

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

Appeal No. 21-02

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**ORDER OF DISMISSAL**

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IN THE MATTER OF THE APPEAL OF:

**JOYCE MONTABON**, Appellant,

Agency: DEPARTMENT OF REVENUE, TREASURY DIVISION, and  
THE CITY AND COUNTY OF DENVER, a municipal corporation.

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This Order concerns an appeal filed by Appellant with the Career Service Authority on January 25, 2002. Appellant makes the following allegations in her appeal:

- 1) Sex discrimination. Appellant alleges that through ongoing temporary assignments with no adjustment in pay, the Agency has engaged in violations of equal pay in that she has not been provided the same resources and pay as other male employees assigned similar work. Corresponding CSR rule cited in appeal: CSR 7-20.
- 3) Harassment and discrimination. Appellant alleges that comments and treatment by her supervisors apparently arising from her dispute over an ongoing duty assignment, and from complications in her worker's compensation case, constitute "harassment." Corresponding CSR rule cited in appeal: CSR 15-100, 15-102.
- 4) Workplace violence. Appellant cites CSR 15-110, prohibiting violence in the workplace, but no factual basis supporting this allegation appears in the appeal.
- 5) Discrimination based on disability. Appellant alleges sick leave was inappropriately deducted from her leave bank, despite that she was directed by physicians to refrain from working on the occasions in question because of her work-relate injury. Corresponding CSR rule cited in the appeal: none.

The appeal form further indicates that the appeal includes "Additional issues associated with Appeal No. 357-01," referring to an appeal she filed on October 31, 2001. In that appeal, Appellant alleged discrimination based on gender and disability, and sexual harassment in addition to a classification decision and demotion. Hearing Officer Michael Lassota dismissed that case on July 9, 2002.

On August 28, 2002 Hearing Officer Lassota issued an Order to Show Cause why the present matter should not be dismissed for lack of jurisdiction. Specifically, the Show-Cause Order addressed the following three concerns:

- 1) Issues in this appeal appear duplicative of those in Appeal No. 357-01, raising a question of timeliness since notice prior to October 31, 2002 is implied by the filing of the original appeal.
- 2) No indication of resolution of the issue of an audit request (*see*, CSR 7-20).
- 3) No articulation of a factual basis in support of Appellant's allegations of violence in the workplace.

Appellant timely responded to the Show-Cause Order on September 6, 2002 (hereinafter "Response").<sup>1</sup> The Agency timely responded to the Show-Cause Order on September 12, 2002. Having reviewed Appellant's and the Agency's Responses, and being fully advised in the premises, the hearing officer now finds and orders as follows:

### DISCUSSION AND CONCLUSIONS

#### **1. Issues duplicative of Appellant's prior appeal in 357-01.**

Because Hearing Officer Lassota dismissed Appeal No. 357-01, any facts addressed in that appeal as of its filing date on October 31, 2001 are *res judicata* and will not be re-considered in this case. However, Appellant responds that certain of the actions complained of in this case occurred after the filing of her appeal in 357-01. The hearing officer is reluctant to consider additional actions by the Agency from October 31, 2001 to July 9, 2002 (the date Hearing Officer Lassota dismissed the case) as *res judicata* without some documentation that the parties expressly agreed to allow such subsequent issues to be raised as part of that appeal. The hearing officer therefore finds that any events occurring after October 31, 2001 are not duplicative of the prior appeal and will not be dismissed solely on that basis.

It is important to bear in mind that actions allegedly constituting an ongoing pattern of harassment or discrimination may, by their very nature, take place over an indefinite period of time. Thus, actions tending to illustrate a pattern may be included in the consideration of such a complaint by the appropriate reviewing body. However, because Appellant has not exhausted the required administrative remedies respecting harassment and discrimination, the Hearings Office is not the appropriate reviewing body at this time.

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<sup>1</sup> Appellant's response included a nineteen-page Affidavit by Appellant recounting the history of events beginning in February of 2000, and nine additional pages of attachments.

