

**DECISION AFFIRMING 15-DAY SUSPENSION
and
AFFIRMING TERMINATION**

MELEAHA GLAPION-PRESSLEY, Appellant,

v.

DENVER HUMAN SERVICES,
and the City and County of Denver, a municipal corporation, Agency.

I. INTRODUCTION

This appeal consolidates three actions: Appellant’s 15-day suspension on November 5, 2018; Appellant’s claims of retaliation (CSA 73-18); her appeal of alleged of retaliation and whistleblower retaliation (CSA 76-18); and her dismissal on December 7, 2018, including her affirmative defenses of retaliation, whistleblower retaliation, and race and color discrimination (CSA 80-18). A hearing of the consolidated issues was conducted by Bruce A. Plotkin, Hearing Officer, on April 18-19, May 10, and June 3-4, 2019. Appellant represented herself, while the Agency was represented by Sherri Catalano, Assistant City Attorney. The following Appellant exhibits were admitted: B, E, F, G, I, J, L, M, N, P at 369 – 370, Q, R at 379–384, 432-438, and 483–500, T at 22–51, 6 –71, 75–77, 81–91, U 469–472, 475, 477–478, V 471, W, Y, Z 463–572, 582–583, 592-597, 614–615, AA–BB, DD–EE were admitted. Agency exhibits 1-15, 17-19, 22, 27-33, 35–36, 38, and 42 were admitted. The Agency called these witnesses to testify: Kathryn Hodson, Rebecca Ball, Mimi Scheuermann, Tammy Davis, Erin Hall, and Josie Berry. Appellant called the following witnesses: Irene Van Cleave, Alancia Gray, Shiree Edwards, Dawn Landrum, Sherron Glapion and Josie Berry as well as testifying on her own behalf. Due to privacy issues arising from multiple references to specific cases in these appeals, a protective order issued, and the hearing was closed to the public. ¹

II. ISSUES

The following issues were presented for appeal:

1. whether Appellant violated any of the following Career Service Rules (CSRs): CSR 16-28 A; 16-28 F; 16-28 R; or 16-28 T;
2. whether the Agency’s issuance of a letter in contemplation of discipline to Appellant was motivated by unlawful retaliation or Appellant’s whistleblower activity;
3. if the Appellant violated any of the aforementioned Career Service Rules, whether the Agency’s decision to suspend her, and later to dismiss her, conformed to the purposes of discipline under CSR 16-41; and

¹ While this redacted decision is posted publicly, the file will remain under seal due to numerous references to individuals protected by law.

4. if Appellant violated any of the aforementioned Rules, whether the Agency's assessment of discipline was motivated by unlawful retaliation, whistleblower retaliation, or discrimination based on race or color.

III. FINDINGS

A. IN GENERAL

The Appellant, Meleaha Glapion, was a case worker at Denver Human Services in the Child Welfare Division for two years. Her last assignment was on the Emergency Response Team (ERT). Her duties included taking calls from the public, properly classifying them, referring calls to supervisory staff when appropriate, and performing accurate and timely on-site child welfare assessments.

B. FINDINGS: CSA 73-18, 15-DAY SUSPENSION

1. On July 18, 2018, Glapion was sent to assess a family where a child, BC, drowned in the backyard pool. Glapion's supervisor, Kathryn Hodson, covered the matters that would need to be assessed. It is a basic function of a Child Welfare case worker to create a safety plan for surviving children when sent to make an assessment. Glapion failed to create a required safety plan regarding two surviving children. Instead, Glapion allowed the great grandfather to take the children without a written plan specifying their care and supervision. Glapion's actions allowed the Maternal Step Grandfather to be with the children although he had a founded investigation for sexual abuse of the mother. [Exh. 11-73]

2. Under Agency policy, case workers must remain in contact with an on-call administrator to supervise fatality assignments. Glapion failed to do so before she permitted the release of the surviving children to the great grandfather; she did not follow up with the on-call administrator until the children were already released and she had returned to the Agency, in violation of State and Agency requirements.

3. Kathryn Hodson contacted Glapion on July 23, 2018, instructing her to remove the restricted access to the above case so that the case worker who would handle the case going forward could review it. [Hodson testimony; Exh. 3-2]. Glapion did not respond and instead contacted two employees who had no authority to unrestrict the case. [Hodson testimony].

4. Agency guidelines require a family engagement meeting known as VOICES² to be scheduled by the case worker within 48 hours of a child being removed from the home. [Exh. 3-3]. The VOICES meeting in the above fatality should, therefore, have taken place by July 20, 2018. Instead, Glapion notified her supervisor that she had scheduled a July 24 VOICES meeting. Glapion then unilaterally rescheduled the July 24 meeting to August 1. She later explained she cancelled the July 24 meeting because it did not work for the family. When asked why by return text, Glapion simply stopped responding.

6. Given the events described above, Glapion's supervisor scheduled a meeting on July 24th to discuss concerns about her handling of the fatality assessment, but Appellant refused to attend stating she worked the voluntary after hours shift the night before. The meeting was rescheduled to July 27, and Glapion initially refused to attend that meeting because it was a flex work day, although she later agreed to attend.

