

BEFORE THE CITY OF SEATTLE CIVIL SERVICE COMMISSION

CYNTHIA SOFTLI

Appellant

Vs.

SEATTLE POLICE DEPARTMENT

City of Seattle, Respondent

DISMISSAL ORDER

CSC APPEAL No. 03-01-007

The Executive Director of the City of Seattle, Civil Service Commission hereby enters the following

**ORDER OF DISMISSAL**

WHEREAS the Presiding Officer issued a Decision granting the Respondent's motion for summary judgment and an Order dismissing the appellant's appeal, on October 7, 2004.

WHEREAS the Appellant did not file a Petition for Review of the Presiding Officer decision (due no later than October 18, 2004).

WHEREAS the Commission reviewed, discussed and voted to affirm the Presiding Officer's decision, at its October 20, 2004 meeting.

The Civil Service Commission hereby dismisses this appeal with prejudice.

Issued this *21<sup>st</sup> day of October 2004*

FOR THE CITY OF SEATTLE CIVIL SERVICE COMMISSION



Glenda J. Graham-Walton, Executive Director

*Note: Commission decisions are final and conclusive unless a party of record makes application for a writ of review to the Superior Court of the State of Washington for King County within fourteen days of issuance*

**ORIGINAL**

**CITY OF SEATTLE  
CIVIL SERVICE COMMISSION**

**Affidavit of Service  
By Mailing**

STATE OF WASHINGTON }  
COUNTY OF KING }

TERESA R. JACOBS, deposes and states as follows:

That on the 21st day of October, 2004, I deposited in the U.S. mail, postage prepaid,  
a copy of **Dismissal Order** to:

**Cynthia Softli  
c/o Kay Frank  
705 Second Avenue, Suite 1500  
Seattle WA, 98104**

And copies of same via interdepartmental and U.S. mail addressed to:

Katrina R. Kelly, Assistant City Attorney  
Gary N. Mclean,, Hearing Officer, CSC

In the appeal of:

**Cynthia Softli v. Seattle Police Department**

**CSC Appeal No. 03-01-007**

DATED this 21st day of October, 2004

  
TERESA R. JACOBS

**ORIGINAL**

RECEIVED  
CITY OF SEATTLE

OCT 07 2004

UNDER DELEGATION FROM THE  
CITY OF SEATTLE CIVIL SERVICE COMMISSION

CYNTHIA SOFTLI,

Appellant,

vs.

CITY OF SEATTLE, SEATTLE POLICE  
DEPARTMENT,

Respondent / Employer.

No. 03-01-007

**PRESIDING OFFICER'S  
DECISION AND ORDER  
GRANTING RESPONDENT'S  
MOTION FOR SUMMARY  
JUDGMENT AND DISMISSING  
APPELLANT'S APPEAL**

This Decision and Order arises from Respondent Seattle Police Department's "Motion to Dismiss / Motion for Summary Judgment" seeking dismissal of an appeal filed with the Seattle Civil Service Commission by Appellant, Cynthia D. Softli. Following review and consideration of facts, evidence, law, and detailed briefing submitted by attorneys for each party (copies of which are maintained in the Commission's file), Respondent's Motion is granted, and Appellant's appeal before the Commission is hereby dismissed.

**I. BACKGROUND**

Appellant filed the instant appeal on September 29, 2003, following her September 12, 2003 discharge from a Volunteer Programs Coordinator position with the Seattle Police Department. (See Notice of Appeal, filed on Sept. 29, 2003; Probationary Discharge Letter dated Sept. 5, 2003; and Termination Order No. 2003-04, dated September 8, 2003 and signed by Seattle Police Chief R. Gil Kerlikowske). In her Notice of Appeal, Appellant

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SEATTLE CIVIL SERVICE COMMISSION  
700 THIRD AVENUE, ROOM 360  
SEATTLE, WASHINGTON 98104



1 signed by Seattle Police Chief R. Gil Kerlikowske). In her Notice of Appeal, Appellant  
2 alleged the following action took place: "PROBATIONARY DISCHARGED FROM  
3 VOLUNTEER COORDINATOR POSITION WITHOUT ORAL NOTICE, WRITTEN  
4 NOTICE THROUGH PROGRESSIVE DISCIPLINE OR EVALUATION." She wrote that  
5 "probationary status steps [were] not followed," and "progressive discipline rules [were]  
6 not provided," alleging violations of Seattle Personnel Rule Nos. 1.3.4 and 1.3.6. (See  
7 Notice of Appeal).

