

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**

Appeal Nos. 34-03

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

DEBRA R. JACKSON, Appellant,

v.

Agency: Denver Department of Human Services and the City and County of Denver, a municipal corporation.

INTRODUCTION

For purposes of these Findings and Order, Debra R. Jackson shall be referred to as "Appellant." The Denver Department of Human Services shall be referred to as "Department." The City and County of Denver shall be referred to as the "City". They will be referred to collectively as the "Agency." The Rules of the Career Service Authority shall be abbreviated as "CSR" with a corresponding numerical citation.

A hearing on this appeal was held May 22, 2003, before Robin R. Rossenfeld, Hearing Officer for the Career Service Board. Appellant was present and appeared *pro se*. The Agency was represented by Niels Loechell, Esq., Assistant City Attorney, with Deirdre Grayson serving as the advisory witness.

The Hearing Officer has considered the following evidence in this decision:

The following witnesses were called by and testified on behalf of the Agency:

Kristine Muro-Dougherty, Faith Wideman, Donna Prince, Deirdre Grayson

The following witnesses were called by and testified on behalf of the Appellant:

Appellant, Nancy Jamerson

The following exhibits were offered and admitted into evidence on behalf of the Agency:

Exhibits 1 – 8,

The following exhibits were offered and admitted into evidence on behalf of the Appellant:

Exhibit Z

The following exhibits were admitted into evidence by stipulation:

Exhibits 1-8

The following exhibits were offered but not admitted into evidence and therefore not considered in this decision:

None

NATURE OF APPEAL

Appellant is appealing a Written Reprimand for alleged violations of CSR §16-50 A. 8), 18) and 20) and §16-51 A. 4), 5), and 11). She is seeking reversal of the disciplinary action and removal of the written reprimand from her personnel files. Appellant alleges race discrimination.

ISSUES ON APPEAL

Was discipline imposed in a timely manner?

Whether Appellant violated the cited provisions of CSR §16-50 A. and/or §16-51 A?

Was discipline of Appellant motivated by a discriminatory animus?

If Appellant violated any provisions of CSR §16-50 or §16-51, what is the appropriate sanction?

PRELIMINARY MATTERS

The Written Reprimand alleges that Appellant violated CSR §16-51 A. 18), Conduct which violates an Executive Order which has been adopted by the Career Service Board. At the commencement of the hearing, the parties agreed that the provision was actually CSR §16-50 A. 18). Appellant stated that she was on notice that she was charged with violating an Executive Order and that the error was merely clerical. The Agency was allowed to amend the Written Reprimand based upon Appellant's statement that she was on notice of the allegations against her.

FINDINGS OF FACT

1. Appellant is an Administrative Support Assistant IV in the Adoption Section of the Department's Family and Children's Unit ("Unit"). She began working at the Department on April 1, 2002. She promoted to this position through the Career Service process. Prior to that, she worked for Denver Parks and Recreation. Appellant's probation for this position ended on October 1, 2002.

2. Appellant is an African-American female.

3. Appellant works with three adoption units, consisting of 23 or 24 caseworkers, three unit supervisors and Faith Widerman, the Administrative Assistant III for the Section. Donna Prince is her direct supervisor. Deirdre Grayson is Ms. Prince's direct supervisor.

4. Prior to Appellant's promotion into the position, Ms. Widerman performed the job duties. Ms. Widerman trained Appellant in her job for approximately 3 months.

5. Appellant is responsible for entering data about "rollovers" and sub-adoption Medicaid for pending adoptions. Rollovers occur during the interim period between the termination of parental rights and the actual adoption. The information is removed from the birth case in the system and put into the adoptive parents' file.

6. On Tuesday, December 17, 2002, Appellant and Kristi Muro-Dougherty, a Senior Social Case Worker, were in the coffee break room. Ms. Muro-Dougherty was eight months pregnant at the time. Appellant asked Ms. Muro-Dougherty to e-mail her when she left something in Appellant's in-box for processing because Appellant was concerned about her entering data in a timely manner. Ms. Muro-Dougherty objected to doing this because she thought the request was "ridiculous." Ms. Muro-Dougherty also indicated that she couldn't send e-mails to everyone to make sure that they got things she left in their mailboxes. Appellant tried to explain her concerns about delays in processing the rollovers. The discussion between the two women became louder. Ms. Muro-Dougherty walked away because she felt herself escalating the discussion. Appellant followed Ms. Muro-Dougherty to her desk, trying to continue the discussion. Ms. Muro-Dougherty thought that the discussion was redundant and just wanted it to end. Appellant's voice at this time was described as "loud", but "not necessarily yelling."