² The acronym stands for Value Of Individual Community Engagement Services. [Exh. B-16].

7. In assessing whether a safety plan was called for in investigating an incident involving a child, MG, Glapion did not staff the case with a supervisor, but decided on her own to implement an unnecessary safety plan “to keep the peace” within the family. Her failure to staff the case with a supervisor violated Agency requirements. Glapion’s assessment provided no information regarding safety, such as whether the mother was unsafe, the mother’s plans, whether relatives were safe for the child, and no information concerning whether Glapion had performed such an assessment.

C. FINDINGS CSA 80-18, DISMISSAL

1. On September 19, 2018, a citizen called the Agency’s hotline with an abuse/neglect concern. She told Glapion that she saw maggots crawling out of a neighbor’s apartment, knowing young children lived there. Regulations under Volume 7 require the call-taker to generate a written referral in the Agency’s TRAILS system by the end of the next business day [12 COLO. CODE. REGS. § 2509-7.103.9 (2015)] so that the case may be reviewed to determine if an immediate response is required or, alternatively, assigned to a RED Team for non-emergency follow-up. The importance of entering the case into the Agency’s TRAILS system is to generate a referral number which is required for tracking all follow-up. Even though Glapion identified the call as one of neglect/injurious environment, she told the caller the case would not be investigated because the caller was unable to provide names and birth dates. Glapion told the caller to contact the Denver Police Department instead. That response violated Agency and State requirements to create a TRAILS report for all reports of neglect and abuse within 24 hours.³ Then, after being directed the next day to call the citizen back and to generate a referral, instead of entering the call into TRAILS, Glapion wrote the information as a Word Document instead of in TRAILS, with no referral number and wrote “none” for what next steps were to be taken. Glapion’s supervisor, Kathryn Hodson, reviewed the document and determined it did not merit an immediate response, but could be submitted to the Red Team for follow-up. Glapion’s failure to generate a referral, in violation of State regulations, caused the Agency to be out of compliance with those regulations.

2. On September 23, 2018, lead Hotline caseworker Alisha Fluken instructed Glapion how to generate a new hotline referral. The next morning, September 24, Fluken emailed Glapion at 7:00 a.m. to request the referral number in order to submit it to the Red Team. The following morning, September 25, Fluken still had not heard from Glapion so she emailed the Intake Manager at 7:32 a.m., to say she had not heard from Glapion, then sought and received permission to generate a TRAILS referral in order to submit it to the Red Team. [Exh. 22-2]. The referral was generated five days after the call, well after the deadline required by State regulations.

3. Glapion took a call on October 18, 2018 concerning physical abuse of a child T.L. who sustained injuries to his head, ears, and mouth. [Exh. 13]. A medical examination revealed T.L. suffered a subdural hematoma and had fluid in his stomach in addition to his other injuries. This referral required Glapion to staff the case with the on-call supervisor or on-call administrator to determine the Agency’s response. Instead, Glapion referred the case to the non-emergency Red Team without any immediate intervention, in contravention of State and Agency regulations.

4. The entire intake division was required to participate in a mandatory training on October 23, 2018. Supervisor Hodson sent an Outlook invitation to that training to her team, including Glapion, on October 17 with a request to let her know if a team member would be unable to attend. Glapion neither attended nor notified Hodson before the meeting. [Exh. 3].

³ Hodson would later testify that case workers take reports and create referrals even from mentally ill and homeless families where such basic information as names, birthdates and home addresses are absent. All that is required is a location and a report of abuse or neglect, since the case can be staffed with a case worker or team to investigate such information.

IV. ANALYSIS

A. Jurisdiction, Burden of Proof and Standard of Review

Jurisdiction to hear this appeal is provided under the Career Service Rules, CSR 19-20 A.1.a, 19-20 A.1.b., and 19-20 A.1.f, as the appeal of Appellants' suspension and dismissal, along with her claims of retaliation, whistleblower retaliation, and race and color discrimination. I am required to conduct a *de novo* review, meaning to consider all the evidence as though no previous action had been taken. Turner v. Rossmiller, 532 P.2d 751 (Colo. App. 1975); see also CSR 19-55 *et seq.*

This appeal contains a mixed burden of proof. The Agency retains the burden of persuasion throughout the case to prove each alleged CSR violation by a preponderance of the evidence. The Agency also retains the burden to prove the degree of discipline in each case was within the range of penalties available to a reasonable administrator. Appellant retains the burden to prove her discrimination, retaliation and whistleblower claims.

B. CSR Violations. The Agency's citation to alleged CSR violations were identical in both cases, although the facts supporting them were different in each case. To avoid repetition, I have organized the following analyses by rule violation, rather than case number.

