HEARING OFFICER, CAREER SERVICE BOARD  
CITY AND COUNTY OF DENVER, COLORADO  
Appeal No. 67-11  

DECISION AND ORDER  

IN THE MATTER OF THE APPEAL OF:  

[Name redacted] Appellant,  

vs.  

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

The hearing in this appeal was held on March 7 - 9, May 10 and June 1, 2012 before Hearing Officer Valerie McNaughton. Appellant was present throughout the hearing and was represented by Michael O’Malley and Russell Harris, Esq. Assistant City Attorney Franklin Nachman represented the Agency in these proceedings. Having considered the evidence and arguments of the parties, the Hearing Officer makes the following findings of fact and conclusions of law, and enters the following order.

I. STATEMENT OF THE APPEAL

Appellant [Name redacted] appeals her Dec. 19, 2011 termination from the position of Deputy Manager of the Denver Department of Environmental Health (Department), also asserting age discrimination and five separate claims under the Whistleblower Protection Ordinance, D.R.M.C. § 2-106 et. seq. The age discrimination claim was dismissed by order dated January 11, 2012. Appellant withdrew three of the whistleblower claims during the hearing.

The following exhibits were admitted into evidence: Agency Exhibits 1 - 91, 10-1 to 40, 10-42 to 46, 10-56 to 78, 10-80, 10-82 to 91, 10-96 to 120, 10-123 to 147, 14 and 18. Also admitted were Appellant’s Exhibits A - G; J - M, O to V, X to Z, CC, FF to AAA, EEE to HHH, JJJ to KKK, MMM to QQQ, SSS, TTT, VVV to XXX, and AAAA.

II. ISSUES

The issues in this appeal are as follows:

1) Did the Agency establish by a preponderance of the evidence that Appellant’s conduct justified discipline under the Career Service Rules (CSR);

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1 Exh. 9 contains the Career Service Authority’s (CSA) written interview summaries conducted during the internal investigation which led to the termination. They are considered as evidence only to the extent they relate to the allegations raised in the dismissal letter.
2) Did the Agency establish that termination was within the range of penalties that could be imposed by a reasonable administrator for the violations proven by the evidence;

3) Did Appellant establish that the termination was motivated by her support of a March 17, 2011 request for investigation asserting fiscal misconduct; and

4) Did Appellant establish that the termination was motivated by her March 10, 2011 report alleging the Manager demoted an employee in violation of CSR § 16-40?

III. FINDINGS OF FACT

Denver's Department of Environmental Health (DEH) is charged with the mission of fostering healthy communities. Appellant [redacted] was hired by the Department on Jan. 4, 2007 as the Deputy Manager to serve under Manager Nancy Severson. Her duties included serving as strategic advisor to the Manager and Acting Manager in Ms. Severson's absence, and handling budget and finance, strategic and policy planning, personnel and information management matters for the Department as a whole. [Exh. LL.] Appellant directly supervised five Division Directors: Robin Valdez, who runs the Community Health and Decision Support (CDHS) Division; Bob MacDonald of the Public Health Inspections (PHI) Division; Doug Kelly, Director of Animal Care and Control (ACC); Celia VanDerLoop for the Environmental Quality (EQ) Division; and Dr. Amy Martin, head of the Office of the Medical Examiner. [Exh. M.]

A. FACTUAL BACKGROUND

During the spring and summer of 2011, the Department faced many challenges. A mayoral election placed into doubt whether Ms. Severson would remain as Manager when the new mayor took office in July. A serious city-wide budget deficit required the Department to deliver $1.1 million in savings and reduce full-time employment (FTE) by seven during the May-June budget process. In March, departmental managers met to address budget concerns, strategize on use of shared city services including budget and personnel, and respond to a proposal to consolidate with Denver Health and Hospitals. [Exh. JJ.] A city task force created several cost-saving options, including positions to be considered for elimination. A summary of those options was provided in briefings to the mayoral candidates to prepare them for the upcoming budget decisions, and was stored in the computer's share drive. [Exh. AAAA.] There was open disagreement among the management team regarding the appropriate measures to take in order to meet these operational and budgetary issues. Appellant's duties were substantially affected by the Shared Services model, since budget and personnel were major aspects of her job. On Mar. 29, 2011, Appellant and most of the Division Directors met with the Mayor's Chief of Staff to express their disagreements, without informing the Manager. [Exh. GGGG-12.]

In the midst of these changes, the relationship between Appellant and Ms. Severson, strained since 2009, became more difficult. In Aug. 2009, the two had a loud and heated argument overheard by Severson's assistant Donna Girtin. Appellant accused Severson of lying about a presentation before City Council, and attempted to leave Severson's office. Severson blocked her way and forcibly closed the door. Appellant raised her voice and stated angrily, "Fuck, let me go!" Appellant later informed Severson that she could not continue to work for her, and intended to look elsewhere. [redacted] 3/9/12, [4:16 pm.] She also told Severson that she was making less money than she did ten years ago and was living off her savings. [redacted], 5/10/12, 1:34 pm.] As a result, Ms. Severson directed Appellant in her 2009 Performance Enhancement Program Report (PEPR) to prepare a transition plan to take...
effect after she located another job. [Exh, MM-16; Severson testimony, 3/7/12, 9:41 am; Purdy, 3/9/12, 4:17 pm.]

Appellant's 2009 PEPR acknowledged her strengths in the areas of finance, planning and organization, but noted that she was often critical of others and failed to take full responsibility for her decisions. Appellant was instructed to foster positive relationships, consider the opinions of others, and avoid assigning blame if the desired outcome was not achieved. [Exh. MM-12, 13.]

Appellant and Ms. Severson met several times during the first three months of 2011 to discuss the draft PEPR for 2010. Between January and May, Appellant submitted her proposed edits and comments. [Exhs. HH, NN - PP.] At Appellant’s request, Severson agreed to weigh each of the six performance factors equally. [Severson, 5/10/12, 4:27 pm.] On Apr. 5, 2011, Appellant was given a copy of the final PEPR, which rated her below expectations in her duties to cultivate positive working relationships and represent departmental positions to others outside the Department. Appellant was also rated below expectations for her failure to provide timely PEPRs to her direct reports. [Exh. LL-9.] The PEPR instructed Appellant to support departmental decisions and build strategic partnerships with Denver Public Health and agencies providing shared services. [Exh. LL-3, 4.] The PEPR again ordered Appellant to finalize her succession plan, this time with a deadline of April 15, 2011. [Exh. LL-10.]

