

ORDER TO APPELLANT TO SHOW CAUSE AND  
ORDER TO AGENCY TO CONFORM NOTICE OF DISCIPLINE

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IN THE MATTER OF THE APPEAL OF:

**GENE HUMPHRIES**, Appellant,

vs.

**TECHNOLOGY SERVICES**,  
and the City and County of Denver, a municipal corporation,  
Agency,

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Appellant filed this appeal on **January 2, 2013**. Jurisdictional issues are apparent from a review of the appeal, which is a direct appeal of a five-day suspension pursuant to Career Service Rule 19-10 A. 1. b. In addition to disputing her suspension, Appellant claims his suspension was motivated by unlawful discrimination and unlawful retaliation. Those two claims, plus the inference of another, are the subject of this order to Appellant.

**A. Regarding Appellant's appeal.**

1. Discrimination. Jurisdiction over a discrimination claim is established by a statement which, if proven, would establish that: (1) the Appellant belongs to a protected class; (2) the Appellant suffered an adverse employment decision; and (3) the circumstances gave rise to an inference of unlawful discrimination. Colorado Civil Rights Comm'n v. Big O Tires, 940 P.2d 397, 400-401 (Colo. 1997). While Appellant has established the second prong, an adverse action (his suspension), he has failed to state of what protected class he is a member, and has failed to state what circumstances establish a link between his protected class and his suspension.

2. Retaliation. Retaliation is established by a statement which, if proven, would establish that a reasonable employee would have found the challenged action materially adverse, which in this context means it well might have dissuaded a reasonable worker from making or supporting Appellant's reporting of the Agency's purported "illegal activity." See Burlington Northern & Santa Fe RR. Co. v. White, 126 S.Ct. 2405, 165 L.Ed. 2d 345 (2006), and Reese v. City of Yukon, 2006 U.S. Dist. LEXIS 61455 (D. OK, 2006). The Appellant has stated sufficient information to establish a prima facie retaliation claim; however, the allegation of "illegal activity" by the Agency does not provide sufficient specificity for the Agency to prepare a defense.

3. Whistleblowing. Read in conjunction with the Agency's notice of discipline, it appears Appellant claims a whistleblower violation by the Agency pursuant to CSR 19-10 A.1.f. However, Appellant did not specifically aver such claim, but only non-whistleblower retaliation.

**B. Regarding Agency's Notice of Discipline.**

The Appellant attached to his appeal the Agency's notice of discipline, dated December 29, 2012. The Agency stated the duration of Appellant's suspension as running from January 14, 2012 through January 18, 2012. The dates are defective either with respect to the month or the year. In consequence of these findings, the following orders enter.

**ORDERS**

1. Appellant is ordered to show cause why dismissal of his discrimination claim should not be entered by filing a response to this order on or before **January 9, 2013**.

2. Appellant is ordered to specify the "illegal activity" engaged in by the Agency in his retaliation claim.

3. Appellant is ordered to specify whether he is claiming a violation of the City's whistleblower ordinance, and, if so, to comply with all requirements under that ordinance, including the notification provision under Denver Revised Municipal Ordinance 2-108 (c).

Appellant's failure to file a response to this order will result in an order dismissing his discrimination claim, or other sanctions.

4. The Agency is ordered to submit its amended notice of discipline on or before **January 11, 2013**, and may file a responsive pleading to Appellant's response by the same date.

DONE this 3<sup>rd</sup> day of January, 2013.

  
Bruce A. Plotkin  
Career Service Hearing Officer

I certify that, on January 3, 2013, I delivered a correct copy of this Order to the following, in the manner indicated:

Mr. Gene Humphries, 3236 S. Newland Street, Denver, CO 80227	(via U.S. mail);
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