

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 55-07

ORDER

IN THE MATTER OF THE APPEAL OF:

LAVELLA M. W. HARRISON, Appellant,

vs.

TECHNOLOGY SERVICES, GEOSPATIAL APPLICATION SERVICES,
and the City and County of Denver, a municipal corporation, Agency.

This matter is presented for determination on an Order to Show Cause as to the existence of jurisdiction over this direct appeal of involuntary investigatory leave. The appeal asserts jurisdiction under the Whistleblower Protection Ordinance, DRMC § 2-106 et. seq., and retaliation under CSR § 15-106 et. seq. Appellant filed her response to the order on Oct. 1, 2007.

This appeal was filed on Aug. 30, 2007, after the Aug. 13th passage of the ordinance, but before the Career Service Rules were amended on Oct. 2nd to conform some provisions in CSR Rules 5, 16 and 19 to the new ordinance.

The whistleblower ordinance sets forth "a sufficient rule by means of which the right given may be enjoyed and protected" without further implementing agency interpretation. See 4 A.L.R.2d 744, Art. 1a; and 11 Am.Jur. 694, Constitutional Law, § 76. The clear language of the ordinance does not render its enforcement dependent on any agency action. In fact, such a requirement would lead to inconsistent enforcement not intended by the ordinance, since it protects employees covered by two separate personnel systems as well as other employees. D.R.M.C. § 2-109(c). In addition, the thirty-day limit for filing appeals under the ordinance could deprive an employee of a remedy if he suffers retaliation while awaiting enactment of the conforming Career Service Rules. Therefore, it is determined that the Hearing Office has jurisdiction over this whistleblower protection appeal.

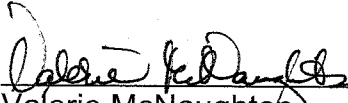
The appeal also alleges retaliation under CSR § 19-10 B. 1. based on the same factual grounds as that supporting the whistleblower appeal. While a retaliation appeal had required the filing of a formal internal complaint under Rule 15 at the time of the incident in question, the rules have since been amended to eliminate the need for such a complaint when there is a right to a direct appeal, as there is in this case. CSR § 19-10 A.1., effective Oct. 2, 2007. Under these circumstances, a prerequisite internal

complaint would be inconsistent with the clear intention of the Whistleblower Protection Ordinance.

Order

The order to show cause is discharged. A Notice of Hearing and Prehearing Order issued today governs the procedures applicable to this appeal.

Dated this 5th day of October, 2007.



Valerie McNaughton
Career Service Hearing Officer

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

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