Ms. Severson testified that Appellant actively challenged Severson’s decision to contract with the Controller’s Office for budgeting and accounting services, and with the Career Service Authority for HR services under Service Level Agreements (SLAs). Their management relationship “went downhill” during the controversy over the Controller’s assumption of the finance and budget functions. [Severson, 3/7/12, 10:07 am.] Before the mayoral election, “we were on a speed train trying to get these things through.” Severson observed that Appellant complained about things to people outside the Department, and worked to slow things down. After trust disappeared between Severson and Appellant, “I changed the management structure so we could move forward on a better footing.” [Severson, 3/7/12, 10:54 – 11:15 am.]

B. PAST DISCIPLINE

Also on Apr. 5, 2011, Appellant was served with a verbal reprimand for unprofessional comments made during two meetings in March, and making disrespectful comments and accusations to Manager Severson. Appellant admitted she had been rude during the first March meeting and apologized for it, but explained it was caused by two broken promises and her resulting distrust in the implementation of the Procure-To-Pay (P2P) process.² [Exh. GGG-12; testimonry 5/10/12, 8:41 am.] The verbal reprimand noted:

I’ve also received concerns from the Mayor’s Office that you are not supporting our department’s engagement with existing and potential support relationships with other City agencies. This new input follows a similar situation in July 2010 that triggered the Mayor’s Office requesting that you not attend any agency-hear or appointee meetings due to your negative attitude and criticism of others working on the Administration’s major initiative – which you and I discussed and I requested corrective action.

² The Procure-To-Pay system was intended to centralize agency purchasing decisions.
Appellant was instructed to immediately improve her performance where she received below expectations ratings, support Severson’s directions and decisions, and work to implement those decisions. It also removed from Appellant final authority over budgetary, personnel and communications issues. [Exh. KK.]

On July 12, 2011, Appellant was given a written reprimand based on several incidents which were alleged to be in contravention of her duties to defend management decisions, build positive relationships, and support the Shared Services agenda. [Exh. 8.] Ms. Severson informed her that a continuation of "inappropriate and unprofessional interactions with [Severson], DEH staff and others throughout the City . . . would not be tolerated" and may be cause for additional discipline, including dismissal. [Exh. 8-4.] Appellant filed a grievance challenging the reprimand, which was denied. [Exh. GGG; Purdy 5/10/12, 11:02 am.]

C. INTERACTIONS WITH ACTING MANAGER BOB MCDONALD

In late July, Ms. Severson was informed that the newly elected mayor, Michael Hancock, would not reappoint her as Manager of the Department of Environmental Health. It was announced on Aug. 5th that Division Director Bob McDonald had accepted the position of Interim Manager. As Deputy Manager, Appellant met with McDonald to discuss a variety of issues before his swearing-in. [Exh. 10-10.] McDonald first asked Appellant how things were going with the Department's Public Information Officer (PIO) Meghan Hughes. Hughes had previously told McDonald that Appellant decided in April to exclude Hughes from her staff meetings, and asked McDonald for his input about the situation. [Exh. 10-115.] In response to McDonald's inquiry, Appellant became agitated, repeatedly interrupted McDonald, and accused him of condoning inappropriate behavior by Hughes. After about an hour, McDonald raised his hand and told her firmly to stop interrupting him and forcing him to explain every statement he made. Immediately thereafter, McDonald typed his own notes of that meeting. [McDonald, 3/8/12, 3:13 pm.] "Although she did not yell at me, her behavior and verbal exchange with me was aggressive, unprofessional, and inappropriate." [Exh. 10-42.]

Appellant denied she was aggressive at that meeting, but observed that McDonald was uncomfortable and angry after she informed him she had told the Mayor's Office about a Colorado Civil Rights Division determination of age discrimination involving McDonald. [Exh. 5/10/12, 10:57; Exh. B.] McDonald conceded at hearing that he was a little upset with himself for not telling the Mayor's Office about the determination, but noted that he was told about his interim appointment the very morning of his swearing-in, and had not thought about it. [McDonald, 3/8/12, 3:07, 5:03 pm.]

The following week, after the conclusion of a managers' meeting related to transitional assignments, McDonald asked Appellant to stay and meet with him. In response to McDonald's first comment, Appellant became visibly upset, interrupted McDonald, and questioned his objectivity and his interim appointment as Manager. When McDonald responded that he had demonstrated his objectivity by reassigning the OPP survey to her, Appellant commented that the assignment "set her up" because she was given only ten days to complete the survey. Appellant then asked about McDonald's decision to deny her grievance of the July reprimand, noting that "trust is going to be difficult" because she believed McDonald had not thoroughly investigated the underlying facts. Appellant believed McDonald's failure to read her documents and talk to her witnesses violated the city's open door policy. [Exh. 5/10/12, 11:01.] Throughout the interaction, Appellant
interrupted McDonald, prompting him to ask her several times to let him finish. “I ended the meeting by informing her that I will continue to be objective with my decisions." [Exh. 10-44, 45.] Appellant did not deny McDonald’s version of events, but stated the meeting "did not occur as characterized." [Appellant, 5/10/12, 3:38 pm.]

**D. PEPR MEETINGS WITH DIVISION DIRECTOR VANDERLOOP**

In mid-June, 2011, Appellant provided Division Director Celia VanDerLoop a copy of her draft PEPR in preparation for her VanDerLoop’s annual performance review. VanDerLoop took issue with four new weights assigned to various tasks, disputed inclusion of her telework and Kronos practices as performance factors, and sought clarification of several other points, including the effect of assignments given directly to her by Ms. Severson. [Exh. 10-39.]

On Aug. 4, VanDerLoop and Appellant had their monthly one-on-one meeting, and discussed among other things the details of the Community Health Assessment (CHA). Appellant told VanDerLoop that her work on the CHA project would count on her PEPR, and advised her to keep her in the loop on her progress. When Appellant learned that Severson had directly assigned the project to VanDerLoop and set its direction, Appellant criticized its structure and said she would need to change things. Appellant accused VanDerLoop of asking Severson to exclude Appellant and Valdez from various projects and assigning them instead to VanDerLoop. VanDerLoop asked if they could discuss her assignments from Severson in a mediated setting, and Appellant agreed to do so. [Exh. 10-36.]

