

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

PATRICIA TIURA

Appellant,

v.

HUMAN SERVICES DEPARTMENT

Respondent.

**File No.
CSC-10-01-019**

**ORDER ON MOTION TO
DISMISS**

The Appellant, Patricia Tiura, filed her appeal with the Civil Service Commission on December 7, 2010. The Respondent Human Services Department (HSD) filed a request with the Commission on December 15, 2010, to dismiss the above-referenced appeal for failure to state a claim over which the Commission had jurisdiction. The Appellant filed a response with the Commission on December 22, 2010. The Commission referred the appeal to the Hearing Examiner on January 4, 2011 but did not rule on HSD's request. HSD filed a petition with the Commission requesting a briefing schedule and a hearing before the Commission concerning its jurisdiction the appeal. The Commission on January 20, 2011, advised the parties that no determination on jurisdiction had been made prior to delegating the appeal, and that issues concerning jurisdiction were to be raised with the Hearing Examiner.

The Hearing Examiner held a prehearing conference with the parties, on February 18, 2011, at which time a briefing schedule was established. Pursuant to that schedule, HSD filed a motion to dismiss on March 11, 2011. The Appellant filed a response on April 1, 2011, and the Department filed a reply on April 21, 2011. The Hearing Examiner has been fully briefed on this matter and has reviewed all of the pleadings and filings in this matter.

1. The appeal statement contended that HSD violated the personnel rules by eliminating the Appellant's position as a Manager 3 and by rejecting the Appellant's offer to be placed in a newly-created Manager 2 position within HSD.

2. Civil Service Rule 5.06 provides that the Executive Director or the Commission may dismiss an appeal which on its face does not fall within the Commission's jurisdiction. HSD's motion asserts that the Commission lacks jurisdiction over this matter, because the Appellant failed to exhaust her intradepartmental grievance remedies

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pursuant to SMC 4.04.260, and also because none of the personnel rules is implicated by the abrogation of her position or the failure to appoint her to the Manager 2 position.

3. The Appellant did not file a grievance through the interdepartmental grievance process; December 7, 2010 Notice of Appeal, Section V. Under SMC 4.04.260, an employee must exhaust his or her intradepartmental grievance remedies before appealing to the Civil Service Commission. The Appellant in her response argues that the intradepartmental grievance procedure is not applicable under the terms of Personnel Rule 1.4.3, because HSD discharged her and/or the action was a "classification and compensation decision." The Appellant's response also argues that she effectively satisfied the grievance requirement through her communications with management; and also argues that HSD is estopped to argue that the grievance process applied, because HSD led the Appellant to believe that there were no other actions she could take.

4. The abrogation of the Manager 3 position occupied by the Appellant was a layoff, not a termination or discharge for cause. HSD issued a notice to the Appellant that she was at risk of layoff because the Mayor's proposed budget for 2011-2012 identified the Manager 3 position for abrogation. After the 2011-2012 budget was adopted by City Council with the position being abrogated, HSD notified the Appellant that she would be laid off. There are no records at HSD which indicate that the Appellant was separated from employment as a disciplinary measure. The Appellant argues that the reasons given by HSD for her discharge (i.e., that the position was being abrogated as part of the 2011-12 budget) and the failure to appoint her to the new Manager 2 position, were pretextual. But even if the Appellant could show that upper management in HSD found her difficult, the fact remains that the Manager 3 position was abrogated following the adoption of the 2011-12 budget; the Appellant was not terminated from that position.

5. HSD was not required to accept the Appellant's offer that she be appointed to the new Manager 2 position as a voluntary reduction. Rule 4.3.3 clearly provides discretion to the appointing authority to reduce an employee to a vacant position in a lower classification, but does not require the appointing authority to do so.

6. HSD's decision to lay off the Appellant and the failure to simply appoint her to the Manager 2 position, was not a "classification and compensation" decision rendered by the Personnel Director within the meaning of Rule 1.4.3.3. The appeal statement did not identify any errors with regard to the classification or compensation for the newly-created Manager 2 position.

7. Because the decision here was neither a discharge nor a Personnel Director classification/compensation decision, the exceptions of Rule 1.4.3. do not apply here, and would not prevent the Appellant from exhausting the grievance process required under SMC 4.04.260.

8. The Appellant did not initiate the grievance process. She argues that her October 14, 2010 memo and her comments to her supervisor were equivalent to Step One of the

grievance process. But the memo does not request a meeting concerning a grievable incident, and the weekly meetings and oral discussions with her supervisor as shown in the filings do not satisfy the Step One process that is required by Personnel Rule 1.4.3.

9. The Appellant has also argued that HSD is estopped from arguing that Appellant was required to exhaust her grievance remedies, because of HSD's representations to the Appellant. The Appellant argues that principles of equitable estoppel should apply here, but cites no authority for the Hearing Officer or Commission to grant equitable relief. Even if such relief could be granted, she has not shown that HSD's explanation concerning the notice of potential bumping rights or its invitation to her to compete for the new Manager 2 position misled her so as to excuse the requirement to exhaust the grievance process.

10. Because the Appellant failed to exhaust her remedies through the grievance process, the Commission lacks jurisdiction over her appeal. The appeal must therefore be dismissed. In light of this ruling, it is not necessary to consider the other arguments raised in HSD's motion to dismiss.

Entered this 26th day of April, 2011.



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