HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO
Appeal No. 52-10

ORDER ON MOTION TO DISMISS AND MOTION TO COMPEL DISCOVERY

IN THE MATTER OF THE APPEAL OF:

GREGORY HILL, Appellant,

vs.

TECHNOLOGY SERVICES,
and the City and County of Denver, a municipal corporation, Agency.

On Feb. 8, 2011, Appellant requested a ruling on two pending matters. Appellant did not serve the Agency with a copy of his emailed request. That day, the Hearing Office forwarded the email to the Agency, copying the Appellant and reminding him to send a copy of all communications to both the Hearing Office and the City Attorney's Office. The Agency responded to the motions on Feb. 15, 2011.

Appellant Gregory Hill filed this appeal under CSR § 19-10 A.2. based on the Agency's July 2010 denial of his age discrimination and retaliation complaints. Appellant seeks 1) an order reversing the investigator's determination on Appellant's discrimination complaint and granting a right to sue under D.R.M.C. 28-110.5, and 2) an order compelling further discovery of the investigator's experience and training.

In support of the first motion, Appellant argues that Technology Services is an agency within the meaning of the Denver Anti-Discrimination Ordinance based on its acceptance of Shared Services as a part of its reorganization in Sept. 2010. Appellant claims that the Agency thus became an "agent of [a governmental] entity or political subdivision where the agency relationship is created by a written contract" under the definition of employer in D.R.M.C. 28-92, making it a proper party for a complaint of discrimination under the ordinance.

In his second motion, Appellant seeks further enforcement of my Sept. 13, 2010 order granting his discovery request for the resume or statement of qualifications of the Agency's investigator, Ashley Kilroy. Appellant states he has received Ms. Kilroy's resume, and now requests information about Ms. Kilroy's investigatory experience and training.

The Agency requests an order requiring Appellant to file his requests as formal motions in order to clarify his meaning. I find the emails are sufficiently clear to provide notice to the Agency of the nature of Appellant's request and permit the filing of a responsive pleading. I therefore decline to require Appellant to file a formal motion.

Analysis

1. Motion to Reverse Agency's Investigatory Finding and Grant Right to Sue

The Denver Anti-Discrimination Ordinance's definition of "employer" includes political subdivisions "where the agency relationship is created by a written contract." D.R.M.C. § 28-92. The plain meaning of that phrase is that a city who engages an employee by private contract is subject to the ordinance's prohibition against discrimination in employment actions. Appellant interprets the phrase as permitting a complaint against Technology Services because it accepted Shared Services as a part of its reorganization. Even if an inter-agency agreement authorized Technology Services to accept certain services from the Career Service Authority, the city's central human resources service provider, that fact would neither place Technology Services in the category of a governmental agency who employs a contractor, nor negate the Agency's authority to investigate claims of discrimination under CSR § 15-103. In other words, the Agency's receipt of human resource services from another city agency does not except the Agency from being a political subdivision under the ordinance's definition of employer.

In addition, such an interpretation would not justify the action Appellant seeks - reversal of the investigator's findings and issuance of a right to sue in state court - since those investigative and administrative remedies are not exclusive. Moreover, the filing of an Equal Employment Opportunity Commission (EEOC) charge of discrimination "will negate the jurisdiction of the Denver Anti-Discrimination Office." Information Sheet, Human Rights & Community Relations, Denver Anti-Discrimination Office. Appellant asserts that he has filed a charge of discrimination at EEOC.

2. Request for Additional Information about Agency Investigator

Discovery in this administrative forum is limited because the Career Service Rules are designed to provide a relatively quick and inexpensive resolution to employment disputes and disfavor extensive discovery. In re Ortega, CSA 81-06 (11/13/06). Appellant in essence seeks not documents but specific information from a potential witness. The discovery rule permits written interrogatories only of subpoenaed witnesses. CSR § 19-45 D. Appellant has received the investigator's resume, which may include information relevant to Ms. Kilroy's investigatory qualifications. Appellant may cross-examine the witness if she is called to testify by the Agency or subpoenaed by Appellant. In any event, the hearing will provide a de novo review of the ultimate investigatory finding on the discrimination allegations. Thus, the investigator's qualifications are not directly relevant to the issues in the appeal.

Order

Based on the foregoing findings, it is ordered as follows:

1. Appellant's motion to reverse the investigator's determination and agency action and grant a right to sue is denied.

2. Appellant's motion to produce the experience and qualifications of the investigator is denied.

Dated this 15th day of February, 2011.

Valerie McNaughton
Career Service Hearing Officer

I certify that on Feb. 15, 2011, I delivered a correct copy of this Order to the following in the manner indicated:

Gregory Hill, Gregory.hill@denvergov.org (via email)
Joseph Rivera, dlefiling.litigation@denvergov.org (via email)