

CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER, STATE OF COLORADO

Appeal No. 28-07

FINDINGS AND ORDER ON INTERLOCUTORY REVIEW

CAREER SERVICE
HEARING OFFICE

IN THE MATTER OF THE APPEAL OF:

NOV 15 2007

SHARMAINE NORMAN-CURRY,

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Appellant/Petitioner,

vs.

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

Agency/Respondent.

This matter is before the Career Service Board ("Board") on Appellant's Petition for Interlocutory Review pursuant to CSR 19-61 E. The Board has reviewed and considered the record presented and **REVERSES** the Hearing Officer's Decision, dated July 20, 2007, on the grounds outlined below.

I. FACTUAL BACKGROUND

On October 13, 2006, a series of incidents occurred between Appellant and Sergeant Collier involving the Agency's uniform policy and Appellant's "butterfly" hair clips. On October 15, 2006, Appellant filed a document with her supervisor, Sergeant Robirds, entitled, "Grievance: Against Sergeant Collier." (**Exhibit 4**, pp. 36-41). That same day, Sergeant Robirds responded to Appellant, stating ". . . my position does not give me the authority to grant the remedy in which you seek . . ." and advising Appellant that ". . . you may take this grievance to the second step in the grievance procedure in accordance with Career Service Rule 18, Dispute Resolution." (**Ex. 4**, p 42). On May 8, 2007, Appellant received a 15-day suspension for the incidents that had occurred the previous October. She filed a direct appeal of her suspension, under CRS 19-10 A., and under CRS 19-10 B., appealed claims of discrimination, harassment, retaliation and the grievance.¹

¹ Rule 19 was amended on October 2, 2007. Appeals of complaints or grievances under the former CSR 19-10 B. are now found in CSR 19-10 A. 2.

On July 20, 2007, the Hearing Officer determined that she did not have jurisdiction over Appellant's claims made under CRS 19-10 B., and therefore, the only issue to be determined in Appellant's career service hearing would be the direct appeal of her 15-day suspension. This interlocutory review follows.

II. FINDINGS

The Hearing Officer concluded that in order to obtain jurisdiction over claims of discrimination, harassment or retaliation, an appellant must first file a formal complaint under CSR 15 and then appeal the disposition of that complaint under CSR 19-10 B. The Board finds this is not a correct interpretation of the Hearing Officer's jurisdiction. When an employee files a direct appeal under CSR 19-10 A., the Hearing Officer has jurisdiction to hear and decide any evidence that is relevant to the employment action under appeal, including evidence that the employment action involves discrimination, harassment or retaliation. *In the Matter of the Appeal of Diaz vs. Denver Zoological Foundation, Appeal No. 72-06, CSA Board Decision, September 6, 2007.* In fact, the October 2, 2007 amendments to Rule 19 clarify that a direct appeal under 19-10 A. does not require a separate complaint of discrimination, harassment or retaliation.

Here however, Appellant was disciplined in May 2007, almost seven months after she filed a grievance over the October incidents. In addition to the direct appeal of her suspension, Appellant is also appealing under former Rule 19-10 B. claims she made in her grievance. The Hearing Officer found that Appellant's appeal of her grievance was not timely and that the grievance was not a formal complaint of discrimination within the meaning of CSR 15 and 19-10 B. The Board disagrees.

In January 2006, the city's grievance procedures were substantially modified by amendments to CSR 18. Rule 18-10 C. 2. now provides that complaints of discrimination, harassment or retaliation may not be brought through a grievance because there is a separate process for bringing such complaints under Rule 15. In addition, the January 2006 amendments eliminated the previous 2-step grievance procedure (CSR 18-40 B.), and specifically provided the following notice requirements:

A. Notice to Employees

The department or agency must post or provide to all employees a copy of this procedure, the name and telephone number of the department or agency designee(s) who may accept grievances, and the acceptable methods of delivery of grievances. If the department or agency fails to appoint a department or agency designee, the appointing authority shall be deemed to be that department or agency's designee.

CSR 18-40 A. It is not clear whether the Agency provided its employees with notice of the new grievance procedures, but the Board notes that in October 2006, Appellant and her supervisor were both operating under grievance procedures that no longer existed.

On the other hand, Rule 15 provides that employees who believe they have experienced discrimination or harassment should report such conduct to their supervisor so that the agency may investigate and resolve the problem. CSR 15 §§100-105. The question before the Board is whether the grievance document Appellant delivered to her supervisor on October 15, 2006 was a complaint of discrimination or harassment within the meaning of Rule 15. The Board finds that it was.

Appellant's grievance not only states in bold letters, "**(Sexual Harassment Grievance)**", but also contains factual allegations in support of that claim: "... while standing by the microwave oven Sergeant Collier came up close to me (touching me at my chest) and said in my ear, "I've noticed your butterflies." (Ex. 4-37). While the Board takes no position as to the merits of these allegations, the Agency should have recognized that Appellant was making a claim of sexual harassment that should have been investigated.

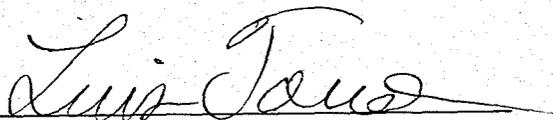
For these reasons, the Board finds that the Hearing Officer has jurisdiction under CSR 19-10 A. to hear and decide all evidence relevant to Appellant's suspension, including any evidence of discrimination or retaliation. Further, under former Rule 19-10 B. (1), (currently 19-10 A. (2) (a)), the Hearing Officer has jurisdiction over Appellant's October 15, 2006 complaint of sexual harassment that was not addressed by the Agency.

III. ORDER

IT IS THEREFORE ORDERED that Appellant's Petition for Interlocutory Review is **GRANTED**, the Hearing Officer's Decision of July 20, 2007, is **REVERSED**, and this case is remanded to the Career Service Hearings Office for further proceedings consistent with the Board's findings herein.

SO ORDERED by the Board on November 1, 2007, and documented this
15th day of November, 2007.

BY THE BOARD:


Co-Chair

Board Members Concurring:

Tom Bonner
Kit Williams

Ashley Kilroy did not participate in the Board's decision

CERTIFICATE OF MAILING

I certify that I have mailed a true and correct copy of the foregoing **FINDINGS AND ORDER**, postage prepaid, this 15th day of November, 2007 to:

David R. Osborne, Esq.
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And **VIA INTEROFFICE MAIL** this 15th day of November 2007:

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