**2. Appellant has failed to show an exhaustion of remedies under CSR 15-100, et seq. necessary to give rise to Hearings Office jurisdiction over a claim of "harassment."**

Hearings Office jurisdiction over available remedies is very limited. CSR 19-27, Decision of the Hearings Officer, states:

The Hearings Officer shall issue a decision in writing *affirming, modifying or reversing* the action, which gave rise to the appeal. This decision shall contain findings on each issue and shall be binding on all parties.

(Emphasis added.)

Historically, appeals alleging discrimination against an agency, acting in its official capacity as an employer, have been permitted under CSR 19-10 c). In these appeals, there is always an underlying agency action (i.e. failure to hire or promote, termination, disqualification) that is the basis for the alleged discrimination. It is this underlying action that can be "affirmed, modified or reversed" under CSR 19-27 (*above*). See, e.g., In the Matter of Robert Stone, Appeal No. 12-01 (Decision entered 4/12/01) (employee claimed disability discrimination in agency's disqualification of employee); In the Matter of Anthony L. Gallegos, Appeal No. 99-98 (Decision entered 10/19/99) (employee alleged racial discrimination in agency's failure to promote him). In the absence of some such underlying agency action, CSR 19-10 c) does not provide the Hearings Office with the authority to hear and resolve disputes between employees, whether or not those disputes contain overtones of discrimination, even when a supervisor is involved.

The Career Service Rules were recently amended to add acts of "harassment and discrimination" under CSR 15-100 *et seq.* and CSR 19-10 f). These regulations create Hearings Office jurisdiction over a cause of action that is *distinct* from discrimination appeals under 19-10 c). They apparently do not require the underlying agency action necessary in appeals under CSR 19-10 c). However, there are administrative remedies that must first be sought before an employee can perfect an appeal alleging "harassment and discrimination" to the Hearings Office under CSR 19-10 f). Those requirements are set forth under the new Career Service Rules. CSR 15-103 requires the *employee* to:

- A. make it clear that such behavior is offensive to them and request that such behavior be discontinued, *and*
- B. report such conduct to their supervisor...*If the complaint involves an employee's supervisor... the employee may go to another supervisor, to his or her agency human resource representative or directly to the Career Service Authority Employee Relations Section.*

(Emphasis added.) Thus, such an action must be initiated by the *employee* through the request for investigation as set forth above.<sup>2</sup> The alternative options of requesting an investigation by the

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<sup>2</sup> The onus of initiation lies with the employee here, not the Career Service as Appellant suggests in her Response.

human resources representative or the Employee Relations Section clearly contemplate a scenario where, as in this case, the supervisors are participants in the acts allegedly constituting "harassment and discrimination." The Hearings Office will not consider informally "complaining" to a supervisor who is in any way complicit in the acts allegedly constituting "harassment and discrimination" as an exhaustion of the required administrative remedy.

In addition, once an employee has initiated a complaint under CSR 103, the agency, the human resources representative or the Employee Relations Section is then mandated under CSR 15-104 to:

...immediately undertake effective, thorough, and objective steps concerning the allegation of harassment or discrimination. If an investigation is deemed necessary, it will be completed and a determination regarding alleged harassment will be made and communicated to the employee as soon as practicable...

Further, CSR Rule 15-105 places the burden of taking remedial action on the agency only after the investigation leads to a finding of unlawful discrimination. That rule states:

If it is determined that unlawful harassment or discrimination has occurred, the *agency* will take effective remedial action commensurate with the severity of the offense. Appropriate action will be taken to deter any future harassment.

