

ORDER DISMISSING APPEAL

IN THE MATTER OF THE APPEAL OF:

MICHELLE FELIX,
Appellant,

vs.

DEPARTMENT OF HUMAN SERVICES
and the City and County of Denver, a municipal corporation,
Agency,

The Appellant was ordered to show cause why her claims of discrimination, harassment and retaliation should not be dismissed. The Appellant and the Agency filed timely responses. Having considered the responses, the file and being otherwise informed in this matter, I now find and order as follows.

1. Appellant's discrimination claim.

As required by the Order to show cause, the Appellant provided a discrimination complaint she filed with her agency on 6/19/07 [Appeal, p.2], thus invoking jurisdiction under Career Service Rule (CSR) 19-10 B. 1. Intentional discrimination is proven by evidence of 1) membership in a protected class, 2) an adverse employment action, and 3) direct evidence or evidence which supports an inference of discrimination. In re Ortega, CSA 81-06,14 (4/11/07). The Appellant stated she is Black, and the Agency concurs that she therefore meets the first criterion. However, the alleged adverse employment action about which she complains is the same action, based upon the same filing, for which she filed an appeal on October 17, 2006. As the Appellant acknowledges, I ruled on the same complaint of discrimination in my Decision dated January 29, 2007. See Appellant's Response, paragraph #1. No new information or allegation is presented here. See Appellant Response at "Summary of Facts." Therefore this issue is precluded from re-hearing.

2. Appellant's retaliation claim.

To establish a prima facie case of retaliation the Appellant must show 1) that she engaged in some action opposed to discrimination, 2) she was subsequently subject to an adverse employment action, and 3) that there is a causal link between the protected activity and the adverse action. Belgasem v. Water Pik Techs., Inc., 457 F. Supp. 2d 1205, 1218-1219 (D. Colo. 2006). The Appellant states the Agency retaliated against

her "after I filed a discrimination complaint with Denver Human Services on September 25, 2006 (not September 26 attached)." Here, unlike her discrimination complaint, above, it is not necessary to prove the discrimination complaint was justified, only that the Agency response to it might dissuade a reasonable worker from alleging discrimination. *Id.* The Appellant stated "I believe that both the written reprimand dated June 13, 2007 and the very negative statements made on the 2007 PEPR evaluation were part of the harassment." While the Appellant does not state these were the Agency actions which support her retaliation claim, I find her response conforms to my order to show cause regarding the first two elements of a prima facie case for retaliation: (1) she filed a complaint of discrimination, then (2) the Agency assessed a written reprimand. A written reprimand can be an adverse employment action for purposes of a retaliation claim. Hysten v. Burlington Northern & Santa Fe Ry., 296 F.3d 1177, 1183 (10th Cir. 2002). The third element, a causal connection is more problematic.

The Appellant does not state what she believes is the connection between her complaint, filed September 25, 2006 and the written reprimand against her on June 13, 2007. Also, the time lapsed between her complaint and the alleged retaliatory written reprimand some nine months later is too remote to suggest a causal connection. "[U]nless the termination is very closely connected in time to the protected activity, the plaintiff must rely on additional evidence beyond temporal proximity to establish causation." Hysten v. Burlington Northern & Santa Fe Ry., 296 F.3d 1177, 1184 (10th Cir. 2002), *citing* Anderson v. Coors Brewing Co., 181 F.3d 1171, 1179 (10th Cir. 1999). Even a three-month lag between protected activity and an adverse action was not close enough to establish causation. Hysten, *citing* Richmond v. ONEOK, Inc., 120 F.3d 205, 209 (10th Cir. 1997). Thus, the Appellant failed to establish a causal connection between her complaint and an adverse Agency action.

3. Appellant's harassment claim.

To establish a claim for harassment, the evidence must tend to show that, under the totality of the circumstances, the harassment was pervasive and severe enough to alter the terms, conditions or privileges of employment. General harassment, if not based upon a protected status, is not actionable. CSR 19-10 B. 1., Belgasem v. Water Pik Techs., Inc., 457 F. Supp. 2d 1205, 1219 (D. Colo. 2006). The Appellant cites the following incidents as evidence of actionable harassment:¹

- Her supervisor refused to allow Appellant to go to a client's house and to call 911. [Appellant's Response at 2 a)];
- Her supervisor refused to allow Appellant to change working units. Id (this issue was decided by a Decision on 1/29/07);
- Appellant felt harassed when questioned by supervisors about "the issue." *Id*;
- Appellant felt harassed for being accused of insubordination because she did not perform a home study where, ultimately the home study

¹ Allegations that were too vague to state a claim, or even if true would not tend to establish a claim, were not included.

was performed by an Arapahoe County supervisor. [Appellant's Response at 2 c)];

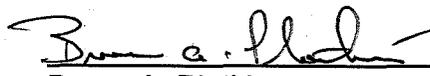
- Her supervisor asked her not to move a client to a different nursing home. *Id*;
- The Appellant feels she has restrictions that other caseworkers do not have. *Id*;
- Appellant's supervisor yelled at her for not knowing procedures, humiliating her in front of colleagues. [Appellant's Response p.4];
- Appellant's supervisor gave conflicting directives. [*Id* at p.5];
- Appellant's supervisor accused her of not following protocol, causing Appellant to feel that she has more restrictions than other co-workers. *Id*;
- Appellant's supervisor did not take her seriously. *Id*;
- An apparently courteous exchange between Appellant and supervisor over possible meeting topics and how to raise them. *Id* at 5-6;
- Appellant feels she cannot speak with other supervisors without receiving a written reprimand. *Id* at 6;
- Appellant's supervisor accused her of insubordination, while Appellant feels she "can speak with the managers without going through her." *Id* at 6-7;
- Supervisor's response to Appellant's grievance was vague. *Id* at 7;
- Supervisor's statement that Appellant needed to foster an environment of trust; *Id* at 8;
- Appellant disagrees with Supervisor's statement that other supervisors and personnel complain about her, because person who complained should be doing what she complained Appellant did not do. *Id*;
- Supervisor failed to respond to Appellant's question how to proceed. *Id*.
- Supervisor failed to act on Appellant's complaint that a co-worker was insulting. *Id*;
- Supervisor fails to acknowledge Appellant's volunteerism. *Id* at 10-11;
- Only one client complained about Appellant, not many, as alleged by supervisor. *Id* at 12;
- Supervisor has not been able to confirm a lot of the complaints against Appellant; *Id* at 13;
- "[D]octors are saying that the harassment at work caused the depression." *Id*. [attached Standard Insurance Co. Psychiatric Questionnaire states Appellant "perceives harassment at work"].

Even when taken together these allegations are not pervasive and severe enough to alter the terms, conditions, or privileges of employment. Belgasem. The Appellant has therefore failed to show cause why her claims of discrimination, retaliation and harassment should not be dismissed.

ORDER

The Appellant's claims of discrimination, retaliation and harassment are DISMISSED. No justiciable claim remains. Therefore, the Appellant's Appeal is DISMISSED WITH PREJUDICE.

DONE August 23, 2007.



Bruce A. Plotkin
Career Service Hearing Officer

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I certify that on August 23, 2007 I forwarded a correct copy of the foregoing Order Dismissing Appeal in the manner indicated:

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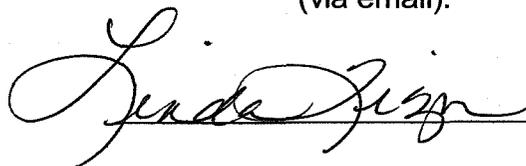
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