

ORDER DISMISSING APPEAL

IN THE MATTER OF THE APPEAL OF:

DONNA LAWRENCE, Appellant,

vs.

DEPARTMENT OF AVIATION,

and the City and County of Denver, a municipal corporation, Agency.

Appellant filed an appeal with the Career Service Hearing Office on June 15, 2012, in which she claimed the Agency retaliated against her in response to her reporting of official misconduct under the Denver Revised Municipal Code section pertaining to whistleblower protection. DRMC 2-107 et seq. That ordinance grants jurisdiction to the Career Service Hearing Office to consider appeals of whistleblower complaints. DRMC 2-109. In pertinent part, the ordinance requires: (1) a supervisor's imposition or threat to impose an adverse agency action on an employee (2) because of the employee's disclosure of official misconduct (3) the employee's good faith effort to notify an appropriate authority about the official misconduct before disclosing it and (4) filing an appeal of the adverse action against the whistleblower within 30 days after it occurred. DRMC 2-108(a),(c); 2-109 (a).

It appeared much of the Appellant's appeal, even if taken as true, failed to state one or more of these four elements. Consequently the Appellant was required to show cause, by June 27, 2012, why her appeal should not be dismissed. The Appellant filed a timely response on June 27 and another, untimely response, on June 28. The June 28 response is not considered here. The Agency did not file a response.

First, Appellant's response acknowledged that much of her appeal statement was not within the jurisdiction of the Hearing Office, [Response p.2], and only her claim relating to an incident on May 17, 2012 was the basis for her whistleblower claim. [Id]. Appellant's response then reiterated every untimely allegation beginning in 2007, making it difficult to assess her response for compliance with the Order to Show Cause.

Regarding the May 17 incident, the Appellant responded her appeal was timely as the adverse action occurred on May 17, 2012 and she filed her appeal on June 15, 2012. The Appellant's response states a timely response under the timeliness requirement of the ordinance.

The Appellant claimed the adverse agency action was her supervisor's removal of 60% of her work on May 17, 2012. This averment states an adverse action, withholding of work, under the ordinance.

The disclosure of official misconduct, and to whom remain elusive. The Order to Show Cause required Appellant to specify how any of her 18 allegations could be construed as official misconduct. Appellant stated she attended a mediation on May 17, 2012, following which the Agency breached the agreement reached therein. Even if this claim could be construed as official misconduct, Appellant does not state, as required in the Order to Show Cause, that she made a good faith effort to notify an appropriate authority about the official misconduct. Appellant stated only that the removal of her duties occurred "in the presence of Ron Morin, acting Deputy Manager of Aviation," and "he was in a position to be able to deal with the issues raised." The presence of an appropriate reporting authority is an insufficient basis to assume an employee made a good faith effort to notify such authority of official misconduct.

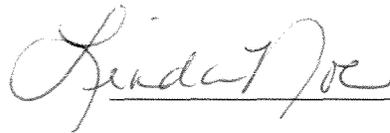
For reasons stated above, Appellant failed to state a claim for which the Hearing Office may take jurisdiction. Her Response failed to provide such additional information to change that failure. Consequently, Appellant's appeal is DISMISSED WITH PREJUDICE.

Done June 27, 2012.


Bruce A. Plotkin
Career Service Hearing Officer

I certify that on June 27, 2012, a correct copy of this Order Dismissing Appeal was delivered to the following in the manner indicated:

Ms. Donna Lawrence, dlawrence712@aol.com	(via email);
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Linda Doe