

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

Appeal No. 13-01

ORDER GRANTING AGENCY'S MOTION TO DISMISS

IN THE MATTER OF THE APPEAL OF:

CHARLESETTA CRUTCHFIELD, Appellant

Agency: DEPARTMENT OF PUBLIC WORKS, and THE CITY AND COUNTY OF
DENVER, a municipal corporation

This case comes before the hearing officer on the Agency's Motion to Dismiss with Prejudice filed February 8, 2001. On February 9, the hearing officer issued an Order to Respond to the Agency's Motion no later than February 19, 2001. Appellant timely filed her response on February 16.

BACKGROUND

On December 28, 2000 Appellant filed a Grievance with her immediate supervisor, Nola Owens, alleging that she had learned a co-worker had gotten access to a disciplinary action against Appellant, was showing it to others and was gossiping about Appellant. Appellant requested that those responsible for the disclosure be transferred out of the Parking Bureau, and that the disciplinary information disclosed be taken out of her file. She further alleged that she was being discriminated against because she was denied access to information on the disciplinary actions taken against two "ex supervisors." Appellant asserted that since her confidential information was disclosed and she is Black, the Agency engaged in racial discrimination when it refused to disclose their confidential information and they are White.

On January 8, 2001, Ms. Owens responded that she did not have the authority to grant Appellant's requested remedies. She denied Appellant's grievance.

On January 9, 2001, Appellant filed a second-level grievance with Director of Parking Management John Oglesby, apparently attaching a copy of her level-one grievance.

On January 19, 2001, Executive Deputy Manager of Public Works, Alan Wheeler, responded to Appellant's second-level grievance. Mr. Wheeler indicated that he conducted an investigation and took the appropriate actions, but that he did not have the authority to grant Appellant the relief she requested. He denied Appellant's grievance.

On January 24, 2001 Appellant filed her appeal with the Career Service Authority hearings office. As a remedy she requested the enforcement of "CSR Rule 18 - Section 16-50 #16" (sic), referencing "Divulging confidential information from official records to unauthorized individuals."

DISCUSSION

In its Motion to Dismiss, the Agency alleges that Appellant has not raised any issues over which the hearing officer has subject matter jurisdiction. First, the Agency asserts that the hearing officer lacks jurisdiction to grant any remedy for Appellant's request that the individuals involved be transferred. Second, the Agency argues that Appellant's request to remove the disciplinary action in question from her personnel file is untimely as outside the ten-day deadline. Third, the Agency posits that Appellant has failed to raise a colorable claim of racial discrimination in her complaint.

In her Response, Appellant first states her supervisor never told her there would be anything concerning a disciplinary action in her file, nor did she copy Appellant on what was put in her file. She therefore did not know there was a disciplinary action in her file until the improper disclosure in question came to her attention on December 19, 2000. She then filed her first-level grievance with Ms. Owens on December 28, 2000, nine days later. Appellant therefore argues that the filing was within ten days as required.

Appellant basically repeats her requested remedy of discipline in the form of transferring the individuals allegedly responsible for the disclosure of confidential information from her personnel file. She also reiterates the same basis for her discrimination claim (i.e. the Agency's failure to disclose the disciplinary actions of White employees while they did disclose hers as a Black employee).

1. Appellant's request for transfer of the offending employees.

In her Response, Appellant maintains her request for the remedy of assuring appropriate disciplinary action (i.e. a transfer) was taken against the offending employees. The Agency has cited standing case law which clearly establishes such a remedy is not within the hearing officer's control. As Hearing Officer Michael L. Bieda ruled in In the Matter of the Appeal of Donnie D. Dollison, Case No.141-00 (cited in the Agency's Motion to Dismiss),

Rule 16, entitled "Discipline" provides for discipline in the event of violation of rule 16-50 by an employee. It does not empower an employee to impose discipline on another employee not under his charge... Appellant has no standing or authority to impose discipline on another employee. While he may request such discipline through the grievance process, as Appellant did here, the Career Service Rules do not provide for the appeal of such a request, in the event of a denial.

The hearing officer's jurisdiction is a creature of statute. She only has so much authority as has been granted by the Career Service Rules. CSR Rule 19-10 establishes that authority as follows:

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

- ... d) Grievances 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....

While Appellant might not be satisfied that whatever action taken against these individuals was severe enough, she has not made any allegations suggesting that the Agency engaged in any rule violation in rendering its decisions based on Appellant's grievance. Furthermore, CSR Rule 19 limits the hearing officer's authority respecting remedies to the following actions:

19-27 Decision of Hearings Officer

The Hearings Officer shall issue a decision in writing **affirming, modifying or reversing** the action, which gave rise to the appeal...

The hearing officer has no jurisdiction to mete out discipline to another employee. She can only affirm, reverse or modify the Agency's decisions to do so, and then only as against Appellant herself, not other employees. *See, In the Matter of the Appeal of George W. Butler*, Case No. 130-98 (also attached to the Agency's Motion to Dismiss).

