

ORDER DISCHARGING ORDER TO SHOW CAUSE

IN THE MATTER OF THE APPEAL OF:

JACEK BURGHARDT, Appellant,

vs.

CLERK AND RECORDERS OFFICE,
and the City and County of Denver, a municipal corporation, Agency.

On December 23, 2013, an Order to Show Cause directed the Appellant to provide: (1) specific CSA, State, and Federal Rules or Laws that were violated by Appellant's layoff; (2) facts which support the alleged violation of those rules or laws; (3) Appellant's protected status; and (4) facts to support each allegation of discrimination.

Appellant did not respond to the Order to Show Cause by the December 30, 2013 deadline. Accordingly, on December 31, 2013 the appeal was dismissed. Later that day Appellant resubmitted his appeal along with a document titled "Motion to Continue" which responded to some of the Show Cause Order, and requested reinstatement of the appeal. Appellant's filing is deemed a motion to set aside the dismissal. As cause, Appellant stated he never received the December 23rd Order to Show Cause.

In addition, on January 3, 2014, Appellant filed another document titled "In Response to Motion to Show Cause, in which he appeared to answer those portions of the Show Cause Order which he did not address in his earlier "Motion to Continue."

On January 7, 2014 the Agency filed its response to both of Appellant's recent filings. The Agency argued Appellant's claim that he failed to receive the Show Cause Order was hollow, and that absent extraordinary circumstances, of which electronic failure is not one, the motion should be denied. Alternatively, the Agency argued that if the claim were allowed to continue, Appellant failed to allege facts sufficient to establish discrimination on the bases of (1) religion; (2) national origin; (3) sex; (4) political affiliation; or (5) sexual orientation. In addition, the Agency asserted Appellant's layoff itself was proper.

Appellant's factual allegations must be taken in the light most favorable to him. As long as those claims are supported by facts which, if true, support the underlying claims, no more is required at this stage.

1. State and federal law claims. Appellant provided a list of CSA Rules which Appellant believes were violated by a reassignment of work duties and subsequent layoff. However, other than a claim that the layoff was a violation of Colorado's hate-crime law, Appellant did not provide any state or federal law which the Agency violated. Because the Colorado hate crime law falls outside the jurisdiction of this venue and no other state or federal law was implicated, Appellant failed to cite any state law or federal under this tribunal's jurisdiction. Consequently, Appellant's claim that the impending layoff violates state or federal law is **DISMISSED**.

2. CSR violations. Appellant provided sufficient facts to establish a claim that the layoff violated one or more CSA Rules.

3. Discrimination. Appellant failed to state a protected status related to religion, political affiliation, or sex. Discrimination claims on those bases are **DISMISSED**.

Appellant claimed discrimination by the Agency based upon its preferential treatment of and pay to a homosexual employee who was similarly situated. While the facts of comparative situations were somewhat vague, Appellant established a prima facie claim of discrimination on the basis of sexual orientation.

Appellant provided sufficient facts which, if established, create a viable claim of national origin discrimination.

Order

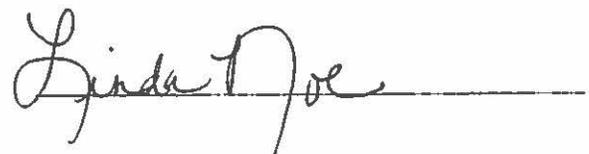
The order to show cause is discharged. Appellant's discrimination claims based on religion, sexual orientation, political affiliation, and sex are DISMISSED. State and federal law claims¹ are DISMISSED. The case shall proceed on Appellant's layoff claim, and on his national origin and sexual orientation discrimination claims. Pre-hearing deadlines are controlled by the Notice of Hearing and Prehearing Order issued on December 23, 2013.

DONE January 8, 2014.


Bruce Plotkin
Career Service Hearing Officer

I certify that on January 8, 2014, I delivered a correct copy of this Order to the following, in the manner indicated:

Mr. Jacek Burghardt, Jaceksburghardt@gmail.com	(via email);
City Attorney's Office at Dlefilng.litigation@denvergov.org	(via email);
John Sauer, ACA, John.Sauer@denvergov.org	(via email);
HR Services, HRServices@denvergov.org	(via email).



¹ Other than those based upon national origin and sexual orientation discrimination.