

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

Appeal No. 08-06

ORDER

IN THE MATTER OF THE APPEAL OF:

MARK LOVIN,
Appellant,

vs.

DENVER INTERNATIONAL AIRPORT, DEPARTMENT OF AVIATION,
and the City and County of Denver, a municipal corporation,
Agency.

On Feb. 14, 2006, the Agency filed a motion to dismiss this appeal and to stay discovery. Appellant responded on Feb. 24, 2006.

This is an appeal of a personnel action that is alleged to amount to a demotion and/or discipline. Appellant alleges that the action violates Career Service Rules and was retaliatory for engaging in protected activity. The Agency argues that jurisdiction is lacking for a direct appeal under CSR § 19-10(A), as amended 1/1/06, and that Appellant has failed to exhaust his internal remedies under CSR § 19-10(B)(1).

Appellant argues that the action amounted to a demotion, citing In re Aguilar, CSA 54-02 (5/28/02), In re James, 135-02 (1/10/03). Both of these appeals raised discrimination claims rather than direct appeals of an adverse action under the Career Service Rules. The remaining cases cited by Appellant arise under civil rights laws, and are therefore inapplicable to a direct appeal under the Career Service Rules. The term adverse action is interpreted more liberally in that setting. Further, Appellant quotes CSR § 19-10 b) Actions of an appointing authority, which was superseded on January 1, 2006 upon amendment of Rule 19.

As to the claim of retaliation under § 19-10(B)(I), Appellant does not directly address the issue of exhaustion. It does appear from the submitted pleadings that Appellant has not yet received a response to his January 31, 2006 complaint, which on its face alleges a claim of retaliation for protected activity under CSR § 15-106. The appealable action in a retaliation claim is "the disposition of such complaint [which] has not resulted in stopping or otherwise addressing the alleged . . . retaliation." Until that disposition occurs, the Hearing Office does not have jurisdiction to hear the appeal.

This appeal is therefore DISMISSED without prejudice, and may be refiled upon disposition of the complaint. The Agency's motion for stay of discovery is mooted by this order.

Done this 1st day of March, 2006.



Valerie McNaughton
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** by depositing it in the U.S. mail, postage prepaid, this 1st day of March, 2006, addressed to:

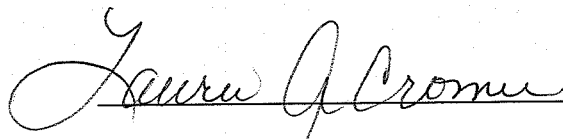
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I further certify that I have forwarded a true and correct copy of the foregoing **ORDER** by depositing it in interoffice mail this 1st day of March, 2006, addressed to:

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Mr. Jim Thomas
Department of Aviation



Laura A. Cromie