

**ORDER DISCHARGING SHOW CAUSE ORDER**

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IN THE MATTER OF THE APPEAL OF:

██████████ Appellant

vs.

**DEPARTMENT OF ENVIRONMENTAL HEALTH**, and the City and County of Denver, a municipal corporation, Agency.

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On Dec. 30, 2011, an Order to Show Cause was issued which required Appellant to identify the official misconduct and adverse actions supporting the whistleblower claim, and identify the protected basis supporting the second discrimination claim. Appellant filed a timely response to the order.

I. Allegations Supporting Whistleblower Claim

In response to this portion of the order, Appellant asserted the following in support of her whistleblower claim:

A. Misuse of grant funding

On Aug. 8 and 11, 2011, Appellant reported to Interim Manager Bob McDonald that the previous manager had assigned an employee fully funded by a federal grant to perform non-grant duties. Appellant claims that these actions violated the federal Office of Management and Budget (OMB) circulars in the Code of Federal Regulations (CFR) Part 220, Denver's Fiscal Accountability Rules (FAR) 9.1 – 9.3, 10.1, and DRMC § 20-120.

Appellant claims that in response, McDonald declined on Aug. 11<sup>th</sup> to reinstate Appellant to her position on the management team of the Community Health Assessment (CHA) project, one of Appellant's core duties, and that she was terminated on Dec. 19, 2011.

B. Violation of overtime rules and laws

On Apr. 5, 2011, Appellant reported to the Animal Care and Control (ACC) Advisory Committee that an employee's uncompensated overtime violated city rules and Colorado labor laws. Appellant reported the same matter to Agency Manager

Nancy Severson on Apr. 18, 2011. Appellant contends this overtime violated CSR § 9-90 and the Colorado Wage and Hour Act, and that as a result of her reports she was terminated on Dec. 19, 2011

C. Misuse of city assets

On Mar. 10, 2011, Appellant reported to CSA HR Professional Roxane Stuber that Manager Severson had not compensated the city for her overnight vehicle use, in violation of city FARs 2.7, 2.8, 10.6 and 10.7 and the Taxable Vehicle Use Agreement. On June 20<sup>th</sup>, Appellant reported the matter to Nancy Howe in the Auditor's Office, and informed the new DEH Manager Doug Linkhart on Nov. 4, 2011. Appellant claims that in response to her reports, Severson and Stuber issued a verbal reprimand to her on Mar. 5, assigned employees under Stuber's supervision to investigate her complaint against Severson, and ultimately terminated Appellant on Dec. 19, 2011.

D. Support of ethics complaint

On Mar. 17, 2011, Appellant supplemented her direct report Robin Valdez' request for an investigation of conduct by another direct report, Celia VanDerLoop, in failing to report a staff member's deliberate error in financial documents. Appellant claims VanDerLoop's conduct violated FAR 10.1 and DRMC § 20-120. Appellant reported her concerns to Severson on Mar. 24 and Apr. 19, 2011, and informed McDonald on Aug. 8<sup>th</sup> that Valdez would be filing an ethics complaint of fiscal misconduct and collusion by the former manager. In response to her reports, Appellant was issued a written reprimand on July 12, placed on investigative leave on Oct. 7, and terminated on Dec. 19, 2011.

E. Report of disciplinary demotion in violation of CSR

On Mar. 10, 2011, Appellant reported to Stuber that Severson had demoted an employee under the procure to pay shared services procedure, although the demotion was based on her performance. In late March, Appellant and four of her direct reports informed the Mayor's Chief of Staff about this, and Severson's subsequent organizational action which resulted in the demoted employee's loss of reinstatement rights. Appellant also reported these actions to Nancy Howe in the Auditor's office on June 20, 2011. It is asserted that Severson's actions violated CSR § 16-40.

Appellant claims that as a result of her reports, she was issued an Apr. 5 verbal reprimand and below expectations rating on two job duties, a written reprimand on July 12, was terminated on Dec. 19, 2011.

II. Allegation Supporting Discrimination Claim on Other Protected Basis

The appeal asserts discrimination based on age and other protected basis. Appellant clarified in her response that this discrimination claim is actually intended to assert that the Agency retaliated against her for engaging in a protected activity; specifically, her report to the Mayor that the Colorado Division of Civil Rights had

found probable cause to support a claim of age discrimination against the new manager Bob McDonald.

"Retaliation against employees for reporting unlawful harassment or discrimination or assisting the City in the investigation of any complaint is against the law and will not be permitted." CSR § 15-106. Here, Appellant asserts only that she communicated an adverse finding in a discrimination charge to the Mayor's Office, which was as yet unaware of it. The rule's purpose in encouraging employees to report discrimination so the city can address it is not promoted by expanding its scope to include merely informing another official about the existence of a discrimination charge or finding. See In re Gallo, CSA 63-09, 4 (CSB 3/17/11). Therefore, Appellant failed to support her retaliation claim by a showing that she engaged in a protected activity within the meaning of § 15-106.

Order

Based on the foregoing findings, the following orders are entered:

1. The Order to Show Cause dated December 30, 2011 is DISCHARGED as to the whistleblower claim, which may proceed to hearing.
2. The retaliation claim based on Appellant's report of the DORA finding is DISMISSED.

DONE January 11, 2012.

  
Valerie McNaughton  
Career Service Hearing Officer

I certify that on January 11, 2012, I delivered a correct copy of this Order to the following:

	
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