1. CSR 16-28 A. Neglect of duty or carelessness in performance of duties and responsibilities.

a. BC Drowning [suspension]. On July 18, 2018, Glapion was assigned to make an assessment involving the drowning of a young child, BC, in the family's pool. Glapion determined the dead child was unsupervised while the mother slept. Two children remained. Such circumstances require the case worker, per Volume 7, to create a safety plan, with the input of the family and approval of a supervisor or on-call administrator, to outline the safety of the remaining children. The following constitute Glapion's neglect of duties in the BC case.

(1) Instead of creating a required safety plan,⁴ Glapion allowed the great grandfather to take the children without a written plan.⁵ He, in turn, allowed the children to be around the mother, who had a prior neglect case,⁶ and another relative who had been investigated for sexual abuse of the mother when she was a child. Instead of calling the on-call administrator, Glapion called Sherron Glapion who "was not supposed to be the direct point of contact for that fatality," and is not an administrator. [Sherron Glapion testimony]. Appellant protested she was not allowed to create a safety plan because the homicide detective told her not to interview the children. Even if this is true, it did not justify Appellant's failure to stay in close contact with the on-call administrator or supervisor for every major decision. Moreover, Agency supervisors testified push-back is sometimes required by the Agency against detectives when it comes to child safety – another reason to stay in contact with her supervisors which Appellant failed to do. Hodson testified DPD and the Agency have different functions, but DPD's function to investigate crimes is not more important than the Agency's obligation to investigate child safety. [Hodson rebuttal testimony]. Appellant claimed case workers must "keep children in the home by any means possible."

⁴ All of Glapion's supervisors agreed a written safety plan was required immediately. [Hodson testimony; Ball testimony; Scheuermann testimony; Berry testimony].

⁵ The Deputy Division Director described Glapion's failure to create a safety plan as "very concerning" because there was no safety assessment which much be done every time a case worker is sent into the field for an assessment. [Berry testimony]. Berry and Hodson went to the BC home and processed the case as if no assessment had been done.

⁶ The mother previously allowed another child, a toddler, to wander into traffic while she slept at home, a horribly prescient foreshadowing of the current tragedy.

However, this is not the Agency's or State's standard which is to protect children. Sometimes that mandate requires removal, as was the case here.

(2) Agency policy requires fatalities to be staffed with an on-call administrator which Glapion failed to do. Glapion protested that she did staff the case. However, she did so only after allowing the release of the surviving children⁷ and returning to the office which is not compliant with Agency policy, and could have endangered the remaining children. This violated Volume 7 requirements and division policy.⁸

(3) In addition, on July 23, 2018, Glapion was asked to remove the access restrictions to the file so that the ongoing case worker could review the case and background checks could enter the file. Instead, Glapion sent emails to Deputy Director Josie Berry, and another administrator. Neither had the ability to unrestrict the case. Glapion's co-worker Alancia Gray believed case workers are not permitted to unrestrict a case, and told Glapion only higher-level administrators and supervisors may restrict or unrestrict cases. However, Gray admitted that if Hodson told Glapion to unrestrict the case, Glapion should listen to her supervisor, not Gray. [Gray testimony; cross-exam].

(4) When the remaining children in the BC case were placed with another family member on July 18, division guidelines required a meeting with the family (VOICES meeting) within 48 hours of the children being removed from the home, i.e. by July 20. [Sheuermann testimony]. Instead, Glapion scheduled the VOICES meeting for July 24, then cancelled that meeting, telling her supervisor it did not work for the family. When asked to explain the cancellation, Glapion stopped responding to those texts. Glapion's failure to schedule the VOICES meeting pursuant to Agency guidelines was a neglect of that duty. Her refusal to respond to her supervisor neglected her duty to comply with her supervisor's directives, and neglected her duty to remain in contact with her supervisor in critical cases.

(5) As stated immediately above, Agency policy requires case workers to meet with supervisors to keep them informed about critical cases. Hodson told Glapion to meet with her on July 27 to discuss Hodson's concerns about Glapion's handling of the BC assessment. Glapion replied it was her flex day so that she would not come in. At hearing, Glapion explained she is not required to go to the office on her flex day, absent "reasonable notice." Glapion's testimony indicated she believed her flex days were days off. [see also Exh. 42]. That response violated Agency policy as accepted by Glapion. "You are expected to provide coverage for critical matters such as court hearings or mandated meetings during your flex day." [Exh. 8; see also CSR Appendix 9A at L.; Exh. 42; Sheuermann testimony].

(b) MG case [suspension]. Glapion had a duty to comply with Agency and State regulations, based upon the safety needs of client children. Her unilateral plan, which was, at once unnecessary and based on her desire to "keep the peace" breached her duty to create a plan based on the safety needs of the child.

(c) Maggots case [termination]. When a caller described maggots crawling out from an apartment occupied by young children, Glapion was required by Volume 7 to create a referral in TRAILS as a report of abuse or neglect. [12 COLO. CODE. REGS. § 2509-7 *et seq* (2015)]. This is a fundamental duty for case workers. [See Exh. Z-597; Berry testimony]. Glapion's failure to do so was

⁷ Glapion replied the investigating DPD detective prohibited her from interviewing the surviving children and family, but that is why it is critical for the case worker to contact and remain in contact with the on-call administrator, who is better trained and positioned to push back on child safety matters. The circumstances of the child's drowning were still unknown and it was critical to find out for the protection of the surviving children. [Erin Hall testimony]. The bottom line is Glapion failed to identify an immediate safety concern -the circumstances of death and surviving children - and generate an immediate referral or safety plan. [Id].