7. Ms. Widerman called her supervisor (Ms. Prince) to tell her what was going on.

8. Ms. Muro-Dougherty testified that she was not frightened by the incident, but that it had upset her. She was eight months pregnant at the time and she felt that she needed to be left alone.

9. Someone told Ms. Muro-Dougherty to tell Ms. Prince about the incident. Ms. Grayson, Mary Peagler and Connie Vigil (other supervisors) were in Ms. Prince's office when Ms. Muro-Dougherty got there. Ms. Muro-Dougherty told them what had happened. She did not ask that Appellant be disciplined. She stated that she did not learn of the discipline until this past March while she was on maternity leave and a co-worker contacted her about the instant hearing.

10. Ms. Prince asked Ms. Muro-Dougherty to put the information in writing. (Exhibit 7) After that, the incident was never discussed with her again.

11. Appellant was not present during the meeting between Ms. Muro-Dougherty and the four supervisors. When she got back to her desk, she sent an e-mail to Ms. Prince about her request and asking for help in getting the social workers to send her notice of placing documents in her in-box. (Exhibit 8). Appellant spoke with Ms. Prince about the incident later that day. She admitted that she was angry/upset when she was called into Ms. Prince's office. She told the supervisors her version of the incident.

12. At the end of the meeting, Ms. Grayson told Appellant, "Well, we decided that we're going to give you a written reprimand." Appellant stated that she was going to grieve it, to which Ms. Grayson replied, "You have the right to grieve it."

13. Ms. Widerman was questioned about the incident by Ms. Prince sometime during that afternoon.

14. Appellant admitted that, prior to December 17, she and Ms. Muro-Dougherty had

two or three other "confrontations" over what Appellant needed from Ms. Muro-Dougherty in order to do her work.

15. Appellant testified that Ms. Grayson had told her prior to this incident that the Unit supervisors felt she was overbearing. She was concerned about this and was working on her behavior when this incident occurred.

16. Appellant testified that her treatment by four of the caseworkers had been "rocky". Ms. Muro-Dougherty was among the caseworkers she named. She said that their treatment of her was closer to harassment than discrimination. She stated that there were problems with their work. Their documentation was frequently incomplete and late when compared to the other caseworkers she dealt with. Appellant had no other evidence of discrimination or harassment either by her co-workers or her supervisors.

17. Nancy Jamerson, a Senior Social Case worker testified on Appellant's behalf. She stated that Appellant was always professional, cordial and polite with her. While she and Appellant have had disagreements about certain things dealing with Appellant's needs for performing her work, she has always been professional with Ms. Jamerson. She has not heard any complaints from any other caseworkers about Appellant's attitude.

18. Ms. Prince and Ms. Grayson discussed the incident on December 17 and decided that a Written Reprimand should be issued because Ms. Muro-Dougherty felt physically threatened by the incident.

19. During the instant hearing, Ms. Muro-Dougherty denied feeling physically threatened by Appellant.

20. Ms. Prince went on vacation on December 19 without having issued the written reprimand. She was sick for a few days after her vacation. As a result, she did not write the Written Reprimand until January 24, 2003, thirty-eight days after the incident.

21. There is no prior disciplinary history for Appellant.

22. Appellant grieved the Written Reprimand in a timely manner. It was denied by the Agency at both Steps One and Two. This appeal was filed with the Hearing Officer in a timely manner.

