

ORDER TO SHOW CAUSE

IN THE MATTER OF THE APPEAL OF:

PHAZARIA KOONCE, Appellant,

vs.

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

Appellant filed an appeal on August 5, 2013. The appeal claims her employer, the Denver Sheriff's Department: wrongfully suspended her or temporarily reduced her pay; involuntarily demoted her with an attendant loss of pay; unlawfully discriminated against on the bases of race, color, and sex; and unlawfully retaliated against her for reporting race and gender discrimination and/or harassment. Jurisdictional issues are apparent from the appeal and accompanying documents.

1. Discrimination.

A discrimination claim requires that an employee (a) who is a member of a protected class, (b) was subject to an adverse agency action, (c) because of her protected status. In re Abdi, CSA 63-07, 30 (2/19/08), citing McDonnell Douglas v. Green, 411 U.S. 792 (1973); Bodaghi v. Dept. of Natural Resources, 969 P.2d 718 (Colo. App. 1998). Appellant has failed to cite any facts which, if proven, would establish (a) or (c).

2. Suspension/Temporary Reduction in Pay.

It is not apparent Appellant stated facts which, if proven, would establish a directly appealable claim of suspension or temporary reduction in pay under CSR 19-10A.1.b. Appellant claims she was deprived of a permanent promotion or assessed a permanent demotion, neither of which appear to state a claim of a suspension or temporary reduction in pay.

3. Involuntary demotion with attendant loss of pay.

It is not apparent that Appellant's stated a claim under this rule for which the Hearing Office has jurisdiction. Appellant stated she was not selected for a promotion or she was demoted from her status as acting major. Appellant must state what facts which, if proven, would establish jurisdiction under this rule.

4. Written Reprimand.

Appellant was assessed a written reprimand for alleged performance and behavior violations of the Career Service Rules. The Rules do not permit the appeal of written reprimands. CSR 19-10A.1; 19-10A.2.b.v. Even if assessed for an improper reason, the Hearing Office lacks jurisdiction over written reprimands as a direct appeal.

In addition, to the forgoing, the Hearing Office may acquire subject matter jurisdiction over an employee's discrimination claim even in the absence of a directly-appealable claim where the employee first filed a complaint of discrimination and the agency failed to respond or failed to address the problem. CSR 19-10A. 2.

Since Appellant stated she is filing a grievance contemporaneously with this appeal, then, if Appellant fails to establish a directly-appealable claim, her request for the Hearing Office to take jurisdiction over her CSR 19-10 A. 2 claims is not ripe for review by this tribunal.

In view of the forgoing, Appellant is ordered to show cause why her claims of discrimination, suspension or temporary reduction in pay, involuntary demotion with attendant loss of pay, and written reprimand should not be dismissed for lack of jurisdiction. Appellant may show cause by stating:

A. With respect to Appellant's discrimination claim:

(1) of what protected class she is a member;

(2) the nexus between her status and an adverse agency action;

B. With respect to her suspension/temporary reduction in pay claim:

(1) what facts which, if proven, would establish a directly appealable claim of suspension or temporary reduction in pay as contemplated by CSR 19-10A.1.b, including the basis for her legal right to retain the acting position of major.

C. Regarding her claim of Involuntary demotion with attendant loss of pay:


(1) what facts which, if proven, would invoke an appealable claim under this rule, including the basis for her legal right to retain the classification of major.

D. With respect to Appellant's written reprimand:

(1) the legal basis for her right to appeal her written reprimand.

Your failure to comply timely with this order will result in the dismissal of those claims cited immediately above. You must comply by filing a response on or before August 14, 2013. The Agency may file a responsive pleading on or before August 16, 2013.

DONE August 5, 2013.


Bruce A. Plotkin
Career Service Hearing Officer

I certify that on August 7, 2013, I delivered a correct copy of this Order to Show Cause to the following, in the manner indicated:

Capt. Phazaria Koonce, phazaria@hotmail.com	(via email);
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