19 APPEALS. The period of time for filing the appeal shall be computed in accordance with subparagraph 19-22 a) 2).

Section 7-67 Effect of Reallocation on Incumbent

c. Effective date:

- 1) If a position is to be reallocated and the employee occupying the position is eligible to remain in the position, then the reallocation must become effective August 1 following the submission of the request for the review of the position.

Section 7-68 Work Assignment Outside of Job Classification

An appointing authority may assign the duties of a vacant higher level job classification to an employee in a lower job classification for a period of 180 consecutive calendar days. Assignments for periods longer than 180 consecutive calendar days require the approval of the personnel director or designee.

- a. Assignments outside of the job classification can be made for up to 30 consecutive calendar days without a change to pay status of the affected employee. On the 31st day and for the duration of the temporary assignment, the employee shall receive 6.9% above their regular pay. However, the employee's job classification will not change when the 6.9% pay increase goes into effect.

Section 18-10 Definitions

A. Grievance

For the purposes of the Career Service personnel rules the term "grievance" shall mean an issue raised by a Career Service employee relating to the interpretation of rights, benefits or conditions of employment as contained in the Career Service personnel rules, the Charter of the City and County of Denver, or ordinances relating to the career service.

Section 18-12 Grievance procedure

If a work related dispute was not resolved through alternative dispute resolution or if alternative dispute resolution was not previously attempted and a career service employee has a grievance as defined in Section 18-10(a) of this rule, the employee may file a grievance according to the following procedures:

1. Form: The grievance shall be presented in writing and shall be dated. It shall include the name and address of the grievant, the action which is the subject of the grievance,

the date of the action, and a statement of the remedy sought. The grievance form shall have a certificate of mailing or certificate of hand delivery which indicates the date the grievance was placed in the mail or was hand delivered to the immediate supervisor.

2. Filing with Supervisor: The employee shall present a grievance to the immediate supervisor within ten (10) calendar days after notification of the action which gives rise to the grievance....
3. Filing with Agency Head: If the response of the immediate supervisor does not resolve the grievance and the employee wishes to pursue the grievance further, the employee shall present the grievance to the head of the agency, or designee, in writing within ten (10) calendar days after receiving the decision of the immediate supervisor....
- 6) Filing with Career Service Authority: If the employee still feels aggrieved after receipt of this decision, or the agency head has not responded within ten (10) calendar days, and the grievance concerns an alleged violation of Charter provisions relating to the Career Service, ordinances relating to the Career Service, or the Career Service Rules, and the employee wants to pursue the grievance further, the employee must appeal to the Hearings Officer of the Career Service Board in accordance with the provision of Rule 19 APPEALS....

Section 19-10 Actions Subject to Appeal

The following administrative actions relating to personnel matters shall be subject to appeal:

- a) Actions of the Personnel Director: Actions of the Personnel Director or a designated representative. Which meet all of the following criteria:
 - 1) The action results in an alleged violation of the Career Service provisions of the Denver City Charter, or Ordinances relating to the Career Service, or the Personnel Rules.
 - 2) The action arises out of:
 - (b) the classification of a career service position, as provided in paragraph 7-66 h) Request for review of classification position.
 - 3) The action is one which the Personnel Director is

not required to perform, and over which personal discretion or judgment in its performance is permissible.

- b) Actions of an appointing authority: Any action of an appointing authority resulting in dismissal, suspension, disqualification, layoff, or involuntary retirement other than retirement due to age which results in alleged violation of the Career Service Charter Provisions, or Ordinances relating to the Career Service, or the Personnel Rules.

- d) Grievance resulting in rules violations: Any grievance which results in an alleged violation of the Career Service Charter Amendment, or Ordinances relating to the Career Service, or the Career Service Personnel Rules. The grievance must be in conformance with and processed pursuant to the requirements of Section 18-10 Grievances of Employees.

Discussion

Because Appellant is appealing her reclassification to Purchasing Technician, she has the burden of proof in this case. Appellant must establish that she is incorrectly classified and that she should be reclassified to another pre-existing classification within the CSA system that better describes her predominant job duties.

The Hearing Officer has considered all the evidence presented and reviewed the arguments of both sides. While initial review of this matter seems complex, it is really very simple. Appellant was classified as an Administrative Assistant reporting to a Staff Assistant. The Staff Assistant was suffering from health problems and was absent for increasingly longer periods of time for over four years. To ensure that required work was performed in a timely manner, the Administrative Assistant and Staff Assistant were cross-trained in each other's duties and served as "back-up." Eventually, the Staff Assistant left the Department's employ, first by taking an extended leave of absence and then by retiring. At the same time, the Administrative Assistant, who had been assuming the Staff Assistant's job, applied for reclassification upwards into a Staff Assistant title. While she was assigned the Staff Assistant's duties in excess of 30 consecutive days, she never demanded that the Department compensate her for her work outside her title or receive permission from the Personnel Director for the continuing assignment after it lasted more than 180 days. Almost 240 days after the Staff Assistant's last day, the Administrative Assistant's position was audited. The auditor was told that the Administrative Assistant was performing additional duties temporarily; she was not told that the Administrative Assistant had assumed any additional duties for over 180 days. After reviewing the Administrative Assistant's predominant duties, the auditor concluded that the Administrative Assistant had been wrongly classified and reclassified her to Purchasing Technician, effective August 1, 2000. To complicate matters, while the reclassification did not affect the Administrative Assistant's rate of pay, it cancelled the August 15, 2000 outstanding PEPR rating and the merit increase she was awarded under the PEPR. The irony is the merit increase was based upon her having assumed the extra duties and performing them in an "outstanding" manner. The Administrative Assistant was then ordered to repay the merit increase because, given the timing of the

underlying PEPR and the audit, the PEPR was deemed not to have existed.