DISCUSSION AND CONCLUSIONS OF LAW

Analysis

The City Charter C5.25 (4) requires the Hearing Officer to determine the facts in this matter "de novo." This has been determined to mean an independent fact-finding hearing considering evidence submitted at the de novo hearing and resolution of factual disputes. *Turner v. Rossmiller*, 35 Co. App. 329, 532 P.2d 751 (Colo. Ct. of App., 1975)

While this matter came before the Hearing Officer as a grievance, this matter is an appeal of a disciplinary action (Written Reprimand). The Agency has the burden of proof to demonstrate that its decision was within its discretion and appropriate under the circumstances. On the other hand, Appellant has the burden of establishing that the Agency acted in a discriminatory or

harassing manner by issuing the Written Reprimand.

The first problem in this case is the issue of timeliness of the issuance of the Written Reprimand. CSR §16-40 A. covers disciplinary action taken after a formal predisciplinary meeting. This Rule provides that the disciplinary action must be taken within fifteen days after the meeting. If the disciplinary action is not taken within that time limitation, the Agency must request an extension of no more than ten calendar days from the Personnel Director prior to the expiration of the fifteen day period. If this is not done, the Agency must repeat the entire predisciplinary process.

While there is no comparable Rule for discipline issued without a formal predisciplinary meeting, the Hearing Officer finds this Rule instructive, if not controlling, as it sets out the Career Service Board's requirement that discipline be issued in an expeditious manner.

In the instant case, the Agency waited almost forty days to issue the Written Reprimand. This is more than the twenty-five days maximally allowed (with the Personnel Director's approval) between the predisciplinary meeting and the issuance of the discipline. While the Agency offered Ms. Prince's vacation and a subsequent illness as the excuse for not issuing the Written Reprimand sooner, this is not legally adequate. Ms. Prince could have issued the Written Reprimand on either December 17 or 18, as she and Ms. Grayson had concluded it was appropriate by the time they met with Appellant, or Ms. Grayson could have issued it herself while Ms. Prince was away from the office. They chose not to do so. Therefore, the Agency failed to issue the Written Remand in an untimely manner and it must be dismissed.

CSR §16-40 A. permits an Agency to repeat the disciplinary process if it is not taken in a timely manner and there is no timely request for an extension of time. The Hearing Officer finds that in the instant case, since the Agency has not complied with the requirements of Rule 16, it may repeat the disciplinary process, if it believes that it has valid grounds to issue a Written Reprimand. However, the reason for the Written Reprimand rather than a Verbal Reprimand provided by Ms. Prince (*i.e.*, Ms. Muro-Dougherty's fear of physical attack) was contradicted by Ms. Muro-Dougherty herself during her testimony before the Hearing Officer. Given Ms. Muro-Dougherty's sworn testimony, the fact that the witnesses against Appellant had possible biases against Appellant, and a lack of prior discipline against the Appellant, the Hearing Officer would not have upheld the Written Reprimand in any case. The Hearing Officer has not concluded, however, whether a Verbal Reprimand might have been appropriate since she has not had to reach the issue of the appropriateness of any discipline.

Since this appeal has been granted because the discipline was untimely, the Hearing Officer does not need to address Appellant's claim of discrimination or harassment, which Appellant offered as a defense to the discipline.

It should be noted that the witnesses testified that Appellant's attitude has improved since the issuance of the Written Reprimand and that all the parties seem to be getting along with each better.

ORDER

Therefore, for the foregoing reasons, the Hearing Officer GRANTS the appeal. She REVERSES the Verbal Reprimand and ORDERS that it be removed from Appellant's personnel files at the Agency and the Career Service and any other files maintained by the Agency or its employees. The Agency may issue discipline after a new predisciplinary meeting in compliance

with Rule 16, if it so chooses.

Dated this 5th day of August 2003.



Robin R. Rossenfeld
Hearing Officer for the
Career Service Board

CERTIFICATE OF MAILING

I hereby certify that I have forwarded a true and correct copy of the foregoing FINDINGS AND ORDER by depositing the same in the U.S. mail, this 7th day of August 2003, addressed to:

Debra Jackson
2975 Glencoe Street
Denver, CO 80207

I further certify that I have forwarded a true and correct copy of the foregoing FINDINGS AND ORDER by depositing the same in interoffice mail, this 6th day of August 2003, addressed to:

Niels Loechell, Esq.
Department of Human Services

Office of the City Attorney
Employment Law Section

Diana Smith
Department of Human Services

