

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

Appeal No. 35-06

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**ORDER OF DISMISSAL**

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IN THE MATTER OF THE APPEAL OF:

**VICTORIA L. CONNORS,**  
Appellant,

vs.

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

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The Agency has moved to dismiss the above appeal on the ground of lack of jurisdiction. Appellant responded to the motion with matters outside the record. For purposes of this motion, the allegations of the appeal are accepted as true. See Colorado Rules of Civil Procedure 12 b); 56. In consideration of the administrative record and arguments and exhibits presented by the parties, the following findings of fact and order are entered.

**Nature of Appeal**

Appellant Victoria L. Connors claims jurisdiction to appeal Career Service Personnel Director Don Cordova's June 9, 2006 denial of her request for reconsideration of a notification that she did not possess the minimum educational requirement to pursue her application for the position of Deputy Sheriff Division Chief. The ineligible notification was dated June 12, 2006, and gave Appellant five days to contact the CSA analyst. The June 19<sup>th</sup> appeal cites "grievance" and "age discrimination" as the basis of jurisdiction, invoking CSR §§ 19-10 B. 2. a. and 19-10 B. 1., respectively.

**Arguments and Analysis**

**A. Appeal of a Grievance under CSR § 19-10 B.2.a.**

The Agency claims the Hearing Office lacks jurisdiction to entertain the appeal as a grievance for three reasons: 1) § 18-10 C. provides that grievances may only be filed "relating to actions/inactions taken by the employee's supervisor/manager . . . ",

2) Appellant's June 9, 2006 email to the Personnel Director was not a grievance because it was not on the official CSA grievance form mandated by Rule 18, and 3) the denial of a request to reverse an ineligibility determination does not directly impact Appellant's pay, benefits or status, as required by § 19-10 B.2.a., since Appellant would not have been guaranteed appointment to the position even if that request was granted.

The purpose of the CSA grievance process is "to provide a process to resolve workplace issues at the lowest possible level (the level which they occur)." Purpose Statement, Rule 18, Dispute Resolution. The phrase "workplace issues" is further described as an "issue[] raised by a Career Service employee relating to actions/inactions taken by the employee's supervisor/manager that violate the employee's rights under the Rules, the City Charter, ordinances relating to the Career Service, executive orders, or written agency policies." § 18-10 C. It is unclear whether that definition is intended to preclude a grievance of an action by the Personnel Director which is alleged to violate an employee's rights under those rules. In order to determine whether the denial of a request for an experience equivalency may be grieved, it is necessary to compare the current and past rules applicable to challenges to classification and disqualification decisions.

CSA is "the central human resources agency" for the Career Service personnel system. The Personnel Director shall "develop, maintain and administer job classifications", including education and experience requirements and permitted equivalencies." Appendix 2.B, citing from D.R.M.C. §§ 18-1, 18-3.1; CSB Education & Experience Requirements & Equivalencies Policies & Guidelines, effective June 26, 2002, CSA Rulebook pp. 3-7, 3-8. "An appointing authority may request the Personnel Director for an administrative review of a classification decision" within ten days of the results of a maintenance study. CSR § 7-40. In the context of this appeal, the deadline for such a request from this agency, the Denver Sheriff's Office, would have been June 26, 2005, since Appellant asserts that the maintenance study prohibiting an education/experience equivalency was completed on June 16, 2005. [Attachments to appeal form, p. 1.] This procedure permits an agency that believes a classification decision does not meet its personnel needs to obtain a review of that decision and a written response to its request for reconsideration. However, the Personnel Director does not have the authority to waive a mandatory educational qualification for an individual applicant. In re Bourgeron, CSA 92-03, 102-03, 113-03 (3/8/04).

Further, an applicant who has been disqualified from competing for a position may petition the Personnel Director to reconsider the decision. "The Personnel Director may reverse, modify or affirm [the decision] for any legitimate reason . . ." CSR § 3-42. In addition, an applicant who believes a disqualification decision was discriminatory may file a complaint under the Career Service's internal complaint procedure. "The Career Service Board's anti-harassment policy applies to all persons involved in the operation of the City and prohibits unlawful harassment or discrimination by any employee in the City, including supervisors and co-workers." CSR § 15-101.

Prior to the amendment of Rule 19 on January 1, 2006, a disqualified applicant had a right to appeal certain actions taken by the Personnel Director. CSR § 19-10 a) 2), effective August 24, 2000. At the same time, the definition of grievance was changed from "an issue . . . relating to the interpretation of rights, benefits or conditions of employment" under the Career Service rules, charter or ordinances, to "[a]n issue relating to actions/inactions taken by the employee's supervisor/manager" under the rules, charter, ordinances, executive orders or agency policies. CSR § 18-10 C., effective Jan. 1, 2006; CSR § 18-10 A., issued April 15, 1999. The 2006 amendments make it clear that an applicant may no longer appeal or grieve a disqualification decision made by the Personnel Director or his designee. The Agency's additional arguments will therefore not be considered.

Appellant also argues that the Personnel Director should have reversed the disqualification because she would have achieved her bachelor's degree in Criminal Justice within six months. However, Appellant did not raise this anticipated degree to the Personnel Director at the time of her request to reconsider her disqualification, instead relying on her associate's degree from Arapahoe Community College and her current educational pursuit of a B.A. in Public Administration from Regis University. Attachments to appeal form, pp. 3, 4, & 9.

B. Appeal of age discrimination claim under CSR § 19-10 B.1.

The Agency also disputes the Hearing Office's jurisdiction of Appellant's claim of age discrimination based upon Appellant's failure to comply with Rule 15, which requires the filing of a complaint with the agency. Discrimination may be appealed "if, after filing a formal complaint as required by Rule 15 CODE OF CONDUCT, the disposition of such complaint has not resulted in stopping or otherwise addressing the alleged discrimination. . . ." CSR § 19-10 B.1. Appellant's response does not allege that she has filed a complaint of discrimination in accordance with CSR § 15-103. Therefore, the Hearing Office has no jurisdiction to hear an appeal of "the disposition of such complaint." The purpose of this jurisdictional limitation is to allow an agency, including CSA, to investigate complaints and correct discriminatory practices at the lowest level. Premature appeals would frustrate that affirmative goal.

**Order**

On the basis of the foregoing analysis, it is ordered that the appeal based upon a grievance is DISMISSED WITH PREJUDICE. The age discrimination appeal is DISMISSED WITHOUT PREJUDICE to allow Appellant to file a formal complaint of discrimination pursuant to CSR § 15-100 *et. seq.* Appellant may refile this appeal within fifteen days after disposition of the complaint if that disposition does not address the asserted discrimination. The hearing now set for Sept. 19, 2006 is vacated.

Entered this 9<sup>th</sup> day of August, 2006.

  
Valerie McNaughton  
Hearing Officer for the  
Career Service Board

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**CERTIFICATE OF MAILING**

I hereby certify that I have forwarded a true and correct copy of the foregoing **ORDER** by depositing it in the U.S. mail, postage prepaid, this 9<sup>th</sup> day of August, 2006, addressed to:

Victoria L. Connors  
5252 South Holland Street  
Littleton, CO 80123

I further certify that I have forwarded a true and correct copy of the foregoing **ORDER** by depositing it in interoffice mail this 9<sup>th</sup> day of August, 2006, addressed to:

Karla J. Pierce  
Assistant City Attorney  
City Attorney's Office - Litigation Section

Don Cordova  
Career Service Authority

Alvin J. LaCabe  
Department of Safety

William R. Lovingier  
Denver Sheriff's Department