8  
9 Subsequently, Respondent filed a motion seeking the following relief: 1) a ruling  
10 that the Civil Service Commission lacks jurisdiction over the instant appeal except for  
11 limited issues that can be appealed by probationary employees and 2) dismissal of Softli's  
12 appeal with prejudice because the City alleges there is no genuine issue of material fact  
13 regarding the limited issues within jurisdiction of the Commission. (See City's Motion).

14  
15 Appellant filed a Response to Respondent's Motion to Dismiss, challenging "the  
16 procedural manner in which the Seattle Police Department came to a decision to terminate  
17 her employment." Appellant's Response, p. 1. The responsive brief notes that "Ms. Softli  
18 timely appeals the manner in which her discharge took place on two bases: First, that the  
19 decision-maker was not an impartial person but a person who had tried to prevent her from  
20 attaining the position on several occasions in the past; second, there was no consideration or  
21 effort during the probationary period to work with her, give her support and assistance, or  
22 progressive discipline." Response, p. 3.

23  
24 In her Response, Appellant also concedes that she is "not challenging that she was  
25 removed from a temporary position to a probationary position" Response, p. 7. Instead,

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1 Appellant opposes summary judgment alleging that SPD violated purported procedural due  
2 process rights by permitting a biased decision-maker to terminate her employment. She  
3 argues that SPD cannot rely on its 'right' to terminate a probationary employee 'without  
4 cause' to escape a procedural due process violation of a flawed and fundamentally unfair  
5 process and decision-maker. Id. She asserts her right to a hearing, "at least as to the  
6 question of Asst. Chief Caldwell's bias, and if bias is found, on the merits of the decision"  
7 to terminate her employment with the City. Id.

## 8 9 II. SUMMARY JUDGMENT STANDARD

10 While summary judgment guidelines are not detailed in Civil Service Commission  
11 Rules, motions are permitted by CSC Rule No. 6.14. Case law firmly establishes that a  
12 party is entitled to summary judgment in an action when there is no genuine issue of  
13 material fact and the undisputed facts warrant judgment for the moving party as a matter of  
14 law. CR 56(c); Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242  
15 (1986); Fjetland v. State, Slip Copy, Wash.App. Div. 1, Sept. 7, 2004.

16 In addressing a motion for summary judgment, a court – and in this matter, the  
17 Hearing Officer – must view the evidence in the light most favorable to the party against  
18 whom summary judgment is sought and must draw all reasonable inferences in its favor.  
19 Matsushita Elec. Indus.Co. Ltd. V. Zenith Radio Corp., 475 U.S. 574, 587(1986). The  
20 court – and in this appeal, the Hearing Officer – must determine whether any disputed issue  
21 of fact exists. Balderman v. United States Veterans Admin., 870 F.2d 57, 60 (2d Cir.  
22 1989). The moving party has the initial burden of demonstrating the absence of a disputed  
23 issue of material fact. Celotex v. Catrett, 477 U.S. 317, 323 (1986). Once such a showing  
24 has been made, the non-moving party must present specific facts showing a genuine issue  
25 remains. CR 56(e).

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1 However, the party opposing summary judgment “may not rely on conclusory  
2 allegations or unsubstantiated speculation.” Scotto v. Almenas, 143 F. 3d 105, 114 (2d Cir.  
3 1998). Moreover, not every disputed factual issue is material in light of the substantive law  
4 that governs the case. CR 56(c). “[B]are assertions that a genuine material issue exists will  
5 not defeat a summary judgment motion in the absence of actual evidence.” Trimble v.  
6 Washington State Univ., 140 Wn.2d 88, 93, 993 P.2d 259 (2000). Finally, “[o]nly disputes  
7 over facts that might affect the outcome of the [case] under the governing law will preclude  
8 summary judgment.” Anderson, 477 U.S. at 248.