They also discussed the weights to be accorded VanDerLoop’s various projects for purposes of evaluating her performance. Appellant concedes she weighed participation in 1:1 meetings more heavily in VanDerLoop’s PEPR than the other Division Directors, but stated she did so “based on [VanDerLoop’s] record of failure to perform.” [Appeal, Atch. B.] Another major issue was the weight assigned to the task of developing a long-term funding plan to pay for administrative support furnished to Environmental Quality, VanDerLoop’s division, by CDHS, the division run by Robin Valdez. Appellant testified that her performance expectation was simply that VanDerLoop must have a collaborative discussion with Valdez, but that she would not be judged on the outcome of that discussion. [Appellant, 5/10/12, 2:37 pm.] The PEPR itself reads a little differently. It states that VanDerLoop must present three funding alternatives and an agreed-upon plan to Appellant by Aug. 31, 2011, or agree with Valdez to a strategy if no plan can be developed. [Exh. XXX-2.]

Ms. VanDerLoop was concerned about a performance expectation that depended on her ability to develop a budget compromise with Mr. Valdez, as they had had a difficult relationship in the recent past. On Mar. 15, 2011, Mr. Valdez filed a request for investigation and ethics complaint asserting that an employee in VanDerLoop’s division falsified a financial record in order to make one of Valdez’ employees “look bad”. [Exhs. J: 18-2.] Appellant supported Valdez’ complaint by providing supplemental information critical of VanDerLoop’s supervision of the employee accused of falsification. [Exh. K.] Mr. Valdez organized the March meeting with the Mayor’s Chief of Staff in opposition to Ms. Severson, and was widely seen as a supporter of Appellant in her ongoing dispute with Severson. [Valdez, 3/9/12, 8:49 am; Raschke, 3/9/12, 11:36 am; Girlin, 3/9/12, 2:21 pm; Kelley, BM, 3/8/12, 3:02.] Valdez conceded that VanDerLoop and he “didn’t see eye to eye”. [Valdez, 3/9/12, 10:08 am.] As a result, VanDerLoop feared that Appellant would evaluate her unfairly if she did not reach an agreement with Mr. Valdez about this important funding issue.

That evening, Ms. VanDerLoop sent Appellant additional comments about the draft PEPR. Appellant did not respond to VanDerLoop’s Aug. 4th email because CSA told her the
PEPR was the manager's call, and the employee's agreement was not needed to finalize a PEPR. [Appellant, 5/10/12, 2:46 pm.] VanDerLoop then contacted Human Resources Analyst Roxanne Stuber and requested an appointment "to discuss what are reasonable expectations for my PEP... Especially in light of the difficult relationship that Nancy and [redacted] had, that Nancy had re-assigned a number of [redacted] tasks to me, and in light of a particularly tense and hostile 1:1 meeting that [redacted] and I had today, I'm very concerned about the PEP." [Exh. 10-37, 10-38.] She later told CSA that "[t]he things I do well were removed from the [PEPR]." [Exh. 9-23.]

On Sept. 7, 2011, Appellant and VanDerLoop met for their next September 1:1 meeting. After they covered their agenda, Appellant told VanDerLoop that she did not see the need for mediation to discuss her assignments. VanDerLoop explained that she wanted to have the discussion in a safer environment because their last conversation had become volatile. Appellant replied she did not recall the previous discussion as volatile, but admitted she was upset that VanDerLoop had left her out of the process, and believed VanDerLoop should not have accepted the assignments. VanDerLoop told Appellant she perceived so much friction between Appellant and Severson during the past 18 months that she believed Appellant would find fault with her work if she agreed with Severson. "If Nancy said A, [redacted] was going to say Z and vice versa..." VanDerLoop added that Appellant "expected the division directors to choose sides." Appellant denied that was so, but reaffirmed that VanDerLoop should not have accepted assignments from the Manager without discussing them with Appellant. "She said that since I did not do that, my performance was lacking." Appellant told her, "I expect my employees to work under my direction and not for Nancy." VanDerLoop related this conversation to McDonald and asked him to confirm that she did not have the ability to refuse assignments from the Department Manager. [Exh. 10-96, 97.]

On Sept. 14, VanDerLoop emailed McDonald to inform him of these interactions and of her request to Ms. Stuber for help. She forwarded the emails between herself and Appellant from June to September, and described their conversations as "very difficult and hostile when projects which Nancy had assigned to me were discussed... She would interrupt, find fault, and criticize... every action that had been made." [Exh. 10-35 to 10-40.] "I continue to feel that we cannot have a productive conversation without a third party present." [Exh. 10-32.]

Shortly thereafter, McDonald met with VanDerLoop to discuss the matter. VanDerLoop explained that she could not talk to Appellant and felt the environment was unhealthy. She was in tears, and told McDonald she could not take it anymore and planned to quit. McDonald testified that he too was looking for another job because of the tension in the management team, as were others. [McDonald, 3/8/12, 4:10, 4:23 pm.] He believed that the contentious relationship between Appellant and Ms. Severson had fractured the team because Appellant forced the staff to choose sides for or against her. McDonald concluded that he needed to take action based on the seriousness of the situation and its effect on staff morale, which he described as "extremely low." [McDonald, 3/8/12, 4:10 pm.] McDonald decided on Oct. 7, 2011 to place Appellant on investigative leave to permit an investigation into Appellant's conduct. [Exh. 4.]

E. EXCLUSION OF PUBLIC INFORMATION OFFICER HUGHES FROM STAFF MEETINGS

In addition to her conduct at meetings with Mr. McDonald and Ms. VanDerLoop as described above, Appellant was charged with negative interactions with Public Information Officer (PIO) Meghan Hughes and ACC Director Doug Kelley.
As a part of Appellant's Apr. 5, 2011 reprimand, the Manager ordered Appellant not to instruct the PIO to issue department-level communications. [Exh. K.K.] Appellant thereupon removed Ms. Hughes from participation in her staff meetings with the five Division Directors, contrary to previous practice. Ms. Hughes emailed Appellant and asked, "Is there a reason I'm not on your distribution list anymore?" Appellant replied, "Yeah, you don't report to me and I have the following verbal reprimand as of today: 'Communications will be handled by our PIO, working with me on department level communications . . . you should not direct the PIO as to these department level communications.'" Ms. Hughes responded, "Seriously—that's just ridiculous." [Exh. 10-115.]

The investigation also revealed that Appellant sent this message critical of Hughes to Donna Girtin, the Manager's Executive Assistant, on Sept. 13, 2011: "Finally, we have a display board, no thanks to our communications staff. Now we need them for the rest of the divisions, which I asked for [Meghan Hughes'] first week on the job." Ms. Girtin replied, "Too busy gossiping—not high on her list." [Exh. 10-69.] Appellant denied this was backstabbing because the statement was true and Hughes was not a member of her staff. [Appellant, 5/10/12, 3:39 pm.]

