

**ORDER VACATING ORDER TO SHOW CAUSE, DISMISSAL OF SOME OF APPELLANT'S CLAIMS,  
AND RETENTION OF A SINGLE WHISTLEBLOWER CLAIM**

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IN THE MATTER OF THE APPEAL OF:

**GUY PIZZULO**, Appellant,

vs.

**CAREER SERVICE AUTHORITY, HUMAN RESOURCE SERVICES**,  
and the City and County of Denver, a municipal corporation, Agency.

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The Appellant, a former probationary employee, was ordered to show cause why this appeal should not be dismissed for a failure of jurisdiction. Both he and the Agency filed timely responses. Having reviewed those filings, the case file, and pertinent authority, I now find and order with respect to each jurisdictional issue as follows.

a. Military status discrimination.

A prima facie case of intentional discrimination is proven by evidence that an employee was 1) a member of a protected class, 2) suffered an adverse employment action, and 3) the adverse action occurred under circumstances supporting an inference of discriminatory intent. *In re Wehmhoefer*, CSA 02-08, 1-2 (2/14/08); *McDonnell Douglas v. Green*, 411 U.S. 792 (1973). The essence of discrimination is proof, whether direct or indirect, of the discriminatory intent behind the adverse action.

Appellant's vague interpretation of his supervisor's comment, "glad to see the military is getting smart on who can serve" as indicating a potential discriminatory attitude was too vague to support Appellant's claim. Appellant's response did not further any potential link between her comment and any discriminatory act. Moreover, as noted by the Agency, Appellant's hiring by the same person who failed to pass his probation, presents an inference of no discriminatory intent. [Agency response, citing *Antonio v. Sygma Networks, Inc.*, 458 F.3d 1177, 1183 (10<sup>th</sup> Cir. 2006)]. Because Appellant failed to state a discriminatory link between his military status and the Agency's failure to pass his probation, this claim is DISMISSED.

2. Disability discrimination claim:

Appellant's claim here was based on his supervisor's response to his seeking medical treatment, when she stated "We will have to see when I can let you go take care of this." In his response, Appellant acknowledged his supervisor allowed him to seek treatment. Appellant stated the causal link between his stated disability and his

failure to pass probation was his supervisor's "distant" and "short" attitude, finding fault in his work, and directing him to complete his work by a certain date. These claims, whether taken individually or collectively, fail to establish a statement of causation. Consequently, Appellant's disability discrimination claim is DISMISSED.

### 3. Reverse race/sexual orientation discrimination:

A reverse discrimination claim is shown where an employee establishes (1) circumstances that support an inference the employer is one of those unusual employers who discriminates against the majority, (2) that he suffered an adverse employment action, and (3) the action occurred under circumstances supporting an inference of discriminatory intent. Mitchell v. City of Wichita, 140 Fed. Appx. 767, 777 (10th Cir. 2005). Alternatively, the employee may satisfy his burden of establishing a prima facie case of reverse discrimination with "indirect evidence sufficient to support a reasonable probability that but for the plaintiff's status, the challenged employment decision would have favored the plaintiff." Id.

Appellant asserted in his appeal that, while he is Caucasian, his African-American supervisor promoted another African-American instead of him. He did not supplement that statement with any assertion in his response that might give rise to an inference of discriminatory intent. Consequently Appellant reverse discrimination claim based on race is DISMISSED.

With respect to Appellant's sexual orientation claim, Appellant's subjective feelings about the reasons for being passed over are insufficient to state a reverse discrimination claim; nor does his statement that his supervisor stated her sexual orientation establish discriminatory animus. Appellant's reverse gender discrimination claim, therefore, is DISMISSED.

### 4. Whistleblower Claims.

Appellant asserted sufficient facts to raise a Whistleblower ordinance violation claim, where Appellant was dismissed from his position shortly after disclosing to Acting Director of the Career Service Authority, Chris Lujan, and to Mr. Peter Garritt, that his supervisor, Ms. Stuber, did not timely submit an employee probation extension letter, in violation of CSR 5-53 C.

Appellant has not asserted sufficient facts to raise a Whistleblower ordinance violation claim, where Appellant asserts photocopying of training materials in violation of copyright laws because he does not assert he reported the official misconduct to any person, a necessary element of this claim. This whistleblower claim is DISMISSED.

Appellant has not asserted sufficient facts to raise a Whistleblower ordinance violation claim regarding Ms. Stuber's alleged instructions to Appellant regarding an employee's disciplinary action- that their job was to "get Mr. Russell Luxa fired from Public Works." Although he asserts that he was dismissed and that there was official misconduct, he does not assert that he reported the official misconduct to any person. This whistleblower claim is DISMISSED.

5. Harassment and non-Whistleblower Retaliation Claims.

Appellant's response failed to state how the Hearings Office has jurisdiction over harassment and non-whistleblower retaliation claims brought by probationary employees. The Career Service Hearing Office's jurisdiction over probationary employees' claims is limited to direct appeals of dismissal based on discrimination or Whistleblower ordinance violations, and appeals of an Agency's disposition of a discrimination complaint. To the extent they were made, these claims are DISMISSED.

6. Appellant's Grievance Appeal

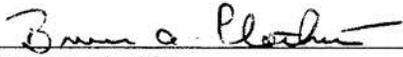
Appellant's response did not include, as required in the Order to Show Cause, a copy of a formal complaint asserting discrimination. This claim is DISMISSED.

Appellant also appealed the Agency's response to his complaint regarding harassment and retaliation claims; however, the Hearing Office does not have jurisdiction over harassment and non-whistleblower retaliation claims brought by probationary employees. Appellant's response did not address this requirement, thus, this claim is DISMISSED.

ORDER

As Appellant established a single whistleblower claim, the case shall proceed to hearing only with respect to Appellant's claim that the Agency's failure to pass his probation was an adverse employment action taken in retaliation for his reporting official misconduct, specifically, Stuber's failure to submit an employee's probation extension letter timely, in violation of CSR 5-53 C. All remaining Appellant claims are DISMISSED. Evidence at hearing will be limited to Appellant's single whistleblower claim. The parties are advised that Appellant's establishment of a whistleblower claim does not prove his claim. The burden remains with the Appellant to prove his claim by a preponderance of the evidence at hearing. Appellant should familiarize himself with the elements required to prove a whistleblower claim under Career Service Rule (CSR) 19-10 A. 1. f., and the City's Whistleblower Protection Ordinance, attached to CSR 19 as appendix CSR 19 A.

DONE July 22, 2011.

  
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Bruce Plotkin  
Career Service Hearing Officer

I certify that on August 9, 2011, I delivered a correct copy of this Order to the following:

Mr. Guy Pizzulo, [Pizzulo@hotmail.com](mailto:Pizzulo@hotmail.com) (via email)  
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