

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**

Appeal No. 144-04

ORDER DISMISSING APPEAL

IN THE MATTER OF THE APPEAL OF:

SHIRLEY MARTINEZ, Appellant,

vs.

Department of Safety, Technology Services - OSI, Agency,
and the City and County of Denver, a municipal corporation.

On June 7, 2005, the Agency filed its Motion to Dismiss. A response was due from the Appellant on or before June 20, 2005. On June 10, the Appellant filed her "Amended Prehearing Statement" without addressing the Agency's Motion to Dismiss. Therefore, having considered the Agency's Motion to Dismiss, the Amended Prehearing Statement, insofar as it addresses remedies sought by the Appellant, and being otherwise informed in this matter, the Hearings Officer finds and orders as follows.

The Agency seeks dismissal of this appeal for the Appellant's failure to state a claim for which the Hearings Officer has jurisdiction to grant relief. The appeal seeks:

- (1) "immediate transfer to another City agency;"
- (2) "PEPR raised to an Exceeds due to overlooked accomplishments"
- (3) Violence to stop.

The Appellant's Amended Prehearing Statement additionally requested the following relief: "elimination of harassment, retaliation, and hostile work environment. Transfer to other department at equal or higher salary. Monetary settlement."

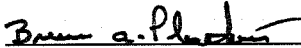
The Agency is correct in its averment that the Hearings Officer is without jurisdiction to grant any of the relief requested in the appeal. The Appellant's Amended Prehearing Statement's request for a transfer with equal or higher salary, or a monetary settlement, are equally outside of the Hearings Officer's jurisdiction. Because the Appellant stated she seeks elimination of harassment, retaliation, and hostile work environment, under CSR 19-10 f), she must meet the requirements for a *prima facie* case for those claims.

To establish a prima facie case of hostile work environment harassment, the Appellant must show that under the totality of the circumstances (1) the harassment was pervasive or severe enough to alter the terms, conditions, or privilege of employment, and (2) the harassment was racial or stemmed from an unlawful animus. A showing of pervasiveness requires more than a few isolated incidents of racial enmity. A plaintiff must produce evidence to show that the workplace was permeated with discriminatory intimidation, ridicule, and insult sufficiently severe or pervasive to alter the conditions of his employment and create an abusive working environment. Bloomer v. UPS, 94 Fed. Appx. 820 (10th Cir., 2004). None of the allegations in the appeal amount to a showing that the workplace was permeated with discriminatory intimidation, ridicule, and insult sufficient to alter the conditions of the Appellant's employment. These averments include "telling me to go back to your hole;" "embarrassed me in front of coworkers;" "gave my PC replacement to another OSI employee;" "excluded my role and responsibility from the official introduction to our new Manager of Safety;" and other comments and actions perceived as negative, such as "Mary Truebe's demeanor is not kind toward me," and being followed. These averments fail to meet the Bloomer test for hostile work environment/harassment.

A prima facie case of retaliation] is made by showing (1) protected employee action, (2) adverse action by an employer either after or contemporaneous with the employee's protected action, and (3) a causal connection between the employee's action and the employer's adverse action. Poe v. Shari's Mgmt. Corp., 1999 U.S. App. LEXIS 17905 (10th Cir., 1999). The Appellant's averments fail to establish, even in a light most favorable to her, a causal connection between the averments and her stated whistle-blowing actions, nor are times established for the described protected actions.

For these reasons, the Hearings Officer must conclude the Appellant has failed to state any claim for which the Hearings Officer has jurisdiction to grant the relief sought. Therefore this case is DISMISSED WITH PREJUDICE.

DONE this 21st day of June, 2005.


Bruce A. Plotkin
Hearings Officer
Career Service Board