

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

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2/1/2011
City of Seattle
CIVIL SERVICE COMMISSION

RONALD KEITH STONER)
)
 Appellant)
 vs.)
)
 FINANCE AND ADMINISTRATIVE)
 SERVICES DEPARTMENT)
)
 Respondent)

CSC File:
CSC 11-03-005

**ORDER DISMISSING
APPEAL**

The Appellant, Ronald Stoner, filed an appeal stating that the Finance and Administrative Services Department (Department) violated Personnel Rules (Rules) 4.1.6 and 4.1.7, which address the selection process for internal applicants applying for employment opportunities within the Department. The Department moves to dismiss the appeal, asserting that the Civil Service Commission (CSC) lacks jurisdiction over it because the Appellant failed to exhaust the internal grievance process before filing the appeal and/or the appeal was not timely filed.

Findings of Fact

1. Barney Hilliard was a full-time Enforcement Manager I in the Finance and Administrative Services Department (FASD), managing the License and Tax Enforcement Unit of the Revenue and Consumer Protection Division. In the summer of 2010, Mr. Hilliard asked to reduce his position to half-time.
2. On September 27, 2010, Mr. Hilliard was informed that his request would be approved, and that the Division's 2011 budget would reflect that the Enforcement Manager I position had been reduced to half-time.
3. Division management determined that the Enforcement Manager I duties that Mr. Hilliard could no longer perform would be allocated to a full-time exempt Strategic Advisor 2, Bill Reddy, and thus, that Mr. Hilliard and Mr. Reddy would co-manage the Regulatory Enforcement Unit.
4. On September 27, and 28, 2010, Division management held two meetings with the Regulatory Enforcement Unit staff to discuss the position reduction and reallocation of duties. During a regular staff meeting on September 30, 2010, Mr. Hilliard again informed the Regulatory Enforcement Unit staff of the position reduction and reallocation of duties. The change took effect on January 4, 2011, with Mr. Hilliard and Mr. Reddy co-managing the Unit.

5. The Appellant, Keith Stoner is a License and Standards Inspector within the Regulatory Enforcement Unit. On February 10, 2011, he filed this appeal, stating that the Department violated Rules 4.1.6 and 4.1.7, that "there was no process at all in the hiring of Bill Reddy as a ½ time enforcement mgr.," and that "[a]bout a month ago enforcement mgr. B. Hilliard announced he was going to half-time. Without any opportunity for others to be considered Nightlife premises mgr. Bill Reddy was simultaneously announced as filling the half-time slot now vacant."

6. It is not disputed that prior to filing his appeal, Mr. Stoner did not file an intradepartmental grievance about the subject of the appeal.

7. The Department filed a motion to dismiss the appeal together with supporting declarations and attachments, including two decisions in which the CSC dismissed appeals because the appellants had failed to exhaust the intradepartmental grievance process before filing the appeals.

8. Mr. Stoner filed a response to the motion together with attached declarations, emails and a decision by the Public Employment Relations Commission. In his response, Mr. Stoner stated that the "appellant admits to knowing the proper use of the grievance procedure," referring to the fact that he filed a grievance, unrelated to this appeal, in January of 2011. Appellant's Response to Department's Motion to Dismiss at 4. See Respondent's Motion to Dismiss for Lack of Jurisdiction, Exhibit A.

Applicable Law

9. SMC 4.04.260.A reads as follows:

A regular employee who is aggrieved thereby may appeal to the Civil Service Commission his/her demotion, suspension, termination of employment, or violation of this chapter or rules passed pursuant thereto; provided that the employee first exhausts his/her intradepartmental grievance remedies.

Emphasis added.

10. Rule 1.4.3 provides in relevant part as follows:

A. A regular or probationary employee may initiate a grievance when there is a disagreement between the employee and his or her supervisor or employing unit concerning the proper application of provisions of the Seattle Municipal Code Chapter 4.04 or Personnel Rules and any policies or procedures adopted pursuant thereto. ...

B. The employee grievance procedure shall consist of three steps. The employee and his or her departmental management shall make a reasonable effort to settle grievances at the lowest possible step.

1. Step One. The employee shall present a written request for a meeting with his or her immediate supervisor within 7 calendar days following the grievable incident. ...

