

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE
UNDER DELEGATION FROM THE CIVIL SERVICE COMMISSION

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CITY OF SEATTLE

SEP 21 2005

CIVIL SERVICE COMMISSION

In the Matter of the Appeal of

JOHN JANSSEN

Appellant,

CSC No. 05-01-006

v.

DEPARTMENT OF INFORMATION TECHNOLOGY

Respondent.

ORDER

Introduction

The Department of Information Technology (Department) filed a motion to dismiss this appeal on September 1, 2005. The appellant, John Janssen, filed a response in opposition on September 9, 2005. The parties represented in this matter are the Department, by Janice Flaagen, Senior Personnel Specialist; and the appellant, John Janssen, pro se.

The Department moves to dismiss on the grounds that the appellant was a probationary employee and was advised of his probationary status, and that neither the Code nor the Rules provide probationary employees with a right to a written notice of discharge, or to appeal violations of the Rules or Code. The Department also argues that judgment should be rendered in its favor because the remedies sought in this appeal cannot be granted. The Department's motion in this regard has been considered to be a motion for summary judgment.

The appellant in his response argues that the undisputed facts show that the Department has violated the rules and he is entitled to relief, and this response shall also be treated as a request for summary disposition of this matter. For the reasons stated below, the Department's motion is granted in part, and denied in part, and partial relief is hereby granted in favor of the appellant.

1. Summary judgment (or at the administrative level, summary disposition) is proper when the pleadings and affidavits show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *City of Lakewood v. Pierce County*, 144 Wn.2d 118, 125, 30 P.2d 446 (2001). A material fact is one affecting the outcome of litigation. *Anica V. Wal-Mart Stores, Inc.*, 120 Wn.App.481, 487, 84 P.3d

1213 (2004). In reviewing a motion for summary judgment, the Examiner must consider the facts submitted and all reasonable inferences from them in the light most favorable to the nonmoving party. *Id.* But the nonmoving party must set forth specific facts to defeat a motion for summary judgment, rather than relying on bare allegations. *Id.* at 487-88.

Background

2. The material facts are not in dispute, as shown by the documents filed in this matter. Mr. Janssen was hired by the Department of Information Technology and began employment there on May 23, 2005. On June 29, 2005, Mr. Janssen was discharged, and was verbally advised of this discharge. He was not provided with any written confirmation of this discharge at that time.

3. Mr. Janssen filed an appeal with the Civil Service Commission on July 15, 2005. The appeal was based on Mr. Janssen's discharge and lack of written notice of discharge. The Department sent a letter to Mr. Janssen, dated July 21, 2005, stating that the letter was written notification of his probationary discharge, in accordance with Personnel Rule 1.3.7.A. The Commission received a copy of this letter on July 27, 2005.

4. The Commission dismissed the discharge appeal, because the Commission lacks jurisdiction over appeals of the discharge of probationary employees. The Commission did not dismiss the portion of the appeal that was based on the failure to provide written notice of the discharge. However, the Commission sent a letter to Mr. Janssen on July 28, 2005, stating that: "The only portion of the appeal the Commission will consider is the alleged violations of Seattle Municipal Code SMC 4.04.230 and Personnel Rule 1.3.7, both related to written notification of a discharge."

5. Thus, the motion for dismissal or summary disposition of the appeal must be considered under SMC 4.04.230 and Rule 1.3.7. (Although the Department cites the Employee Handbook as part of the basis for its motion, the Commission's review authority is based on applicable provisions in the Code, Charter and the Rules.) The Department argues that no violation of these provisions occurred, and that in any case, Mr. Janssen, as a probationary employee, would have no right to appeal if a violation did occur.

Analysis

6. SMC 4.04.230.F provides that "An appointing authority who takes a disciplinary action that is subject to appeal to the Civil Service Commission shall inform the employee in writing of the employee's right to appeal to the Commission." (Emphasis added.) In this case, the Commission has already determined that the discharge was not subject to appeal to the Commission, as SMC 4.04.260.A grants this right of appeal only to "regular" employees (defined by SMC 4.04.030 as those who have completed the one-year probationary period). Thus, SMC 4.04.230.F did not require the Department to

provide written notice of the discharge. There are no other provisions of SMC 4.04 that would require the Department to provide a written notice of his discharge, so no violation of this Code chapter was shown.

7. Rule 1.3.7.A states that a written notification of a discharge “shall be delivered to the affected employee not later than 1 working day after the action becomes effective. The notification shall include the reason for the action taken.” This Rule states that “in the case of a regular employee” the notification is to include a description of the employee’s right of appeal to the Civil Service Commission. It is not disputed that the letter of discharge was sent to the Mr. Janssen approximately three weeks after he was discharged, and that the letter did not state the reason for the discharge. Thus, the Department’s verbal discharge and subsequent letter did not comply fully with Rule 1.3.7.A.