F. CRITICISM OF DIVISION DIRECTOR KELLEY UNRELATED TO SUPERVISORY ROLE

Appellant and ACC Director Doug Kelley had been in conflict over a number of performance and program issues since 2009, when Appellant first placed Kelley on a Performance Improvement Plan (PIP). The disciplinary letter asserts four incidents in which Appellant made negative comments about Kelley's performance outside her role as his supervisor.

The first such incident occurred during an Aug. 17, 2011 meeting with Assistant City Attorney Jackie Berardini which was held to discuss animal regulatory issues related to the Food Producing Animals process. Appellant complained that Ms. Severson had intentionally excluded her from the program. She called the process "a fucked-up mess," yelled that Kelley had been unprofessional, and blamed both for problems in the notification process. [Exh. 10-84.] Appellant denied that she used that phrase, calling it instead either a "disaster" or a "debacle." [Appellant, 5/10/12, 11:07 am; Appeal, Atch. 9; Exh. 6.]

On Sept. 6, 2011, Appellant exchanged emails with Ms. Girtin, who also functioned as secretary for the Board of Environmental Health (BEH) and its citizens' ACC Advisory Committee. Appellant criticized Mr. Kelley for not including information on public health risks in a briefing document to the BEH, adding, "I am getting really tired of this game playing . . . I am referring to Doug's game playing by not including me on the email and then trying to explain his error by saying the document was a draft." [Exh. 10-56, 10-59.] The next day, Appellant emailed Donna Middlebrooks, the chairperson of the all-volunteer ACC Advisory Committee,

I'm so tired of [Kelley's] back door maneuverings. I have had discussions with Bob, our interim Manager, and I have his support to move forward with taking disciplinary action as needed re: Doug's performance. Something Nancy wouldn't let me do b/c Doug supported her efforts to try to get rid of me. I'll keep you posted on that as needed since the Committee continues to express concerns about his performance as well.

[Exh. 10-137.]
On Sept. 7, Ms. Girtin suggested to Appellant that she could subtly inform the Board of Environmental Health that Kelley failed to provide information for them. Appellant responded,

Doug would just blame Stacey, who has actually saved him on the public health issues. I was just thinking about sending Doug a follow-up to ask when and how he intends to provide the answers to [the Board chair's] questions about public health risks . . . Stacey keeps me informed, but not Doug.

[Exh. 10-134.]

Appellant did not deny sending these emails, but countered that they were true and made as a part of her responsibility to supervise Mr. Kelley and assure performance of his duties. She stated that Ms. Middlebrooks was not an outside party, contending that as Chair of the ACC Advisory Committee she is internal to city processes.

G. CRITICISMS OF CSA, CITY ATTORNEY'S OFFICE, AND MANAGER SEVERSON

The Agency contends that Appellant made other critical comments during the month of September. Appellant told Ms. Girtin, "[b]ottom line, [HR Analyst Stubera] can't perform, yet she lives on in a job without any ramifications for not even knowing how to do her elemental HR support work." [Exh. 10-63.] On Sept. 8, Appellant met with Mr. Kelley and ACC supervisor Frank Baldoe to discuss the outcome of an employee grievance. Appellant stated that "H.R. Services really messed this up". Appellant added that the City Attorney's Office agreed with her assessment that "obviously no one in HR Services know what they're doing." [Exh. 10-85.] Appellant testified that she criticized Stubera's technical competence as a part of her job to ensure adequate service levels under the Department's Service Level Agreement with CSA for HR services. Appellant sent this email to Girtin with a request that she help her prepare a complaint against Stubera because McDonald tasked her to oversee Stubera's performance. Appellant decided not to file the complaint. [Appellant, 5/10/12, 11:14 am.]

On Sept. 14, Assistant City Attorney Berardini reminded Ms. Girtin to publish notice of a special meeting. Ms. Girtin, obviously offended by the reminder, forwarded the email to Appellant, asking, "Do our city attorneys think I'm dumb . . . or that we don't know our jobs without Nancy?" Appellant joked in response, "[p]erhaps we should reciprocate and remind them about how to do their jobs -- give advice within deadline, give consistent advice, alert clients to time frames; finish contracts and draft rules sooner; etc."

[Exh. 10-128.] Ms. Girtin laughed when she received Appellant's response. [Girtin, 3/9/12, 2:45 pm.]

The day before, Appellant emailed to McDonald, "I know that this will make [Assistant City Attorney] Shaun [Sullivan] even crankier than he typically is, but it underscores the need for an independent legal opinion -- one in which both parties share in the cost of obtaining and agree to be bound by the outcome."

[Exh. X.] Appellant sent her subordinate Keith Raschke an article entitled, "8 Reasons Your Employees Don't Care Anymore." Mr. Raschke responded that he thinks he does a reasonable job on most of the eight points, and invited

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3 The disciplinary letter asserts that Appellant stated that HR Services' staff was "full of shit". Appellant denied using that phrase, and the Agency presented no testimony in support of this allegation. [Appellant, 5/10/12, 11:32 am.]
Appellant to a farewell lunch for an employee. Appellant replied, "I didn't have much of these items in the positive with Nancy as a supervisor. I hope it improves." [Exh. 10-64.]

H. PRE-DISCIPLINARY PROCEEDINGS

During the investigation, Appellant and fourteen other employees were interviewed, nine of which testified during this hearing. [Exh. 9.] McDonald furnished to the investigators his own notes and copies of emails sent by Appellant that McDonald believed were inappropriate. [McDonald, 3/8/12, 4:16 pm.]

On Nov. 15, 2011, CSA investigators Kathy Billings, Dimitri Clarke and Ranae Taylor submitted their summary of findings to Doug Linkhart, the DEH Manager appointed by Mayor Hancock on Oct. 31, 2011. The investigators concluded that "[t]he facts . . . support the allegation that [redacted] has in fact behaved inappropriately in the workplace and her actions are described as intimidating and have created an environment of mistrust and fear. Further, statements obtained from both [DEH employees] and those outside of the organization describe the leadership team for DEH as fractured due in part to Ms. [redacted] behavior and interactions with other members of the [team]." [Exh. 7, 7-6.]

On Nov. 22, 2011, Appellant was served with a pre-disciplinary letter alleging six Career Service Rule violations based on information obtained during the investigation. [Exh. 3.] On Dec. 5, 2011, Appellant appeared with her attorney at the pre-disciplinary meeting, presented an oral response to the charges, and submitted copies of emails and other documents in support of her response. At that meeting, Appellant denied using the phrase "fucked-up mess" to describe the Food-Prodcing Animal process on Aug. 17, stating that she described it as "a debacle". Appellant argued that the other comments alleged in the pre-disciplinary letter were factual and made as a part of her duties to manage programs and oversee contractual services. [Exh. 6.]

