

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal Nos. 98-06, 99-06

ORDER ON AGENCY'S MOTION TO DISMISS

IN THE MATTER OF THE APPEAL OF:

MARY LOUISE PADILLA
Appellant,

vs.

FINANCE OFFICE, RISK MANAGEMENT, WORKERS COMPENSATION UNIT
and the City and County of Denver, a municipal corporation,
Agency.

The Agency filed a motion to dismiss this consolidated appeal. Appellant timely filed a response to the motion. Upon review of the pleadings and the parties' submissions, it is found and ordered as follows:

Background

Appeal # 98-06 is a challenge to the Agency's response to Appellant's complaint of harassment, which was based upon the May 16, 2006 actions of Appellant's supervisor Alan Hutchins. The appeal cites sex, age and harassment as the bases of the discrimination alleged, although these were not cited or investigated in the complaint itself. The Agency seeks dismissal of the harassment appeal because Appellant did not allege a protected basis for the harassment within the internal complaint.

Appeal # 99-06 is a claim of retaliation for Appellant's action in appealing her "needs improvement" PEPR. [CSA 25-06, filed 4/1/06]. The appeal also claims jurisdiction based upon the Agency's response to her grievance of a written reprimand for a "needs improvement" Performance Improvement Plan (PIP) dated March 9, 2006. The Agency requests dismissal of this appeal on the basis that the Hearing Officer is without jurisdiction to consider an appeal of a written reprimand. CSR § 19-10 B. 2; B. 2. e.

Analysis

Appeal # 98-06 alleges harassment based on a single incident of conduct determined by the investigator to be condescending and demeaning by Appellant's supervisor. Appellant's complaint described the conduct as yelling and speaking to her in a condescending, hostile and demeaning manner. Even if Appellant alleged that the

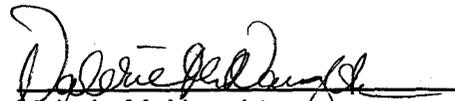
conduct was motivated by her membership in a protected class, such an incident does not support a claim of harassment under Harris v. Forklift Systems, Inc., 510 U.S. 17, 23 (1993). "We have made it clear that conduct must be extreme to amount to a change in the terms and conditions of employment." Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998).

A written reprimand may not be appealed. CSR § 19-10 B. 2. e. However, a retaliation claim under the Career Service Rules may be based on an act that does not amount to an adverse employment action as that term is defined in discrimination law. CSR § 15-106; Burlington Northern & Santa Fe Ry., 548 U.S. _____, 126 S.Ct. 2405, 2414 (2006). Here, Appellant asserts that her supervisor's hostility toward her escalated since Appellant challenged her PEPR and she prevailed in that appeal (CSA 25-06), and included the written reprimand, enforcement of unreasonable work expectations, and other hostile working conditions.

ORDER

1. Appeal 98-06 is dismissed for lack of jurisdiction.
2. The sole jurisdictional basis for Appeal 99-06 is retaliation under CSR § 15-106.
3. The number for this appeal will henceforward be Appeal No. 99-06.

Done this 9th day of January, 2007.


Valerie McNaughton
Career Service Hearing Officer

CERTIFICATE OF MAILING

I hereby certify that I have forwarded a true and correct copy of the foregoing **ORDER** by depositing it in the U.S. mail, postage prepaid, this 9th day of January, 2007, addressed to:

Lauren Cabot Oray, Esq.
11944 Kearney Circle
Thornton, CO 80233

I further certify that I have forwarded a true and correct copy of the foregoing **ORDER** by depositing it in interoffice mail this 9th day of January, 2007, addressed to:

Robert A. Wolf, Esq.
City Attorney's Office
Litigation Section

