

ORDER DISMISSING APPEAL

IN THE MATTER OF THE APPEAL OF:

LAURIE K. DARMOFAL, Appellant,

vs.

DEPARTMENT OF SAFETY, DENVER POLICE DEPARTMENT,
and the City and County of Denver, a municipal corporation, Agency.

INTRODUCTION

Appellant was in probation status when the Agency dismissed her from employment by declining to pass her from probation. Appellant filed her appeal on September 5, 2012, six days after the jurisdictional filing date. An Order to Show Cause issued September 6, 2012, in which the Appellant was ordered to explain why her appeal should not be dismissed for lack of jurisdiction. Based upon Appellant's response, a limited-scope hearing was conducted on September 27, 2012, in order to permit the Appellant to meet her burden to establish, by a preponderance of the evidence, that the Agency substantially misled her into filing late. Appellant's principal claims were:

1. Appellant's supervisor, Scott Snow, misled her into filing a grievance concerning her dismissal and presented false testimony at the limited scope hearing.
2. A human resource representative, Marinda Kincaid, later advised Appellant only after the filing deadline that Appellant could not file a grievance, but would have to file an appeal.

EVIDENCE

Regarding what information was exchanged between the parties, I find the following to be the most significant.

1. Notice of Termination [Exhibit 1]. Appellant acknowledged receiving her notice of termination. The notice directed Appellant to, and recited, Career Service Rules (CSR) 14-30 and 5-61. CSR 14-30 refers probationary employees who are

contemplating filing an appeal to consult CSR 19. CSR 19, in turn, contains the deadlines for filing an appeal. CSR 19-20. The Agency therefore provided the information from which a reasonably astute employee could ascertain her rights with respect to filing deadlines.

2. Misled by Snow. Appellant claimed she was led to believe that she was required to file a grievance based upon false representations by her supervisor Scott Snow. She based her assertion on the following exchange between her and Snow on August 9, 2012.

SNOW: OK, well then I would encourage you through Human Resources or private means, if you believe that your rights have been violated.

APPELLANT: They [my rights] absolutely have [been violated]. And the fact that I am in here without representation is another violation.

SNOW: Then you can include that with this grievance, or however you want to pursue.

[Transcript of August 9, 2012 meeting provided by Appellant without objection].

While Snow used the word "grievance," it is not clear he was instructing Appellant to file a grievance pursuant to CSR 18. Moreover, he provided her the option of proceeding however Appellant deemed appropriate. This exchange did not establish, by a preponderance of the evidence, that Snow misled Appellant about the requirement to file a timely appeal or into inaction.

3. Misled by McCain. Appellant also claimed Agency witness HR representative Paige McCain misled her into filing a grievance because McCain did not tell Appellant she could not file a grievance [inferably of her termination]. Appellant bases this claim on her email to McCain dated August 30, 2012. [appeal attachment]. However, McCain responded the same day, August 30, at 9:15 a.m., still in time for Appellant to file an appeal. Appellant's failure to contact HR representative Marinda Kincaid until September 5 "due to holidays, furloughs and illness," [appeal attachment dated 9/5/12], cannot be attributed to wrongdoing by the Agency.

4. Misled by Kincaid. Finally, Appellant claimed interim HR Director Marinda Kincaid also misled her (Appellant) with respect to her untimely filing. Kincaid directly refuted the allegation. Moreover, Kincaid responded to the Appellant at 9:24 a.m. on the same day she received a copy of it, August 30, 2012. In her reply, Kincaid told Appellant to contact her regarding the appeals process and provided both email and cell phone contact information. [Exhibit 2]. Even if Appellant did not review this response until later, there is no indication Kincaid misled Appellant, and even

provided the means for Appellant to comply with the filing requirements had Appellant reviewed the email on August 30.

Appellant failed to meet her burden to establish, by a preponderance of the evidence, that the Agency misled her into filing her appeal outside the jurisdictionally required deadline. [CSR 19-20 A. 1. B., 19-20 A. 2.]. Consequently Appellant has failed to show cause why this appeal should not be dismissed for failure to meet the jurisdictional filing deadline.

While the Appellant failed to prove the Agency engaged in wrongdoing, this incident could have been avoided if the Agency had made abundantly clear what rights and procedures are available to terminated employees. An employee's discussion of, or a grievance form concerning, termination should trigger HR to provide timely, accurate guidance.

ORDER

This appeal is DISMISSED WITH PREJUDICE.

DONE October 10, 2012.



Bruce A. Plotkin
Career Service Hearing Officer

I certify that, on October 10, 2012, I delivered a correct copy of the foregoing Order Dismissing Appeal in the manner indicated:

Ms. Laurie K. Darmofal, beagmom@me.com (via email);
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