

**ORDER GRANTING MOTION TO AMEND APPEAL**

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IN THE MATTER OF THE APPEAL OF:

**DAWN BIENEK**, Appellant,

vs.

**DENVER COUNTY COURT**,  
and the City and County of Denver, a municipal corporation, Agency.

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Appellant moves for permission to amend her appeal to add an additional retaliatory adverse action imposed since the filing of this appeal. The Agency objects that the motion is untimely.

Procedural Background and Arguments on the Motion

This appeal was filed on Jan. 11, 2013, and alleges that the Denver County Court violated the Whistleblower Protection Act by a series of adverse actions against Appellant in November and December, 2012. Appellant claims these actions were taken in retaliation for her report of official misconduct on Oct. 15, 2012, the day she complained to the Risk Management Department that the Agency had exposed employees to a harmful chemical.

Appellant now seeks to amend her appeal by adding her challenge to a one-day suspension dated Feb. 4, 2013, which she asserts is a further act of retaliation for her whistleblower report. She supports this request by agreeing that the evidence on this claim can be submitted within the current deadlines established in the Prehearing Order, and thus the amendment will not delay the current appeal proceedings.

The Agency's response argues that the new claim is untimely because it was filed 22 days after the adverse action, and is thus seven days late under CSR § 19-20 A.1.a. If the motion is nonetheless granted, the Agency does not oppose consolidation of this matter into this appeal if the hearing is restricted to one day, but suggests a prehearing conference to limit the number of witnesses.

Analysis

Under the Career Service Rules, hearing officers are obligated to "perform the functions necessary to implement and maintain a fair and efficient process for appeals." C.R.C.P Rule 15(a) provides that leave to amend "shall be freely given when justice so requires." The Agency does not allege that it will be prejudiced by the granting of the motion, and suggests procedures to expedite a consolidated hearing of the original and amended issues.

The additional claim is timely, as the deadline for whistleblower actions is 30 days under § 19-20 A.1.b., which provides that claims under the whistleblower ordinance "shall be filed with the Hearing Office within thirty (30) calendar days of the alleged retaliatory adverse

employment action." This motion was filed 22 days after the suspension, and is therefore well within that time frame. In the interests of justice and administrative efficiency, this motion to amend should be granted in order to provide the Appellant with a forum for a full hearing on her whistleblower claim.

Order

Based on the foregoing findings and conclusions, it is ordered as follows:

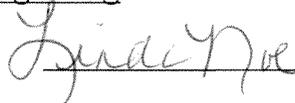
1. The motion to amend the appeal is GRANTED, and
2. The parties are directed to contact the Hearing Office to file a joint report of their final stipulations as to facts, exhibits and witnesses by **March 11, 2013**.

DONE March 1, 2013.

  
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Valerie McNaughton  
Career Service Hearing Officer

I certify that on March 1, 2013, I delivered a copy of this Order to the following via email:

Dawn Bienek, [Dawn.Bienek@denvergov.org](mailto:Dawn.Bienek@denvergov.org)  
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