### 9 III. FINDINGS OF FACT

10 The parties do not dispute that Appellant was appointed to a Volunteer Programs  
11 Coordinator position with the Seattle Police Department in January of 2003, and that  
12 following her appointment, she received a document explaining that she would be on  
13 probationary status for twelve months. City’s Motion at p. 3, Ex’s. H, I and J; Appellant’s  
14 Response, p. 2. The parties also agree that Ms. Softli signed the document, captioned  
15 “Probationary Periods – Civilians,” on or about January 15, 2003. City’s Motion, Ex. J.  
16 The document includes the following advisory: “[d]uring your probationary period, you  
17 may be discharged without cause at any time.” *Id.*

18 Finally, the parties do not dispute that Appellant was discharged on September 12,  
19 2003, during her probationary period. See Termination Order No. 2003-04, dated  
20 September 8, 2003 and signed by Seattle Police Chief R. Gil Kerlikowske.

### 21 IV. CONCLUSIONS OF LAW

- 22  
23  
24 **A. Because Appellant was discharged during her probationary period, she does  
25 not have the right to appeal her dismissal to the Civil Service Commission.**

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1 Seattle Personnel Rule No. 1.3.5(B) expressly provides that the City may discharge  
2 a “probationary employee” without justifiable cause. In contrast, a “regular employee” –  
3 defined at PR 1.3.1(K) and SMC 4.04.030 to mean an employee who has completed their  
4 one-year probationary period – can only be discharged for just cause. PR 1.3.5(A).  
5 These two employment statuses are mutually exclusive. Clements v. Airport Authority of  
6 Washoe County, 69 F.3d 321, C.A.9 (Nev.), 1995, (comparing at-will and for-cause  
7 employees). City Personnel Rules allow “regular employees” to appeal their discharge to  
8 the Civil Service Commission (PR 6.01(A)); “probationary employees” cannot. Instead,  
9 Civil Service Commission Rule No. 6.01(B) details the limited Civil Service rights of  
10 probationary employees as follows:

11 “Any employee who is alleged to be probationary by the  
12 disciplining department may appeal to the Commission the  
13 questions of the employee’s probationary status and whether  
14 the procedures for discharge of probationers, as found in the  
15 Personnel Rules, were properly followed.”

16 Thus, Appellant’s appeal of her discharge must be denied, as the Commission lacks  
17 jurisdiction over such question.

18 **B. The instant appeal fails because there is no genuine issue of material fact**  
19 **regarding any of the limited issues within the Commission’s jurisdiction.**

20 Viewing the evidence in the light most favorable to the Appellant, and drawing all  
21 reasonable inferences in her favor, the Hearing Officer must carefully consider the  
22 information and arguments raised in her Response. In this appeal, to avoid summary  
23 judgment, the Appellant needed to come forward with a genuine issue of material fact  
24 regarding a) any “questions of the employee’s probationary status” or b) “whether the  
25 procedures for discharge of probationers, as found in the Personnel Rules, were properly  
26 followed.” (see CSC Rule No. 6.01(B)).

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1 As to the first question – regarding the employee’s probationary status – there is an  
2 undisputed answer: she was, indeed, a probationary employee. Thus, there is no  
3 outstanding issue on this topic.

4 This leaves the second, and only possible remaining area of jurisdiction for the  
5 Commission in this appeal: “whether the procedures for discharge of probationers as found  
6 in the Personnel Rules, were properly followed.”

7 The Personnel Rules contain a single “procedure” for discharge of probationary  
8 employees, found in PR 1.3.5(B), where it requires that a written statement of a  
9 probationary employee’s discharge be provided to the Personnel Director and the Civil  
10 Service Commission. The Appellant did not allege any violation of this procedure in her  
11 Notice of Appeal or in her Responsive brief.

12  
13 Turning to allegations raised in her Response brief opposing summary judgment, as  
14 well as other statements made in her original Notice of Appeal, and inferences that can be  
15 drawn from the Personnel Rules and evidence presented by the Appellant, there are simply  
16 no genuine issues of material fact remaining that would preclude summary judgment.

17 Although conceding her probationary status, Appellant’s Response brief and  
18 supporting affidavit basically assert that she is entitled to an appeal regarding the “fairness”  
19 of an investigation conducted concerning her alleged misconduct. While a “fair-  
20 investigation” requirement may be contained in the Personnel Rules at PR 1.3.3(C)(3), this  
21 section applies to disciplinary matters involving a “regular employee,” not a “probationary  
22 employee,” like the appellant.