The rule for determining the correct classification is to look at the predominant duties for the position. Predominant duties are defined as the job responsibilities that are the most important to the position based upon priority, frequency of performance and impact of error. The auditor, and by extension, the Hearing Officer, must look at the nature of the duties, not the volume of the work or the attributes of the incumbent holding the position.

CSR §7-66 b) provides that filled positions may be reallocated from one class to another class on an individual basis where all of the following conditions are found to exist:

- 1) Significant changes have occurred in the level of duties and responsibilities of the position, rather than changes in the performance of the incumbent.
- 2) Such change has been gradual, rather than resulting from assignments to a specific employee in a short period of time in accordance with Paragraph 7-68 a) Temporary Assignment of Duties.
- 3) Such changes in duties and responsibilities are of a permanent nature and have been performed in the position for ninety (90) days or more.

It is important to note that there is nothing in this Rule that prohibits the "downgrading" of a position if the reclassification audit reveals that the position was incorrectly classified in the first place.

CSR §7-66 b) requires that Appellant establish that she is entitled to the reclassification to Staff Assistant under all three prongs. It is clear from the record that Appellant was performing the duties for more than ninety days. The Appellant, for the purposes of her argument that she was entitled to the reclassification, argues that the changes were permanent and not due to a temporary assignment of duties¹. This may or may not be true. The Department, through Ms. Haddock and Mr. Weiss, told the auditor that any changes were due to a temporary assignment of duties. Given the fact that Ms. Haddock and Mr. Weiss did not comply with the requirements of CSR §7-68, which would have established conclusively that the assignment of job duties was temporary, the Hearing Officer finds that the Appellant presented sufficient evidence that the change in her duties were permanent at the time of the audit in September 2000.² That leaves the first prong of the test, i.e., whether the level of duties meets the job specifications for Staff Assistant or not.

¹ The Appellant's alternative theory under equitable estoppel requires her to argue the contrary position, i.e., that the assignment of duties was temporary and that she is entitled to be awarded compensation for the Department's failure to comply with CSR §7-68.

² The fact that some duties were subsequently assigned to other Department employees in February 2001, a full year after Ms. Mathis left, does not negate this conclusion about the status at the time of the audit.

Appellant argues that she should be reclassified upwards to Staff Assistant because she had assumed all of Ms. Mathis's duties other than supervising. CSR 7-66 b) 1) requires that auditor look at the nature of the duties, and not Appellant's performance of those duties. While Appellant performed the duties in an exemplary fashion, as evidenced by her outstanding PEPR, the increase in her responsibilities was merely an increase in volume and not in the nature of her responsibilities. The other problem is that, based upon the information discovered by the auditor during the audit and the information presented during the hearing, Ms. Mathis was probably misclassified as a Staff Assistant; it appears that her predominant duties, other than the supervision of Appellant, might not meet the class specifications, either.

What is left to the Hearing Officer is to examine Appellant's predominant duties, as described by her and Ms. Lucero-Holub during their testimony and as confirmed by Appellant's PEP for the relevant period. This review clearly establishes that Appellant's correct classification is Purchasing Technician. Appellant's line of reporting does not meet the General Statement of Duties for an Administrative Assistant (i.e., "performs administrative duties for cabinet member, deputy directors of large charter departments, directors of divisions within large charter departments, and directors of independent agencies or agencies under the Mayor." See, Exhibit O). Since Ms. Mathis's departure, Appellant has been reporting to a line-supervisor, Ms. Haddock, and not directly to the Director of Finance for the Department, Ms. Weiss. Appellant does not "coordinate payroll, budget, purchasing, personnel, information or report processing to assist organizational staff," the General Statement of Duties for a Staff Assistant. (Exhibit P) A majority of Appellant's time is spent reviewing, verifying and processing purchase orders and encumbrances and maintaining inventory files. This is almost a perfect match with the Purchasing Technician job specifications. Ms. Lucero-Holub's analysis was correct and her findings, along with the administrative review of those findings by Ms. Klawonn, must be upheld.

Normally, the discussion of this case would end here, but this is not a normal case. The problem here is that Appellant was performing "temporary" duties in excess of 30 days (actually in excess of 180 days) and received no compensation for it, and, in fact, had to pay the merit increase back because, through a technicality, the PEPR for the year ending August 15, 2000, is deemed not to exist. The issue is whether the Hearing Officer has the jurisdiction to consider these issues.