⁸ While Sherron Glapion affirmed Appellant's view, that she was required to call her supervisor and not the on-call administrator, that view of the chain-of-command, even if true, was moot, since Glapion did neither before allowing the surviving children to be released.

a neglect of that duty. Glapion's referring the caller to the police department did not satisfy that requirement. [Sheuermann testimony]. Glapion also replied she did generate a referral, but did so as a Word document due to issues recording in TRAILS. Hodson agreed TRAILS had issues early-on, but Hodson directed the lead worker to show Glapion how to generate the TRAILS referral. Notwithstanding the instructions, when the lead worker asked for Glapion's referral she received no response, without which follow-up was delayed and caused the lead worker to seek, and eventually receive, authorization to generate the TRAILS referral five days later, well-after the required deadline, and therefore in violation of CSR 16-28 A.

d. [T.L. abuse case. Termination]. Glapion did not dispute she had a duty to staff abuse calls with the on-call administrator or supervisor. Her receipt of a call on October 18, 2018, concerning injury to the head, ears, and mouth of a three-year-old child, T.L., required such referral. That Glapion ignored the requirement and instead referred the case for a non-urgent Red Team response was a neglect of this duty.

e. [Required training. Termination]. Glapion, along with the rest of her section, was required to attend training on October 23, 2018, or receive permission in advance to miss it. She received an e-mailed notice days before training. [Exh. 3; Exh. 18]. Appellant claimed the meeting was not mandatory, but did not provide evidence to rebut exhibit 18. Appellant also claimed she had two other mandatory state trainings that week and had a busy schedule. Alternatively Glapion stated she advised Hodson the day before the training that she had a family emergency and did not receive adequate notice, which she told Hodson. Glapion neither attended nor notified her supervisor Hodson she could not attend training on October 23, 2018, in violation of CSR 16-28 A.

2. CSR 16-28 F. Failing to comply with the lawful orders of an authorized supervisor or failing to do assigned work which the employee is capable of performing.

a. [BC Drowning Case [suspension]. The same facts that established a violation of CSR 16-28 A., above, also establish a violation of this rule. As the assigned case worker, Glapion was obligated, under Volume 7, to create a safety plan by the end of the following business day, but she failed to do so. [12 COLO. CODE. REGS. § 2509-2 (2015)]. She also failed to staff the case timely with an on-call administrator as required by Agency policy; failed to unrestrict the case file, as required for the ongoing case worker to review the case⁹; failed to contact the social worker at Children's Hospital as part of her general duties of case management [Exh. 3-9; and failed to schedule a timely VOICES meeting.

Glapion violated the first part of this rule, to comply with the lawful orders of an authorized supervisor, by refusing, to meet with Hodson on July 27, 2018 to discuss Hodson's concerns about how Glapion handled the fatality assessment. Glapion claimed she was not obligated to meet with Hodson because it was her "flex day off" which she apparently understood to be paid time off (PTO). [4/18/19 Glapion cross-exam question to Hodson]. That belief did not excuse Glapion's refusal and misconstrued the nature of a flex day, which is a work day and not a day off. [Exh. 8; CSR Appendix 9.A. at L; Exh. 27 pp 2-3; Hodson testimony]. Glapion's belated agreement to meet did not negate her earlier violation, particularly since her early intransigence caused her supervisor to reassign the case. [Hodson testimony; Berry testimony]. Glapion also testified she was not required to follow Hodson's directive to come to the office because she considered Hodson to have falsified information and abused her time off. "I don't just follow... someone... where if I think they're committing time fraud, and I think they're falsifying records, that's abuse of authority. They see themselves as leaders. I see them as dictators." [Glapion testimony]. Even on its face, this argument fails to justify Glapion's rejection of a legitimate directive from her supervisor, in violation of CSR 16-28 F.

⁹ Glapion testified only a supervisor can unrestrict a case. That testimony was refuted by higher-ranking supervisors who were in a better position to know the Agency's policies and practices. [Berry testimony; Ball testimony].

b. [Maggots case. Termination]. When a caller described maggots crawling out from an apartment occupied by young children, Volume 7 required Glapion to create a referral in TRAILS. Her failure to do so was a failure to perform work she was capable of performing. Glapion's referring the caller to the police department did not satisfy that requirement. Glapion also replied she did generate a referral, but did so as a Word document due to issues recording in TRAILS. Hodson agreed TRAILS had issues early-on, but had the lead worker show Glapion how to generate the TRAILS referral. However, when the lead worker asked for Glapion's referral she received no response, which delayed follow-up and caused the lead worker to seek, and eventually receive, authorization to generate the TRAILS referral five days later, well-after the assigned work of meeting required deadlines, and therefore in violation of CSR 16-28 F.