23 Appellant specifically asserts that the investigation into her conduct “was a sham,  
24 contrary to the procedural rules set forth for investigation in PR 1.3.6(A)(1), (2) and (3).”  
25 Response, p. 5. Even if the investigation was a sham (although the level of detail and

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1 follow-up reporting contained in the evidence tends to contradict Appellant's  
2 characterization of the investigation), as a matter of law, the provisions of PR 1.3.6 (the  
3 "pre-disciplinary hearing rule") apply only to "regular employees" not probationary  
4 employees, such as the Appellant.

5 Appellant also alleges that "failure to consider and implement one of the lesser  
6 disciplinary measures [other than discharge] is a violation of PR 1.3.5" entitled  
7 "Application of Discipline." (Response, p. 5). As a matter of law, Appellant's position on  
8 this issue must fail. PR 1.3.5 expressly provides that a probationary employee may be  
9 discharged "without justifiable cause." Because the rule expressly permits the most  
10 extreme form of discipline (i.e. discharge) to be imposed without just cause, there is no  
11 basis to read additional "progressive-discipline" requirements into such section. The rule  
12 permits any form of discipline to be taken without just cause and the appointing authority  
13 clearly retains the discretion to dismiss a probationary employee without prior discipline.  
14 See *Drobny v. Boeing Co.*, 80 Wash.App. 97, 907 P.2d 299 (1995) (because employer  
15 retained discretion to dismiss an employee without prior discipline, progressive discipline  
16 policy was not an enforceable promise).

17 Finally, Appellant seeks to avoid summary judgment by asserting various "due-  
18 process" claims. As a probationary employee, the Appellant does not have a property  
19 interest protected by the due process clause of the state or federal constitution. Without a  
20 property interest in a job, an employee has no right to due process before discipline is  
21 imposed, including dismissal from employment. See *Bankston v. Vallejo City Unified*  
22 *School Dist.*, 2 Fed.Appx. 817, C.A.9 (Cal.), 2001 (because Bankston was a probationary  
23 teacher, district court dismissal of her due process claim affirmed by 9<sup>th</sup> Circuit); *Clements*  
24 *v. Airport Authority of Washoe County*, 69 F.3d 321, 321 (9th Cir.1995)(employee's at-  
25 will employment status negates the existence of a property interest in his employment); *Bd.*  
26 *of Educ. of the Round Valley Unified Sch. Dist. v. Round Valley Teacher's Assoc.* 13  
Cal.4th 269, 52 Cal.Rptr.2d 115, 914 P.2d 193, 202-03 (Cal.1996) (a probationary teacher

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1 does not have a property interest protected by the due process clause); Samuels v. City of  
2 Lake Stevens, 50 Wn.App. 475, 480-81 (1988) (probationary employee lacked property  
3 interest in job).

#### 4 **V. DECISION AND ORDER**

5 For the reasons set forth above, the undersigned Hearing Officer finds that as a  
6 matter of law, no decision maker could find that Appellant has raised an appealable issue  
7 within the jurisdiction of the Civil Service Commission. Accordingly, Respondent's  
8 Motion for Summary Judgment / Motion for Dismissal is granted and the instant appeal is  
9 hereby dismissed.

10 ISSUED this 7<sup>th</sup> day of OCTOBER, 2004.

11 

12 Glenda Graham-Walton, Executive Director  
13 for Gary N. McLean, Hearing Officer

#### 14 **CONCERNING FURTHER REVIEW**

15 Note: It is the responsibility of the person seeking to appeal the Hearing  
16 Officer's decision to consult Code sections and other appropriate sources  
17 to determine applicable rights and responsibilities.

18 The decision of the Hearing Officer in this case is subject to review by the Civil Service  
19 Commission. To be timely, the petition for review must be filed with the Civil Service  
20 Commission no later than ten (10) days following the date of issuance of this decision, as  
21 provided in Civil Service Commission Rules 7.01 and 7.03 (per Commission Rules adopted  
22 12/10/2002).

23  
24  
25 **DECISION AND ORDER**  
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