The Hearing Officer only has the jurisdiction conferred upon her by the CSA Rules. That jurisdiction is limited to "an alleged violation of the Career Service provisions of the Denver City Charter, Ordinances relating to the Career Service, or the Personnel Rules." CSR §19-10.

This appeal was brought against the Personnel Director pursuant to CSR §19-10 2) b) (the classification of a Career Service position). That is the sole basis for the Hearing Officer's jurisdiction.

However, Appellant, at the hearing, wished to extend the Hearing Officer's jurisdiction by raising an equitable estoppel argument, citing the Department's violation of CSR §7-68. Unfortunately for Appellant, this argument fails.

The courts have applied equitable estoppel to municipalities. See *Kohn v. City of Boulder*, 919 P.2d 822 (Colo. App. 1995). However, for estoppel to apply, the party

against whom it is asserted must have, by word, or conduct, or silence when he or she has a duty to speak, induces another to change position to his or her detriment in reasonable reliance upon the words, conduct or silence of the first party. *See Margason v. Roberts*, 919 P. 2d 818, 821 (Colo. App. 1995).

The first requirement for the assertion of equitable estoppel is that it can only be asserted against the party who breached a duty that caused Appellant to change her position to her detriment. The CSA, the agency involved in this proceeding, is not the party that breached a duty to Appellant. The agency that breached its duty under CSR §7-68 was the Department of Parks and Recreation, which is not a party in this case.

There is no question here that Appellant took on additional "temporary" work, to her detriment, for more than 30 days and that the Department failed to request a 6.9% pay increase or ask permission from the Personnel Director to extend the temporary job assignment for more than 180 days. There is also evidence that Ms. Haddock and Mr. Weiss "fudged" the length of the "temporary" assignment, telling Ms. Lucero-Holub that the temporary assignment had only been since July 1, when in fact Appellant had been doing Ms. Mathis's job at least since February 1, 2000. But it is the Department, not the CSA, which violated CSR §7-68 to Appellant's detriment. Equitable estoppel cannot be asserted against the CSA in this proceeding.

The other problem is that the violation of CSR §7-68 can only come before the Hearing Officer as an appeal of a grievance under CSR §19-10 d) (grievances of Rule violations). As stated above, this appeal was brought against the Personnel Director under CSR §19-10 a). CSR §19-10 d) appeals has different procedures associated with it than CSR §19-10 a) appeals, including the requirements under CSR §18-12 that all grievances must first be filed with the supervisor within 10 days of the notice of the action which gave rise to the grievance, and then a second step to the agency head within ten days before coming to the Hearing Officer. Appellant never complied with this requirement. Therefore, the Hearing Officer has no jurisdiction to hear the grievance. Lacking such jurisdiction, the Hearing Officer has no power to order the Department of Parks and Recreation to pay Appellant an additional 6.9% for her extended "temporary" assignment.³

The other problem that Appellant complains about, her reimbursement of the merit pay, is also not properly before the Hearing Officer. The action was due to the technicality that, given the timing of the PEPR and the fact that the reclassification took effect August 1, 2000, fifteen days before the PEPR's year-end date, there does not appear to be a violation of any discretionary Rule that the Hearing Officer can address, even if it had been properly raised.

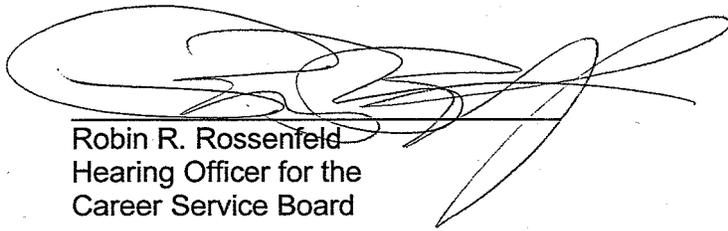
ORDER

Therefore, for the foregoing reasons, the Hearing Officer DENIES the Appellant's request for reclassification from Purchasing Technician to Administrative Assistant. Further, the Hearing Officer lacks jurisdiction to consider the Department's failure to

³ The issue as to whether Appellant could file a grievance against the Department of Parks and Recreation now or whether it would be untimely was not raised and is, therefore, not ripe for consideration.

comply with CSR §7-68 and order Appellant be paid an additional 6.9% for her "temporary assignment" or to order Appellant be awarded her merit pay for the year ending August 15, 2000. The appeal is DISMISSED with prejudice.

Dated this 28th day of September 2001.



Robin R. Rossenfeld
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 FINDINGS AND ORDER by depositing the same in the U.S. mail, this 3rd day of October 2001, addressed to:

Elizabeth V. Cordova
651 South Zuni Street
Denver, CO 80223

Mark A. Walton, Esq.
Walton & Walton, LLC
8400 East Prentice Avenue, Penthouse
Greenwood Village, CO 80111

I further certify that I have forwarded a true and correct copy of the foregoing FINDINGS AND ORDER by depositing the same in interoffice mail, this 3rd day of October 2001, addressed to:

Mindi L. Wright
Assistant City Attorney

Sandra S. Klawonn
Career Service Authority

Virginia Granado