11. A "grievable incident" is defined as "an alleged action or event that resulted from the misapplication of the provisions of Seattle Municipal Code Chapter 4.04 or the Personnel Rules and any policies or procedures adopted pursuant thereto which aggrieves the employee who files a grievance." Rule 1.4.1.C.

12. Rule 1.4.5 provides that "[i]f a regular employee exhausts this grievance procedure and remains dissatisfied with the outcome, he or she may file an appeal with the Civil Service Commission in accordance with Seattle Municipal Code Section 4.04.260.

13. Rule 1.4.2.C provides that Rule 1.4 "does not apply to employees who are exempted by state law, the City Charter or SMC Chapter 4.13 from compliance with the Personnel Rules or SMC Title 4 related to selection, discipline, termination or appeals of personnel actions to the Civil Service Commission."

14. Rule 4.1.4 requires that employing units submit notice of all classified service employment opportunities for publication in the Opportunity for Advancement bulletin unless the publication requirement is waived by the Personnel Director. As noted, Rules 4.1.6 and 4.1.7 govern the selection process for such employment opportunities.

Conclusions

1. Mr. Stoner cites Rules 4.1.6 and 4.1.7 as the basis for his appeal and argues that under Rule 1.4.2.C, the appeal is exempt from the provisions of SMC 4.04.260.A and Rule 1.4 that require exhaustion of the intradepartmental grievance process before an appeal is filed with the CSC. Mr. Stoner is correct that his appeal alleges noncompliance with Rules 4.1.6 and 4.1.7. They form the *substantive* basis for his appeal. However, these Rules do not provide an exemption from the *procedural* requirements of both the Code and Rule 1.4 for exhaustion of the intradepartmental grievance process.

2. Rule 1.4.2 merely states that Rule 1.4 does not apply if an employee is exempted from compliance with the Personnel Rules or from compliance with those sections of SMC Title 4 that address selection, discipline, termination, or appeals of personnel actions to the CSC. The exemption could be afforded by state law, the City Charter, or SMC Chapter 4.13. However, Mr. Stoner does not hold an exempt position. (If he did, he could not have filed his January 19, 2011 grievance.) Therefore, the exception in Rule 1.4.2.C does not apply. Mr. Stoner is subject to Rule 1.4, including the requirements of

Rule 1.4.3 and Rule 1.4.5 for exhaustion of the intradepartmental grievance process before filing an appeal with the CSC.

3. Mr. Stoner argues that a grievance is required only when an employee and his supervisor or employing unit disagree about the proper application of Chapter 4.04 SMC or the Rules. He contends that because he has no personal disagreement with the Department, he is not required to exhaust the grievance process before filing his appeal. That is not correct. Mr. Stoner seeks to appeal a "grievable incident," i.e., an action that resulted from what Mr. Stoner believes was a misapplication of the Rules, by which he was aggrieved. If Mr. Stoner is arguing that he is not aggrieved by the Department's action, then he has no standing to file either a grievance or an appeal to the CSC.

4. Mr. Stoner suggests that he has no personal stake in his appeal, and that he has filed it as a "Qui Tam appeal".¹ However, Mr. Stoner cites no Code section authorizing such an action to enforce the Rules, and the Examiner has found none.

5. Mr. Stoner did not exhaust the intradepartmental grievance process. Consequently, the CSC has no jurisdiction to hear his appeal, and it must therefore be dismissed.


6. In light of the fact that the appeal must be dismissed for lack of jurisdiction, it is not necessary to address the issue of the timeliness of the appeal.

Decision and Order

The Department's motion to dismiss is **GRANTED**.

The appeal of Ronald Keith Stoner is **DISMISSED**. The second prehearing conference, scheduled for May 11, 2011, is **CANCELED**.

Entered this 26th day of April, 2011.


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¹ A Qui Tam action is possible under a statute that establishes a penalty for doing, or failing to do a particular act and also provides that the penalty may be recovered in a civil action by a private individual, with part of the penalty going to the individual and the rest to the government agency that was empowered to, but did not bring the action against the violator.

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

This is a final decision of the Hearing Examiner and is subject to review by the Civil Service Commission. To be timely, the petition for review must be filed with the Civil Service Commission no later than ten (10) days following the date of issuance of this decision, as provided in Civil Service Commission Rules 6.02 and 6.03.