8. Civil Service Commission Rule 5.01.B provides that “Any employee alleged to be probationary by the disciplining department may appeal to the Commission the questions of the employee’s probationary status *and whether the procedures for discharge of probationers, as found in the Personnel Rules, were properly followed.*” (Emphasis added). Thus, the Commission’s own rule appears to interpret the Code and the Charter to allow a probationary employee to appeal on the basis that the discharge procedures were not properly followed. Furthermore, the Commission did not dismiss this portion of the appeal in its initial review of the matter. Given the language of Rule 5.01.B, it will be presumed that the appellant may appeal a violation of Rule 1.3.7.

9. The Department also moves to dismiss on the basis that, even if a violation occurred, the appellant’s requested remedies cannot be granted by the Commission. The appellant has requested back pay and benefits, beginning on June 30, 2005 until he receives a corrected written notice of discharge; that his personnel file be changed to “reflect continuous employment” for the same time period; that the reasons for discharge be listed as involuntary, without negative reasons; and that he be given compensation for “hassle and emotional trauma” associated with the failure to receive a timely written notice of discharge.

10. The appellant cites no relevant laws or Code sections in support of his requested remedies. Furthermore, his allegations of harm (e.g., that failure to specify the reasons for his discharge have negatively affected his future employment prospects) are extremely speculative. The appellant states that his job search and his own peace of mind have been affected by the lack of detailed information concerning his discharge, and these are valid concerns. But there is no indication that these concerns would be addressed to any extent by a written statement of the reasons for his discharge. Broad discretion is given to the appointing authority to discharge a probationary employee without cause, and Rule 1.3.7.A does not specify the level of detail that must be provided in the written notice as to the reason for discharge. Thus, the written notice might describe the reasons for discharge in very general terms and yet still satisfy Rule 1.3.7. The appellant also argued that prospective employers could not verify whether he had

been discharged or not, but Rule 1.3.7 does not require that employment status verification be provided to prospective employers, only that a written notice be given to the discharged employee. Furthermore, while the delay in providing written notice should not be condoned, the appellant has not shown a cognizable harm arising out of the delay of written notice. He was told by his supervisor that he was discharged, and he timely exercised his right to appeal. The requested remedies as to back pay, changes to the personnel file, and damages are not supported by the Code or the allegations in the pleadings.

11. However, the appellant is entitled to partial relief, which is a written notice that states the reason for his discharge. It is not disputed that the appellant has not received the complete written notice required by Rule 1.3.7.A. While the appellant has not shown harm, the Rule nevertheless requires that an employee be provided with a reason for his or her discharge. This is not a particularly burdensome requirement, and the Department has offered no reason why it should not comply with this Rule. The Department will therefore be required to provide the required written notice to the appellant, including the reason for his discharge.

Conclusion

The Department did not violate SMC 4.04.230, but it did not comply with Rule 1.3.7, which requires written notice of discharge that includes the reason for the discharge.

Order

The Department's motion to dismiss and for summary disposition is **granted in part and denied in part**. The appellant's motion for summary disposition is **granted in part**. The Department shall provide written notice to Mr. Janssen, including the reason for his discharge in accordance with Personnel Rule 1.3.7.A, by October 5, 2005. The hearing scheduled for September 27, 2005, is hereby canceled.

Entered this 20th day of September, 2005.



Anne Watanabe, Deputy Hearing Examiner
P.O. Box 94279
Seattle, WA 98124-4829
(206) 684-0 521 FAX: (206) 684-0536

BEFORE THE CITY OF SEATTLE CIVIL SERVICE COMMISSION

John Janssen
Appellant

v.

Department of Information Technology
City of Seattle, Respondent

DISMISSAL ORDER

CSC APPEAL No. 05-01-006

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

DISMISSAL ORDER

WHEREAS Deputy Hearing Examiner, Anne Watanabe issued a Decision regarding the appellant's appeal, on September 20, 2005.

WHEREAS the Appellant filed a Petition for Review of the Hearing Examiner's decision on September 30, 2005.

WHEREAS the Commission reviewed, discussed and unanimously voted to amend the Hearing Examiner's decision, at its October 26, 2005 meeting.

WHEREAS the Commission issued a Memorandum Decision on October 26, 2005.

WHEREAS neither party requested a judicial review of the Commission's decision.

The Civil Service Commission hereby **dismisses this appeal with prejudice.**

Issued this *14th* day of *November, 2005*

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

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BEFORE THE CITY OF SEATTLE CIVIL SERVICE COMMISSION

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V.

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City of Seattle, Respondent

CORRECTION NOTICE

CSC No. 05-01-006

The Civil Service Commission hereby enters the following

NOTICE

The dates on line 16 and line 27, on the *Memorandum Decision* issued by the Commission for the above appeal on October 26, 2005, should read "July 26, 2005, the **postmark** date of the probationary discharge letter".

Dated this 27th day of October, 2005

FOR THE CITY OF SEATTLE CIVIL SERVICE COMMISSION


Glenda J. Graham-Walton, Executive Director

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