c. [T.L. abuse case. Termination]. Glapion was required to staff abuse calls with the on-call administrator or supervisor. Her receipt of a call on October 18, 2018, concerning injury to the head, ears, and mouth of a three-year-old child, required such referral. That Glapion ignored that requirement and instead referred the case for a non-urgent Red Team response was a failure to perform work she was capable of performing, in violation of CSR 16-28 F.

d. [Required Training. Termination]. Glapion, along with the rest of her section, was required to attend training on October 23, 2018, or receive permission in advance to miss it. Her supervisor, Hodson, sent an emailed notice of the requirement on October 17. [Exh. 3; Exh. 18]. Glapion neither attended nor notified Hodson, in violation of the first part of CSR 16-28 F, failure to comply with the orders of an authorized supervisor. Glapion testified that she did provide "several" advance notices by email on October 17 that she would not attend, but did not provide that correspondence.¹⁰ She then stated she was ill the day before training which would have been October 22, not October 17, that she was being targeted, harassed, treated differently from everyone else without any specificity. These inconsistencies raise credibility questions about Glapion's response.

Glapion also claimed other case workers failed to attend the training yet were not disciplined. Hodson replied by naming the three other case workers who did not attend, and explained two of them were at other mandatory training and they so advised her in advance. The third case worker was out of the country on pre-approved travel to visit family. In contrast, Glapion gave no notice, so the comparison is inapt and fails to justify Glapion's failure to attend training required by her supervisor, in violation of CSR 16-28 F.

3. CSR 16-28 R. Conduct which violates the Career Service Rules... written departmental or agency regulations, policies or rules...

a. Volume 7 (7.104B)

The same description of events, above, regarding the maggots referral, also constitutes a violation of this rule. Volume 7 requires a referral to be generated by the end of the next business day after a call involving abuse or neglect. It is evident the call concerned neglect of children. Glapion's failure to generate a referral violated that requirement which, in turn constitutes a violation of CSR 16-28 R. Glapion claimed referring the caller to DPD was an appropriate response because the caller was unable to provide names and other contact information for her neighbors. The Agency rebutted that claim. All supervisors testified that when a caller calls in an abuse or neglect even with no demographic information, referral must be made, and at least ask a supervisor for direction and assistance. [Hodson testimony; Scheuermann testimony; Berry

¹⁰ Despite offering over 500 pages of exhibits, those emails, which would have vindicated her defense to this Agency claim, were absent.

testimony]. Telling the caller to have DPD conduct a welfare check does not substitute for the obligation to make a referral. [VanCleave testimony].

Glapion's failure to staff the T.L. abuse case with an on-call administrator or supervisor violated Volume 7 referral requirements, [Sheuermann testimony], and Agency policy. [Landrum testimony].¹¹ This is a basic duty for case workers, since they cannot make dispositions of abuse cases without such referrals. [Id.]. In the BC fatality, Glapion claimed it was her first fatality and she was under-trained. [see also Gray testimony; Edwards testimony]. Berry responded every case worker has their first fatality at some point, and no experienced case-worker is required on site because the case worker is expected to remain in close communication with a supervisor for every decision made while on the assessment, something Glapion failed to do in violation of Agency policy. [Berry testimony]. Moreover, Glapion's assignment as a case worker on the Emergency Response Team, inherently placed her on notice that she would be dispatched to emergencies.

b. VOICES Policy.

Division "Policies and Procedures" require a VOICES meeting to be scheduled within 48 hours of a child being placed or removed from the home. [Exh. B-20, B-22; Ball cross-exam]. In the B.C. drowning case, the surviving children were placed with another family member on July 18, 2018, which triggered the guideline for a VOICES meeting by July 20. Glapion scheduled, then cancelled a VOICES meeting for July 24, rescheduling it to August 1, 2018, in violation of this policy, and was, therefore, in violation of CSR 16-28 R.

4. CSR 16-28 T. Conduct which is or could foreseeably

- 1. Be prejudicial to the good order and effectiveness of the department or agency;**
- 2. Bring disrepute on or compromises the integrity of the City; or**
- 3. Be unbecoming of a City employee.**

With respect to the maggots case, Glapion's failure to generate a referral as required and even after being instructed how to do so, delayed that requirement until well-after the required response time. Such delay negatively impacted the effectiveness of the agency, and could foreseeably have subjected the Agency to sanctions and lawsuits in violation of CSR 16-28 T. 1. and 2. Glapion's release of the surviving children without a safety plan or inquiry in the BC drowning case exposed the Agency to sanctions and the City to lawsuits for placing the children at risk, in violation of CSR 16-28 T. [Sheuermann testimony].

In the BC fatality case, after Glapion failed to generate a safety plan, Berry took Hodson back to the home and started an assessment from the beginning as if no assessment had been done. [Berry testimony]. Since supervisors were compelled to do the work that is normally done by the case worker, this was prejudicial to the good order and effectiveness of the department, in violation of CSR 16-28 T.