Appellant claimed generally during the pre-disciplinary meeting that she was not being treated fairly because she made complaints against her manager. As a result, Mr. Linkhart obtained documentation about the emails highlighted by Appellant at their meeting. After reviewing the documents, he concluded that Appellant had not been treated unfairly as a result of her complaints. [Linkhart, 3/7/12, 4:11 pm.] Mr. Linkhart then reviewed the voluminous investigative file and discussed the matter with four of the witnesses. [Linkhart, 3/7/12, 3:57; Exh. 2.] He found that Appellant had recently been disciplined for inappropriate communications and fostering negative relationships, yet thereafter yelled at employees and disparaged managers, subordinates and the City Attorney’s Office in emails and meetings. He considered her conduct toward Mr. McDonald as insubordination, and her discussion of potential discipline with Ms. Middlebrooks a breach of confidentiality.

Given the nature of Appellant’s job duties to work with employees and others to build an effective team, Mr. Linkhart found her negative comments about others unprofessional and inflammatory. He found that was so even when the person disparaged never learned of the remarks, since he believes that negative comments decrease a listener’s respect for the person making them. Mr. Linkhart discounted Appellant’s argument that she was exercising her managerial role in making those statements, noting that Ms. Girtin and Ms. Middlebrooks played no role in the disciplinary process as to Mr. Kelley, Ms. Hughes, Ms. Stuber, or the City Attorney’s Office. He found that Appellant’s conduct in August and September was consistent with the pattern of conduct that led to her previous discipline, and found that her denial of wrongdoing indicated the behavior would continue. Mr. Linkhart noted that Appellant either denied that each incident occurred or justified her negative statements by
adding that they were true. Appellant did not concede that she had done anything wrong, or that her behavior needed improvement. [Exh. 6.] Under those circumstances, he determined that termination was the only penalty that would correct the situation. [Linkhart, 3/7/12, 4:08 pm.]

Mr. Linkhart considered lesser penalties, but ultimately decided that Appellant's conduct had damaged the integrity of the Department and lowered morale so irreversibly that Appellant could not be returned to her position without risking further divisions and resignations among the staff. After removing two of the rules and some of the factual allegations cited in the pre-disciplinary letter to conform it to his findings, Mr. Linkhart approved the final letter of dismissal. [Exh. 2.]

IV. ANALYSIS

The Agency bears the burden to prove by a preponderance of the evidence that the conduct stated in the disciplinary letter violates the Career Service Rules cited in the disciplinary action. The Agency must also establish that dismissal is within the range of discipline that can be imposed by a reasonable administrator based on the proven violations and Appellant's employment and disciplinary history. In re Gustern, CSA 128-02, 20 (12/23/02); Turner v. Rossomiller, 535 P.2d 751 (Colo. App. 1975). Appellant bears the burden of proof to establish her whistleblower claims.

I. VIOLATION OF DISCIPLINARY RULES

1. Carelessness in the performance of duties under § 16-60 B.

An employee is careless in the performance of duties if she acts heedlessly of an important work duty, resulting in potential or actual significant harm. In re Mounjim, CSA 87-07, 5 (7/10/08), rev'd on other grounds.

The Agency claims that Appellant acted carelessly when she informed Ms. Girtin that she would be terminated as a part of the Department's reorganization. Since Appellant had been previously disciplined for this incident as a part of her July written reprimand, the Department cannot impose additional discipline for the same conduct. In re Harrison, CSA 55-07, 53 (6/17/10).

2. Failure to comply with lawful orders under CSR § 16-60 J.

An employee violates this rule by willfully failing to obey a reasonable order. In re Sawyer and Sproul, CSA 33-08, 9 (1/27/09). Here, the Department contends that Appellant's misconduct in August and September violated orders to support management's decisions once made, and build positive working relationships instead of creating "an environment of intimidation, fear and mistrust." [Exhs. 8-4; KK; LL; MM.]

The word "order" within the meaning of this rule refers to a specific instruction requiring or prohibiting defined or reasonably understood actions. This requires proof of an affirmative order governing particular conduct rather than an exhortation to conform to a generalized standard of conduct. While it may be true that the comments alleged in the disciplinary letter would tend to build negative rather than positive relationships, it does not follow that any act not in strict conformity with a quality described in a job description or performance evaluation constitutes a violation of an order within the meaning of this rule. Any other interpretation of the rule would blur the lines between it and the rules governing standards of
performance and working relationships. CSR § 16-60 K and O. The Agency failed to establish that it issued a specific order under this rule.

3. **Failing to meet established standards of performance under § 16-60 K.**

An employee violates this rule when the agency clearly communicates a standard of performance, and the employee fails to meet that standard. In re Bernal, CSA 54-10, 11 (3/11/11). The pre-disciplinary letter described the following qualitative standards: 1) support department’s needed transitions; 2) support shared services and serve as a senior level advisor; 3) information management: reflect the Manager’s positions, 4) leadership: work to develop recommended solutions to operational issues; 5) support the Manager’s decision in carrying out the solutions; and 6) human resources: support Human Resource Services’ primary role in DEH personnel matters. [Exh. 3-2, 3-3.] Appellant’s 2011 PEPR likewise states that Appellant is required by her position to support the Manager’s positions and initiatives, and work to implement needed changes. [Exh. LL-2, LL-3.] Although the final letter of dismissal did not reference these standards, Appellant was on notice of the specific performance standards at issue based on her receipt of the pre-disciplinary letter, which cited each of the above job requirements.

The Agency contends that Appellant refused to support final decisions by continuing to argue and criticize after decisions were made by the Manager, notably the decision to transfer the personnel function to CSA under Shared Services. This is the common thread connecting Appellant’s profanity-laced criticism of Ms. Stuber at an Aug. 17 meeting, her Sept. 7 email to Ms. Girtlin, and her emails to Ms. Girtlin and Ms. Middlebrooks on Sept. 6 and 7 expressing frustration over her lack of power to discipline Mr. Kelley. Appellant became agitated with Mr. McDonald on Aug. 11 and accused him of refusing to restore assignments removed by Severson out of bias against her. [Exh. 10-45.] Similarly, in August and September Appellant interrupted Ms. VanDerLoop’s explanations and criticized her for accepting assignments from the former Manager. [Exhs. 10-35, 10-96.] Both McDonald and VanDerLoop were upset by these accusations, and felt Appellant was attempting to force them to choose sides with her and against decisions made by their former Manager. They observed that morale was extremely low and that several employees, including themselves, were actively looking for other work.

