

ORDER TO SHOW CAUSE

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IN THE MATTER OF THE APPEAL OF:

KEITH ABEYTA, Appellant,

vs.

DEPARTMENT OF PARKS AND RECREATION, HIAWATHA DAVIS RECREATION CENTER,  
and the City and County of Denver, a municipal corporation, Agency.

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Appellant filed an appeal of his one-day suspension on July 9, 2013. He stated his suspension, assessed on June 24, 2013 and served on June 28, 2013, was based upon unlawful discrimination, harassment, retaliation, and violated certain Career Service Rules. He filed a grievance concerning his claims on June 6, 2013, which the Agency rejected. The Appellant also appeals the denial of his grievance. Jurisdictional issues are apparent from two of Appellant's claims.

1. Discrimination. A complaint or grievance of discrimination requires a showing of (1) membership in a protected class, 2) an adverse employment action, and (3) evidence which supports an inference of discrimination (some connection between (1) and (2)). Protected classes include those of race, color, creed, religion, national origin, gender, sexual orientation, marital status, military status, age, disability, political affiliation, or any other status protected by federal, state or local law. Appellant has not alleged he is a member of any protected class. Appellant's appeal infers the Agency's suspension was the adverse action; however, he has not stated what facts, if proven would tend to show a connection between his protected status and the suspension.

2. Harassment. A claim of harassment requires a showing of at least one of the following: (a) wrongful verbal conduct (such as epithets, derogatory comments, sturs, unwanted sexual advances, invitations or comments); (b) wrongful physical, or visual conduct (such as derogatory posters photographs, cartoons, drawings or gestures); (c) wrongful physical conduct; (such as assault, unwanted touching, blocking normal movement, or interfering with work); (d) threats or demand to submit to sexual requests in order to keep your job or avoid some other loss, or offers of job benefits in return for sexual favors; (e) retaliation for having reported or threatened to report harassment, demands, retaliation or other negative action or conduct; (f) some other wrongful workplace action or conduct. In addition to stating one of the preceding, a harassment claim must state the harassment was based on a protected status such as race, color, creed religion, national origin, gender, sexual orientation, marital status, military status, age, disability, or political affiliation. Appellant states the basis of his harassment claim is that he was "falsely accused" and referred to his grievance for further explanation. Appellant's grievance stated only that his immediate supervisor did not know the reason for the suspension and told Appellant he (the supervisor) was instructed by upper management simply to sign the disciplinary letter. Appellant concluded "this shows bullying; intimidation as well as harassment toward me from upper Management." Even if taken as true, Appellant failed to state some harassing conduct or action and failed to state what is his protected status.

3. Retaliation. To establish a retaliation claim, Appellant must show (1) he engaged in some protected activity, (2) a reasonable employee would have found the challenged action to be materially adverse, meaning, in the present case, that the suspension would have deterred a reasonable employee from filing or supporting a grievance, and (3) a causal connection between the adverse employment action and the employee's protected activity. In re Gallo, CSB 63-09A (3/17/11). Appellant's appeal states a claim for retaliation. He filed a grievance on June 6 and about two weeks later, he was suspended. At this stage, no more is required.

**You are ordered to show cause, on or before July 19, 2013, why your discrimination and harassment claims should not be dismissed for lack of jurisdiction. Your failure to respond on time will result in the dismissal of your discrimination and harassment claims as abandoned. In order to comply, you must state the following:**

1. With respect to your discrimination claim: (a) your protected status (race, color, creed, religion, national origin, gender, sexual orientation, marital status, military status, age, disability, political affiliation, or any other status protected by federal, state or local law); (b) what facts connect your suspension to your protected status.
2. With respect to your harassment claim: (a) specifically, what verbal, physical, or visual conduct, or threats, demands, retaliation or other action was harassing to you and; (b) your protected status.

The Agency may, but need not, respond to this order on or before July 23, 2013.

DONE July 12, 2013.

  
Bruce A. Plotkin  
Career Service Hearing Officer

I certify that on July 12, 2013, I delivered a correct copy of this Order to Show Cause to the following, in the manner indicated:

Mr. Keith Abeyta, [Keith.Abeyta@denvergov.org](mailto:Keith.Abeyta@denvergov.org)  
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