C. Appellant Claims

1. Discrimination – Race and color

A discrimination claim is established by demonstrating (1) the employee's membership in a protected class; (2) an adverse employment action; and (3) evidence supporting a causal

¹¹ It is noteworthy that Landrum, who was a witness for Glapion, and who accompanied Glapion to the BC drowning, affirmed Agency policy to "keep in constant communication with our team members that are in the office" when the situation called for emergency placement of children, and that removal of children requires an on-call administrator, contrary to Glapion's actions. Also, contrary to Glapion's assertion that call-takers receive little or no training, Landrum testified they receive 40 hours per year, that online training is available, and all attend off-site training.

relationship between the protected class and the adverse action. [In re Lombard-Hunt, CSA 75-07, 7 (3/3/08), *citing In re Ortega*, CSA 81-06, 14 (4/11/07)]. Appellant identified her protected race and color classes as “Black,” she was terminated, an evident adverse action, and she claimed three similarly-situated white co-workers were not disciplined for failing to attend a training. Accordingly, Appellant stated a prima facie case of race and color discrimination.

Tammy Davis is the Office of Human Resources Senior Business Partner for the Agency’s Child Welfare Section. She is African American. She testified Glapion complained to her that she was being targeted and overly-scrutinized in the BC drowning case, but Glapion acknowledged she did not follow procedure when she failed to engage an on-call administrator. [Davis testimony]. No causal connection between Glapion’s protected class and the Agency’s discipline was established.

Next, Alancia Gray testified people of color are underrepresented in the Agency as not one person of color is an administrator; however, she did not know how the supervisors self-identify. [Gray testimony]. Glapion provided no statistical information or other testimony to prove this disparate impact claim. Gray also testified she had conflicts with Hodson and VanCleave, who she found abrasive, but provided no material evidence of discrimination by Hodson against her or against Glapion. Moreover, Ball testified VanCleave was admonished about her abrasive style, she acknowledged her inappropriate behavior, and subsequently ameliorated her tone. [Ball cross-exam]. In addition, Edwards, who testified for Glapion, stated she is Black and was appointed to the ERT by Hodson. [Edwards testimony]. Finally, supervisors and the OHR representative unanimously found Glapion unwilling and even hostile to feedback to address her own hostility. [Ball testimony; Hodson testimony; Davis testimony; Berry testimony].¹² Their testimony remained un rebutted and provided a legitimate business reason for the Agency’s adverse actions.

Glapion claimed VanCleave, who is White, was promoted by Hodson, who is White, over her to Team Leader of the ERT although VanCleave was hostile toward co-workers. [Shiree Edwards testimony]. Edwards, who is Black, acknowledged Hodson, who is white, hired her. Edwards also testified Hodson stated Van Cleave would need less training and that she [Edwards] did not know the protected class of the other candidates.

Dawn Landrum, also testified for Glapion.¹³ She is African-American, Multi-Racial. [Landrum testimony]. Hodson hired her. [*Id*]. Although she accompanied Glapion to the fatality, she received no discipline from Hodson. She testified she did not experience discrimination by Hodson.

Hodson testified that the three similarly-situated white co-workers who were not disciplined for failing to attend training either informed her before-hand, or were doing other required training and were excused. Appellant did not seek permission, nor have an excuse, and accordingly there was no disparate treatment established at hearing.

2. Retaliation

A retaliation claim requires evidence of: (1) a protected activity; (2) an Agency action that a reasonable employee would have found materially adverse, meaning it might well have dissuaded a reasonable employee from engaging in that protected activity; and (3) a causal connection between the protected activity and the adverse action. [See In re Koonce, CSB 36-13, 2 (10/16/14); Burlington N. & Santa Fe Ry. v. White, 548 U.S. 53 (2006).

¹² Sherron Glapion testified favorably toward the Appellant, but was not in her chain of command. [Ball cross-exam].

¹³ Ms. Landrum testified by telephone .

Glapion's protected actions included an e-mail containing complaints of "false allegations/harassment/differential treatment," sent on October 25, 2018; and a complaint to the City's Fraud Hotline, administered by Lighthouse Services, on August 15, and October 27, 2018 alleging Hodson's engaged in official misconduct by fraudulently reporting time and attendance, and a violating Executive Order 142. [Exh. L].

Glapion claimed the Agency retaliated against her by serving her with a letter in contemplation of discipline while she was serving her 15-day suspension. She claimed the letter was a deprivation of a property interest in employment. A contemplation letter is not a materially adverse action.¹⁴ Moreover, a contemplation of discipline does not meet the "material adversity" requirement of a retaliation claim. Belgasem v. Water Pk Techs., Inc., 457 S. Supp. 2nd 1205, 1215 (D. Colo. 2006).

Gray testified she feared retaliation for testifying at hearing "based on past events with Hodson and VanCleave" [Gray testimony]. This evidence is too vague to establish a retaliatory motive for the Agency's disciplinary actions against Appellant.