The hearing officer therefore lacks jurisdiction over Appellant's requested remedies on this issue. Her request to have the individuals in question transferred must therefore be dismissed.

2. The timeliness of Appellant's request to remove the disciplinary action from her file.

The Agency argues that Appellant failed to request the disciplinary citation be removed from her file within ten days of the information being placed there. Appellant essentially asserts she was never given notice of the disciplinary action until December 19. Therefore, she argues her action on December 28 was within ten days of "notice" of the action in question, and was timely under CSR Rule 19-22 1).

The Agency has failed to provide documentation establishing that Appellant was actually given timely notice of an action requiring such notice. In the absence of such information, the hearing officer cannot agree with the Agency's basis for this argument where Appellant has asserted that she never received actual notice.

Further, the nature and date of the alleged disciplinary action is not definitely known because neither party has attached a copy of that document. There are only five forms of disciplinary action provided under CSR Rule 16-20: verbal reprimand, written reprimand, suspension, involuntary demotion, and dismissal. Appellant included as her Exhibit #2 an e-mail indicating the Appellant received a "verbal warning" on October 2, 2000. But it is not clear whether this is the "disciplinary action" which is at the center of the debate.

Yet while the hearing officer is left to speculate as to the possibilities, she can find no hypothetical under which Appellant has timely filed her appeal of the disciplinary action in question. CSR Rule 16-40 reads as follows in pertinent part

C. Disciplinary actions which may be grieved or appealed.

A verbal warning may not be grieved or appealed. An employee may file a grievance on a written reprimand in accordance with **Rule 18, Dispute Resolution**, but may not file an appeal, except as permitted under **Rule 19, Appeals**. An employee may appeal a suspension, involuntary demotion, or dismissal in accordance with **Rule 19, Appeals**.

Thus, if Appellant's disciplinary action was a verbal warning, it may not be grieved or appealed no matter when she received actual notice of it. If the disciplinary action was a written reprimand, Appellant would have had to follow the Dispute Resolution procedures set forth under Rule 18, and it is apparent from the record presently before the hearing officer that she failed to do so. If the disciplinary action was a suspension, involuntary demotion, or a dismissal, Appellant cannot grieve such a disciplinary action. She was required to *appeal* that disciplinary action, not to grieve it, within ten days of when she had actual notice of it. Therefore, her grievance filing on December 28 did not preserve the appeal because it was the wrong action.

The hearing officer finds that Appellant has not timely raised an appeal of the disciplinary action. Her request to have the disciplinary action documentation in question removed from her personnel file must therefore be dismissed as untimely.

3. Appellant's claim of discrimination.

The Agency asserts that Appellant has stated no basis for her claim of racial discrimination. Appellant challenges the Agency's refusal to disclose the disciplinary actions against two White employees, after the Agency had disclosed similar confidential information about her, as a Black employee. Appellant asserts that the Agency's failure to release the confidential information in one case and not in the other is an act of discrimination.

Yet the crux of Appellant's primary complaint in this case is that officials for the Agency released confidential information from her personnel file to another employee. While it may feel unfair to Appellant, as the aggrieved party, not to be informed of what punishment was administered as a result of her complaint, she also cannot now expect to demand an action be taken in violation of the same Rule as she alleged was violated against her in her complaint. She further cannot successfully assert that the Agency has engaged in discrimination because it failed to violate that same Rule upon her demand. As the old adage goes, "two wrongs do not make a right."

The hearing officer concludes that Appellant has failed to establish any colorable claim of discrimination based on these allegations. Furthermore, Appellant is basically demanding as a remedy for this claim that the hearing officer force the Agency to make the same violative disclosure as she complains was made against her. Clearly, the hearing officer does not have the

authority to order the Agency to *violate* the rules. She therefore does not have any jurisdiction over the remedy sought in this claim.

Based on the foregoing, Appellant's discrimination claim must therefore be dismissed.

RULING AND ORDER

WHEREFORE, in light of the above analysis and conclusions, the hearing officer GRANTS the Agency's Motion to Dismiss for lack of jurisdiction over any of the claims Appellant has raised. This Matter is hereby DISMISSED WITH PREJUDICE.

Dated this ___ day of April, 2001.



Joanna L. Wilkerson
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 **ORDER GRANTING AGENCY'S MOTION TO DISMISS** by depositing same in the U.S. mail, postage prepaid, this 3rd day of April, 2001, addressed to:

Charlesetta Crutchfield
3189 Racine St.
Aurora, CO 80011

I further certify that I have forwarded a true and correct copy of the foregoing **ORDER GRANTING AGENCY'S MOTION TO DISMISS** depositing same in interoffice mail, this 3rd day of April, 2001, addressed to:

Richard A. Stubbs
Assistant City Attorney

Rama Mallett
Department of Public Works

John Olgesby
Parking Management Division

V. Garado