At the time of these incidents, the Department had just weathered a mayoral election, the abrupt end of Ms. Severson’s tenure as Manager, a proposed consolidation with another agency, severe budget reductions, two interim Managers, and implementation of shared accounting and personnel services by the Controller’s Office and Career Service Authority. It was common knowledge that Severson and Appellant endured a hostile relationship for the past several years, often angrily disagreeing at meetings and pressing subordinates to take sides. The fact that they held the positions of Manager and Deputy Manager made their contentious relationship especially harmful to the Department, and prevented them from creating a cohesive and productive team to achieve departmental goals. In March 2011, Appellant and Mr. Valdez organized a meeting of all but one of the Division Directors with the former Mayor’s Chief of Staff to discuss their issues and complaints about Ms. Severson. [McDonald, 3/8/12, 3:01 pm; Exh. GGG-12.] Before that meeting, Appellant accused McDonald of “waffling” when he refused to add more to his criticism of Severson than just saying Severson could have been more transparent in her communications. Appellant complained that Mr. Valdez “is the only one that supports me.” [McDonald, 3/8/12, 2:50, 3:02 pm.] Appellant tried to get her direct reports to agree with her that Severson was unethical and a liar. McDonald noted that their antagonism “seemed to trickle down” to the Division Directors, who divided into two groups based on their support for Severson or Appellant.
Ms. Girtin felt the tension lift after Ms. Severson's last day in July, and said Appellant appeared to calm down thereafter. However, Appellant's negative interactions with McDonald, Kelley, VanDerLoop and Hughes in August and September caused McDonald to observe that “[w]e seemed to be going down the same path with [Appellant] that [Severson] had with her.” His decision to place Appellant on investigative leave was motivated in large part on the damaging effect her conduct was having on VanDerLoop and the morale of the entire team. [McDonald, 3/8/12, 4:12.]

Appellant did not deny that she was required to support management decisions, but argued that Severson sabotaged her ability to perform her job by removing duties she did well, keeping her out of the loop on major projects, and communicating with her staff behind her back. [Appellant, 5/10/12, 8:41.] Appellant believed that Severson made the decision to remove her personnel and budgetary duties under Shared Services in order to harm her, and continued to criticize these decisions and the personnel performing HR services. These criticisms were not a part of her role to assure the HR service level, since they were made to staff such as Ms. Girtin and Mr. Kelley who had no role in monitoring the HR Service Level Agreement.

By April 2011, the working relationship between Severson and Appellant became so difficult that Severson made changes to the management structure “so we could move forward on a better footing” and get projects done. [Severson, 3/7/12, 11:13 am.] Severson assigned some projects to Division Directors without informing Appellant of those assignments, including work on CHA given VanDerLoop and directing Kelley on the FPA ordinance. When Appellant discovered Severson’s role in assigning work to Appellant’s own direct reports, she became angry and critical of the projects and performance of these Division Directors, even though Severson had already left the Department. It is impossible to determine on the evidence whether Appellant fairly evaluated her subordinates’ work on the merits, but her evident dislike of Severson triggered an immediate negative reaction in several of the cited incidents. Appellant became critical of VanDerLoop’s performance after learning the projects were assigned by Ms. Severson. [Exh. 10-35 to 38.] She became agitated with McDonald after he informed her he would make no immediate changes to assignments made by Severson. [Exh. 10-44 to 45, 10-89.] Appellant overreacted to Severson’s instruction not to direct the PIO on department level communications by excluding PIO Hughes from future staff meetings, negatively affecting the communications function. [Exhs. KK, 10-115.] Appellant characterized the Food Producing Animal process as a “fucked-up mess” in part because Severson had excluded her from its development. [Exh. 10-84.] Appellant perceived that Severson was protecting Mr. Kelley from discipline because “Doug supported her efforts to try to get rid of me.” [Exh. 10-137.] Mr. Kelley observed that “almost every interaction I had with [Appellant] had some sort of Nancy bashing”, and that Appellant “felt Roxanne [Stuber] and Nancy were in cohorts [sic] and were trying to fire her. . . . To begin with [Appellant] was very supportive of [Shared Services] but then she felt Roxane was out to get her and HR services became worthless.” [Exh. 9-97.] Two management employees were concerned that Appellant would not evaluate them fairly because Appellant perceived they were on Severson’s "side". [Hughes, 3/8/12, 8:58 am; Exh. 10-37.]

The evidence does not support Appellant’s contention that her critical comments were made in order to allow her to perform her duties. Appellant expressed her disagreements with managerial decisions in inappropriate ways: by sharing her frustration with administrative staff and external volunteers, and becoming angry and argumentative at meetings. Appellant failed to seek resolution of her disagreements by using any appropriate
channel of communication. The Agency proved that Appellant failed to meet her performance standard to support management’s decisions once made, in violation of this rule.

4. **Failure to maintain satisfactory work relationships under § 16-60 Q.**

This rule is violated by conduct an employee knows or reasonably should know will harm or significantly impact a working relationship. In re Burghardt, CSA 81-07, 2 (CSB 8/28/08). The Agency contends that Appellant inappropriately criticized Severson and others in a manner that significantly harmed the working relationships among management staff, and that Appellant either knew or reasonably should have known her conduct would have that effect.

I find that Appellant should have known the comments alleged in the disciplinary letter would significantly harm working relationships, with three exceptions. The evidence shows that Appellant’s reply to Ms. Girtin on Sept. 14 was indeed intended to be perceived as a joke to assuage Girtin’s hurt feelings rather than a serious commentary on the performance of the City Attorney’s Office. [Exh. 10-128.] Her description of Assistant City Attorney Sullivan as “cranky” was intended to refer to his previous opposition to seeking outside legal opinions. The Career Service Rules is not intended to police mildly critical or even sarcastic exchanges made in the course of performing business duties. I also find that Appellant’s comment to Mr. Raschke on Sept. 8 — “I didn’t have much . . . in the positive with Nancy as a supervisor” — related to their discussion on employee morale, and could not be anticipated to impact a current working relationship. [Exh. 10-64.]

The most relevant evidence on this allegation is her confrontational conduct toward Mr. McDonald during their August meetings. Mr. McDonald testified credibly that Appellant aggressively interrupted him on Aug. 5th and accused him of condoning misconduct by Meghan Hughes. His contemporaneous notes are consistent with that testimony. Appellant denied that she was aggressive during their discussion of the McGovern case, a fact that is not in dispute. [Appellant, 5/10/12, 10:52 am.] She did not directly address the allegation that she angrily interrupted Mr. McDonald when the topic turned to Ms. Hughes and her attendance at staff meetings. I find that Mr. McDonald’s more detailed recollection of events is more reliable than Appellant’s general denial that her manner was aggressive.