Glapion also claimed she was not promoted to the Lead Worker position for the ERT in retaliation for her report of Hodson's alleged misuse of leave. As analyzed below, Glapion's claim fails as she failed to establish wrongdoing by Hodson while the Agency established Glapion's wrongdoing.

3. Whistleblower Retaliation.

A claim under the Whistleblower Protection Ordinance is raised by allegations that: (1) a supervisor imposed or threatened to impose; (2) an adverse employment action upon an employee; (3) on account of the employee's disclosure of information about any official misconduct to any person. [In re Wehmhoefer, CSA 02-08, 4 (2/14/08); D.R.M.C. § 2-106 et. seq.] Official misconduct means any act or omission by any officer or employee that constitutes (1) a violation of law, (2) a violation of any applicable rule, regulation or executive order, (3) a violation of the code of ethics or any other applicable ethical rules and standards, (4) the misuse, misallocation, mismanagement or waste of any city funds or other city assets, or (5) an abuse of official authority. [Wehmhoefer].

Glapion reported allegedly fraudulent conduct by Hodson for revising Glapion's TRAILS notes in the BC drowning case, specifically, how long the child was in the water. The Agency rebutted the presumption that such conduct was fraudulent. Rebecca Ball, an administrator at the Agency, testified without rebuttal that it is appropriate for supervisors to make corrections to their subordinates' TRAILS notes, and Glapion's notes required corrections. [Ball testimony; see also Sheuermann testimony].

Glapion also claimed Hodson engaged in official misconduct by taking excessive PTO and failing to report it. She complained to Josie Berry who investigated the Hodson's timekeeping and found no concern. Berry also testified Rebecca Ball looked into the matter and found no concern. [Berry testimony]. Hodson testified, without rebuttal, that Glapion did not complain about her use of PTO until after Glapion's disciplinary meeting, when Glapion filed her whistleblower complaint. A protected activity engaged in after an adverse action fails to establish a temporal causation link to a whistleblower claim.

Edwards testified Hodson had access to Josie Berry's logon information, and believed it was a breach of security and against Agency policy, but did not cite any particular policy, rule or order.

¹⁴ As distinguished from whistleblower retaliation where the threat of an adverse action constitutes an adverse action. See DRMC § 2-100 et seq.

Edwards was not in a management position to make such an assessment. She also testified she believed Hodson misused PTO, but did not know how much banked PTO Hodson had, nor did she know how much PTO Hodson used. [Edwards cross-exam].

Glapion also claimed she was not promoted to ERT lead worker in retaliation for her report of Hodson's misuse of leave (PTO). She failed to provide any independent evidence of it.¹⁵

Appellant's first Lighthouse report was submitted on August 15, 2018, and involved allegations of time fraud and abuse. [Exh. L-1]. Josie Berry and Rebecca Hall investigated Appellant's claims. They found no substantiated basis for her claims. [Berry rebuttal testimony]. The complaints were provided to Division Director Mimi Scheuermann, who did not sustain them, although Scheuermann said some feedback was provided to Hodson to be more available to assist the After-hours team. [Scheuermann testimony]. Despite the close temporal proximity between Appellant's first Lighthouse report and the Agency's issuance of a contemplation of discipline, a naked assertion of official misconduct, without more, fails to establish a whistleblower claim.

Appellant's second Lighthouse report was submitted on October 27, three days before the Contemplation of Discipline meeting in appeal number 73-18. [Exh. 1; Exh. L]. That complaint restated the claims in the first report, and included complaints that Hodson "fraudulently" logged into the TRAILS system under a co-worker's login information. Scheuermann countered such activity is not unusual or wrongful, stating supervisors often login under subordinates' credentials in order to correct entries. Scheuermann checked Glapion's specific login allegations and found no inaccurate or false information with the TRAILS entries. Deputy Division Director Josefe (Josie) Berry testified she offered her login information to Hodson to use so that Hodson could continue to perform her duties while she was in the midst of a name change which temporarily disabled her access. In short, no official misconduct was established. Moreover, Glapion filed her complaint about Hodson's use of another's login information only after being served with a letter in contemplation of discipline, obviating any temporal connection between her complaint and the adverse actions against her. Consequently, Glapion failed to prove her whistleblower retaliation claims.

Finally, Glapion claimed she was removed from the BC case in retaliation for her report of misconduct by Hodson. However, Glapion submitted her complaint about Hodson's PTO use two weeks after Hodson removed her from the BC drowning case, again obviating temporal causation.

4. Additional Appellant Claims. In appeal #76-18, Glapion sought the following relief.

Injunctive relief, including, but not limited to, back pay (with interest and Afterhours pay); expunging of the records of any retaliatory adverse actions; a written apology from Denver Human Services Executive Director; restoration of all personal time off (PTO) accounting for all sick leave and time taken because of encountered discrimination/retaliation mental/emotional anguish, loss of consortium; all associated printing, mailing, mileage costs; non-pecuniary and past/future pecuniary compensatory damages; and discipline of RMOs.

