

ORDER

IN THE MATTER OF THE APPEAL OF:

GINA DUPREE,
Appellant

vs.

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

The Agency moved to dismiss this appeal on July 11, 2007. Appellant responded to the motion to dismiss by filing her prehearing statement.

This is an appeal of the disposition of a complaint of discrimination under CSR § 19-10 B.1. The pro se appellant alleges that her failure to pass employment probation was based on disability discrimination. The Agency moves for dismissal on two grounds: 1) the appeal is untimely and 2) the appeal does not state a claim upon which relief can be granted.

1. Timeliness of Appeal

A probationary employee may appeal “the disposition of [a formal complaint of discrimination.] CSR § 19-10 B.1. The Agency’s disposition of appellant’s formal complaint is dated June 22, 2007. Thus, the July 2, 2007 appeal that followed is timely under § 19-20 A.1.

The Agency argues that the fifteen days to file an appeal should run from the date of the underlying action. That interpretation would restrict the amount of time within which an employee could obtain an agency’s investigation and disposition of any formal complaint of jurisdiction, and is inconsistent with the plain meaning of the language used in the rule. “Appeal of Complaint or Grievance: An employee may file an appeal *following a formal complaint or grievance* [of] 1. Any action of any supervisor . . . resulting in alleged discrimination . . . if, *after filing a formal complaint as required by Rule 15 CODE OF CONDUCT, the disposition of such complaint* has not resulting in stopping or

otherwise addressing the alleged discrimination . . ." [emphasis added.] § 19-10 B. 1. Therefore, I decline to adopt this reading of the rule.

2. Failure to State a Claim

In an agency motion to dismiss, statements in the appeal must be viewed in the light most favorable to the appellant, all appellant's assertions of material facts must be accepted as true, and the motion to dismiss must be denied unless it appears beyond doubt that the appellant cannot prove that the facts as she alleges them would entitle her to relief. In re Van Dyck, CSA 143-05, 1(2/16/06), citing Dorman v. Petrol Aspen, Inc., 914 P.2d 909, 911 (Colo. 1996).

Intentional discrimination under CSR § 15-101 is proven by evidence of 1) membership in a protected class, 2) an adverse employment action, and 3) evidence that supports an inference that discrimination caused the adverse employment action. In re Johnson, CSA 135-05, 3(3/10/06).

The appeal alleges that Appellant was terminated during her probation while she was on doctor-ordered bed rest after complications in her pregnancy. Appellant states her performance had been good, and that there was no other reason for her termination other than her disability as a result of her pregnancy. Appellant asked for an accommodation in the form of an extension of her probation to allow her to make up the days missed during her bed rest, and her supervisor informed her she would work with her to obtain an extension. Shortly thereafter, Appellant was terminated. Thus, Appellant alleges that the proximity in time between her disability-caused absences and the adverse action creates an inference of discrimination.

In the light most favorable to Appellant, the appeal raises factual issues as to whether Appellant's disability caused the termination of her probation.

Order

The Agency's motion to dismiss is denied.

Done this 1st day of August, 2007.

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Valerie McNaughton
Career Service Hearing Officer

I hereby certify that I have forwarded a copy of the as indicated below:

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