Appellant stated the Aug. 11th meeting with McDonald “did not occur as characterized, but admitted she told him "trust is going to be difficult" because he denied her grievance without a thorough investigation, and thereby violated the open door policy. Appellant also told McDonald she did not believe he could be objective with her, and that he was “setting her up” by giving her responsibility to complete the OPP survey ten days before it was due. McDonald’s two pages of notes of that meeting demonstrate that Appellant’s anger arose instead from his decision to maintain the current assignments during a transitional period, and Appellant’s belief that McDonald was trying to get her or Severson’s job. This version of events is corroborated by the testimony of Severson and VanDerLoop, who both stated that Appellant’s pattern when angry was to interrupt, raise her voice, talk over them, and question any response they made. Mr. McDonald set the meeting to discuss methods by which their relationship going forward could proceed amicably, given Appellant’s past role as his supervisor. I find that Appellant knew or should have known that her confrontations with the newly appointed Acting Manager during these meetings would harm or significantly impact their working relationship, especially in light of the previous reasonable order issued by her former manager to build positive working relationships and avoid intimidating behavior.
As noted above, the evidence shows numerous instances where Appellant made comments critical of others’ performance in contexts unrelated to discipline or corrective action. In at least three of these instances, the listeners responded to Appellant’s implied invitation to be negative by adding their own critical comments. [Exh. 10-56, 59, 69, 137.] In others, the competence or neutrality of those providing professional services to the Department was disparaged. [Exhs. 10-63; X.] The reasonably foreseeable effects of such comments are that the reputation of the person being insulted is tainted, and the working relationships among those involved in the conversation are harmed by having engaged in workplace gossip, contrary to their obligation to reflect credit on the City under the Employee Code of Conduct. CSR § 15-5. Acting Manager McDonald observed that “[m]y challenges over the last couple of months has been to bring the dept. back together that has been fractured as a result of Sherry’s behavior.” [Exh. 9-79.]

Several witnesses testified to the harm caused by the negative comments asserted in the disciplinary letter. Mr. Kelley perceived that Appellant “took positions based on who presented them”, and made negative comments about Ms. Stuber because Appellant believed Stuber was acting on Severson’s behalf. [Kelley, 3/8/12, 12:12 pm.] McDonald testified that even after Severson’s departure, Appellant constantly brought up their disagreements. [McDonald, 3/8/12, 3:06 pm.] Generalized fear of angering Appellant was expressed by a number of witnesses. “It’s to the point that I dread meeting with her.” [Exh. 9-93.] Ms. VanDerLoop asked that any meeting she had with Appellant, who was her supervisor, be mediated by a third party. [Exh. 9-22.] “When she got [mad] at Meghan [Hughes] and basically cut off all communications with her, she was put in a situation where I had to go to [Hughes] and ask how to do things.” [Exh. 9-96.] The hostility between Appellant and Severson at meetings and their disagreements led to a widespread perception that there were two camps in the Department - one favoring Severson, and one favoring Appellant. That perception continued even after Severson’s departure. [McDonald, 3/8/12, 2:52 pm; Raschke 3/9/12, 12:10 pm; Girtin, 3/9/12, 1:30 pm.]

Employees began to suspect that Appellant’s motivations behind substantive project and PEPR decisions were based not on the facts but on whether the proponents were on Appellant’s side. Several reacted to Appellant based on that suspicion. Ms. VanDerLoop contested the terms of her PEPR for four months and requested mediation because she believed Appellant was unfairly penalizing her for accepting an assignment from Severson. Mr. McDonald reluctantly agreed to allow Appellant to continue excluding PIO Hughes from staff meetings in order to avoid further angry confrontations with Appellant, despite its negative effect on the communications function. [McDonald, 3/8/12, 5:07 pm.] Ms. Girtin was drawn into the inappropriate role of Appellant’s confidante on numerous personnel and disciplinary topics as to Mr. Kelley, Ms. Hughes, Ms. Stuber and the City Attorney’s Office, and conceded at the hearing that she made a “bad decision” in continuing those discussions. [Girtin, 3/9/12, 2:45 pm.] Ms. Middlebrooks became privy to confidential disciplinary matters and internal management rivalries outside of her committee role. Mr. McDonald and Ms. VanDerLoop, among others, began to seek other employment.

The instances of inappropriate conduct proven in this appeal continued Appellant’s previous pattern of negative statements against Severson, extending the feud beyond a single Manager and threatening to upend the assumption that Appellant’s managerial decision-making was neutral and merit-based. Employees reacted to Appellant’s negative comments by avoiding conflict with her, seeking help from HR Services, or taking other action bearing no direct relation to the best interest of the Department. As a result of Appellant’s actions and these reasonably foreseeable reactions from several employees, the Agency
failed to obtain the benefit of the employees’ best judgment with regard to their duties. This is one form of damage to working relationships that CSR § 16-60 O was designed to prevent.

Appellant had notice of her need to improve in the area of promoting positive relationships since the issuance of her 2009 PEPR. [Exh. MM-14; LL-4; KK; 8.] Her denial that her conduct was improper or negatively affected her employees demonstrates that she does not understand or accept the city or departmental standards governing interpersonal relationships. The Agency established that Appellant violated this rule as found above by failing to maintain satisfactory working relationships with her supervisor, staff and other employees.

5. Divulging confidential or otherwise sensitive information to unauthorized individuals under § 16-60 X.

The Agency alleges that Appellant violated this rule by disclosing to the citizen Chair of the ACC Advisory Committee the fact that she had authority to discipline ACC Director Doug Kelley. [Exh. 10-137.] Appellant admits she sent this email to Ms. Middlebrooks, but states that Ms. Middlebrooks was not an unauthorized individual under the rule, as the Committee had discussed Mr. Kelley’s performance issues during executive sessions. [Exh. 6.]

Ms. Middlebrooks’ role on the Advisory Committee to provide operational oversight to the Animal Care and Control Division does not also automatically permit her or other committee members access to confidential personnel information about individual employees. I find that Appellant divulged confidential disciplinary information to an unauthorized person, in violation of this rule.