Those requested remedies, except for back pay, fall outside the authority of the Hearing Office and are, therefore, denied. Back pay, while within the authority of the Hearing Officer, is denied, where the Agency claims were proven, no mitigation established (as discussed below), and none of Appellant's affirmative defenses were proven

5. Conclusion

In summary, Glapion was suspended and dismissed because she did not perform her duties, refused to accept feedback, and showed no interest in amending her performance to conform to state and Agency requirements and to supervisors' legitimate directives. In her discrimination claims, Glapion proved no causal link between her protected characteristics or protected actions and the Agency's disciplinary actions. Disparate treatment, while an impression of Appellant and her witnesses, was not established by specific evidence. Glapion's also failed to prove her retaliation and whistleblower claims. Even if Glapion had proven her claims, the Agency could well have reached the same conclusions about Glapion's violations even in the absence of the alleged protected conduct,

V. DEGREE OF DISCIPLINE

Hodson addressed the most significant reason for the Agency's decision dismiss Glapion. "What do you think the biggest concerns you had with Meleaha's performance are?" Hodson testified "the ability to take feedback. The job we do is extremely difficult. Caseworkers often make mistakes who are learning new skills at this job, but the key to improving your case work is being able to meet with your supervisor to discuss concerns, and then make improvements to your work and growth." [Hodson testimony]. Hodson's response was justified not only by Glapion's refusal and failure to meet with her supervisor, but also because she deemed them to be dictators; she failed to keep supervisors apprised of the progress of the BC drowning assessment, and because she refused to attend mandatory training. The multitude of Glapion's refusals to comply with orders, rules and procedures justified Hodson's response that she "absolutely" had trust issues with Glapion's willingness and ability to collect information relevant to the safety of the surviving children in the BC investigation.

Although Glapion called VanCleave as her witness, when Glapion asked VanCleave if she told Hodson that she (Glapion) was upset about performing her work, VanCleave did not hesitate. "My perception is that you have been upset about performing your job since the day that I joined the team three years ago, and that you were unhappy with every supervisor. You made every shift difficult. You were uncooperative. You were difficult to be around, and it applied to every supervisor we had." Glapion complained she was singled out for "supervisions" with her supervisor Hodson, but VanCleave negated the claim with her response that she and the entire ERT had mandatory weekly supervisions. [VanCleave testimony; see also Hodson testimony].

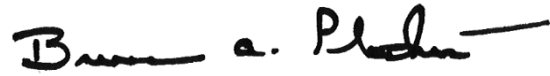
The preponderance of the evidence disclosed that Glapion's entire leadership team extensively attempted to work with Glapion to improve her performance, but Glapion rejected their efforts. She refused to accept even a modicum of responsibility for her wrongdoing and made the work environment difficult and stressful for co-workers and supervisors. When Glapion asked why her supervisors did not place her on a Performance Improvement Plan since they were concerned about her performance, Ball replied the management team discussed it, but a PIP requires buy-in from the employee and willingness to change. Because Glapion believed she did nothing wrong "it's a challenge to have them write... what they're planning to change in their practice if they don't believe that there is any concern." [Ball cross-exam]. Glapion's responses during her hearing indicate Ball's concern was justified. Glapion did not accept responsibility for any wrongdoing or performance deficiency. Even when Glapion acknowledged she failed to take actions required by Volume 7 and Agency policies, she always justified the failures and seemed not to recognize, or was unwilling to recognize, a connection between the requirements and her failure to meet them. Her responses went beyond mere disagreement. Her steadfast refusal to accept feedback made it unlikely she would be receptive to meaningful change in the future. In consequence of the foregoing, the Agency's elections to assess a suspension in CSA 73-

18, and then, taking the suspension into account, a dismissal in 80-18, were within the range of alternatives available to a reasonable administrator, and conformed to the purposes of discipline under CSR 16-41 and CSR 16-42. In re Economakos, CSB 28-13A (3/24/14), see also Adkins v. Division of Youth Services, Dept. of Institutions, 720 P.2d 626, 628 (Colo.App.,1986); CSR 16-41; CSR 16-42.

VI. ORDER

The Agency's suspension of the Appellant, effective on November 5., 2018, is AFFIRMED. The Agency's dismissal of Appellant, effective on December 7, 2018, is AFFIRMED. Appellant's retaliation, whistleblower retaliation, and race and color discrimination claims are not sustained.

DONE July 12, 2019.



Bruce Plotkin
Career Service Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board for review of this final order, in accordance with the requirements and limitations of CSR § 21-20 et seq., within fourteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the certificate of delivery, below. See Career Service Rules at www.denvergov.org/csa. All petitions for review must be filed with the:

Career Service Board

c/o OHR Executive Director's Office
201 W. Colfax Avenue, Dept. 412, 4th Floor
Denver, CO 80202
FAX: 720-913-5720
EMAIL: CareerServiceBoardAppeals@denvergov.org

Career Service Hearing Office

201 W. Colfax, Dept. 412, 1st Floor
Denver, CO 80202
FAX: 720-913-5995
EMAIL: CSAHearings@denvergov.org.

AND opposing parties or their representatives, if any.