6. Conduct violating Executive Order 112, under CSR 16-60 Y

The Department asserts that Appellant violated Executive Order 112 by repeated verbal abuse to McDonald, VanDerLoop, Hughes and Kelley, failing to follow performance standards, and failing to maintain satisfactory work relationships. Since the latter two allege violations of more specific rules, a determination as to them under CSR § 16-60 Y is unnecessary.

Verbal abuse has been described as harsh and insulting treatment which reviles the recipient, often resulting in mental, emotional, sexual or physical injury. In re Owens, CSA 69-08, 6 (2/6/09); In re D’Ambrosio, CSA 98-09, 8 (5/7/10). While Appellant’s comments were highly critical and on one occasion profane, I do not find that they rose to the level of verbal abuse either in their emotional intensity or their effects on the recipient. Thus, the Agency failed to prove a violation of this rule.

7. Appropriateness of Termination as Penalty

The level of discipline imposed by an agency must not be disturbed unless clearly excessive or not supported by substantial evidence. In re Owens, CSA 69-08, 8 (2/6/09). In evaluating the proper degree of discipline under the Career Service Rules, an agency must consider the severity of the offense, an employee’s past disciplinary record, and the penalty most likely to achieve compliance with the rules. CSR § 16-20; In re Norman-Curry, CSA 28-07, 23 (2/27/09). The reasonableness of discipline is determined by the facts of each case. See In re Poz, CSA 07-09A, 2 (CSB 1/21/10).
The Agency contends the termination decision is supported by the evidence for two reasons: 1) Appellant failed to improve after two years of notice regarding her performance inadequacies and two disciplinary actions for similar behavior, and 2) her misconduct caused serious effects on Agency morale. It argues also that no less a penalty would have corrected this behavior because Appellant does not acknowledge her conduct required any improvement.

Appellant counters that the termination is fatally flawed by the decision-maker's consideration of matters outside the scope of the pre-disciplinary letter. Mr. Linkhart testified that he considered certain bullet points from the investigation's summary of findings, several of which were not specifically included in the pre-disciplinary letter. [Linkhart, 3/7/12, 4:25 pm; Exh. 7-3 to 7-5.] However, the bullet points he considered were either general observations by witnesses consistent with evidence at this hearing, or did not assert misconduct. [See bullets 1 – 3, 14, 15.] Since this hearing is de novo, the appointing authority's review and consideration of matters beyond the four corners of the pre-disciplinary letter does not thereby render the resulting disciplinary letter improper under the rules.

Mr. Linkhart appropriately considered the seriousness of Appellant's misconduct toward her supervisor, subordinates and persons performing personnel and communications functions, and its negative effect on the operations and morale of the Department given Appellant's high-level position and key administrative responsibilities. Appellant's pattern of negative criticism outside her duties silenced constructive communication at the top level of the Department. Her failure to acknowledge that her conduct was inappropriate demonstrates a lack of awareness of her duties to represent and support departmental goals. As a result, no discipline less than termination could have corrected the proven misconduct. See e.g., In re Morgan, CSA 63-08, 18 (4/6/09) (holding that an employee's continued intransigence supports substantial discipline.) I find that termination was not unreasonable given the violations proven and their effects on the entire Department.

II. WHISTLEBLOWER CLAIMS

Appellant contends that her termination was motivated by whistleblower activity. The first claim is based on her support of Ms. Valdez' ethics complaint asserting an employee violated Fiscal Accountability Rule (FAR) 10.1. Appellant made a second report of asserted official misconduct HR Analyst Stuber on Mar. 10, 2011, alleging that Ms. Severson violated CSR § 16-40 by improperly demoting an employee to part time for disciplinary reasons without providing Rule 16 procedural safeguards.

The Whistleblower Protection Ordinance prohibits adverse employment action motivated by an employee's report of official misconduct to any person. Official misconduct is an act or omission that constitutes a violation of law, applicable rule, regulation or executive order, code of ethics or applicable ethical rules and standards, waste of city funds, or abuse of official authority. In re Wehrmhoever, CSA 02-08, 4-5 (2/14/08); D.R.M.C. § 2-107 (d).

A. Support of Ethics Complaint

On Mar. 15, 2011, Division Director Robin Valdez requested an investigation into the intentional omission of data in financial reports by two administrative assistants from Ms.
VanDerLoop’s division committed in order to reflect negatively on an accounting technician in Mr. Valdez’s division. [Exhs. J.] Appellant provided supplemental information to the Denver Board of Ethics, which thereafter dismissed the claim as rooted in a personnel matter rather than an allegation the employees were motivated by a desire for personal gain. [Exh. K, WWW, 18.]

Appellant believes that Severson disciplined her for her part in this complaint when she raised it by characterizing her actions as "[challenges] regarding personnel actions and supervisor responsibilities, primarily stemming from your involvement in a claimed "bullying" issue that was sent to and investigated by HRS." [Exh. 8-4.] Appellant’s participation in the matter consisted of raising questions for the investigators and communicating that she shared Mr. Valdez’ concerns about the employee conduct. Appellant made no independent report of official misconduct within the meaning of this rule, which was intended “to encourage employees to speak out fully and frankly on any official misconduct which comes to their intention without fear of retaliation.” In re Blehm, CSA 47-10, 8 (10/29/10) (internal quotes omitted). The purpose of the ordinance is not furthered by extending its reach to any comment made in support of the original report.

B. Disciplinary Demotion Claim

Appellant contends that Ms. Severson improperly abolished a full-time accounting assistant position based on a performance concern, i.e., that the assistant’s duties only justified a part-time position. Appellant argues that the performance issue should have triggered the protections of the disciplinary process under CSR § 16-40, and that the abolishment violated the spirit if not the letter of Rule 16. [Exh. HH-7.] Appellant reported her belief to HR Analyst Stuber on Mar. 10, 2011, and did not learn if further action was taken to investigate the matter. Appellant testified that her “out of line” behavior at the Mar. 15th meeting with the Controller was caused in part because of her reaction to the loss of this and another accounting position. Appellant apologized to Ms. Severson, Ms. Stuber and the Division Directors for her reaction, and sought and received training in communication shortly thereafter. [Appellant, 5/10/12, 11:42 am; Exh. UU, VV.] Appellant presented no other testimony in support of this claim. Discipline for behavior arising from an ethics complaint does not by itself establish adverse employment action, especially as in this case where it is one of many allegations supporting the discipline.

Order

Based on the foregoing findings of fact and conclusions of law, it is ordered as follows:

1) The Agency dismissal dated December 19, 2011 is affirmed.

2) Appellant’s whistleblower claims are dismissed.

DONE July 16, 2012.

[Signature]
Valerie McNaughton
Career Service Hearing Officer