(Emphasis added.) Only when this process is exhausted does the matter then become ripe for an appeal to the Hearings Office under CSR 19-10, which states as follows in relevant part:

- f) Harassment and Discrimination: *The disposition by a supervisor or other appropriate official of a complaint of harassment or discrimination may be appealed if such disposition has not resulted in stopping the prohibited behavior.*<sup>3</sup>

(Emphasis added.) In Paragraphs 9 and 10 of her Affidavit, Appellant provides a lengthy recitation of actions she alleges she took in order to fulfill the affirmative steps required of her to exhaust the remedies set forth in CSR 15-100 *et seq.* (above). However, Appellant's entire recitation addresses how she sought medical treatment for her work-related injury, and how Denver Health failed to inform her of her rights concerning her work-related injury. This has nothing to do with satisfying the requirements of CSR 15-100, *et seq.* Appellant further sets forth, in Paragraphs 11 forward, a detailed recitation of events occurring in May 2001, through around the time she prepared the Affidavit. While Appellant states that she has complained numerous times to numerous authorities, up to and including the Mayor, the recitation evidences no request for an investigation of harassment and discrimination by a human resources representative or the Employee Relations Section, as is required of Appellant in CSR 15-103 (above).

<sup>3</sup> In light of the limits on the hearing officer's remedial powers under CSR 19-27 (above), it is not clear from CSR 19-10 f), and the corresponding regulations governing the administrative process, what potential remedy might be sought on such an appeal. However, because the hearing officer lacks jurisdiction over Appellant's claims of harassment and discrimination, it is unnecessary to reach that issue at this time.

Finally, Appellant describes in detail her activities in pursuit of a worker's compensation claim in the above- referenced paragraphs. The Hearings Office has no jurisdiction over worker's compensation claims. It only has jurisdiction over actions that a) allegedly violate the Career Service Rules, b) can be affirmed, reversed or modified by the Hearings Office, and c) have not been expressly limited or eliminated from Hearings Office jurisdiction by the rules governing jurisdiction.

In essence, Appellant has not shown she has made a request for an investigation by the designated entities as required under CSR 103, or that any of those entities has undertaken the investigation as under CSR 15-104. She has not shown any disposition respecting such a request under CSR 15-105. Such a disposition is required to establish Hearings Office jurisdiction under 19-10 f). Therefore, this claim is not ripe for an appeal in this tribunal.

### **3. Hearings Office Jurisdiction over Appellant's claim of disability discrimination.**

Appellant alleges that she is being discriminated against on the basis of her disability because the Agency has deducted sick leave for absences she alleges were caused by her work-related injury.

Under the Career Service Rules, jurisdiction over a claim may be achieved through two main conduits. First, jurisdiction over the alleged violation is specified under CSR 19-10 governing appeals. Second, where CSR 19-10 is silent respecting a topic the employee alleges is a violation of a Career Service Rule, such a violation may be grieved under CSR 18-12, and then appealed under CSR 19-10 d), permitting the appeal of grievances. Jurisdiction over issues raised in grievances may be either a) violations over which the Hearings Office has been specifically granted jurisdiction through the grievance process,<sup>4</sup> or b) allegations of violations of the Career Service Rules which address issues not *expressly excluded* from Hearings office jurisdiction.<sup>5</sup>

Appellant's allegation may constitute a violation of CSR 11-30, governing sick leave. There is no express grant of jurisdiction over the Agency's election to deduct time from Appellant's sick leave under CSR 19-10. Therefore, it cannot be directly appealed under CSR 19-10. However, there is also no express *prohibition* against jurisdiction over this issue. Therefore, the issue of docking Appellant's sick-leave bank might have constituted an underlying CSR violation forming the basis of a *grievance* under CSR 18-12, if it had been properly filed as such.

CSR 18-12 1. requires the following:

Form. The grievance shall be presented in writing and shall be dated. It shall contain the name and address of the grievant, the action which is the subject of the grievance, the date of the action, and a statement of the remedy sought. The grievance form shall have a certificate of mailing or certificate of hand-delivery which indicates the date the grievance was placed in the mail or was hand-delivered to the immediate supervisor.

<sup>4</sup> See, e.g. CSR 16-40 C. expressly permitting the grievance and appeal of written reprimands.

<sup>5</sup> Cf., CSR 16-40 C. expressly prohibiting the grievance or appeal of a verbal warning.

In addition, the Career Service employs a form clearly labeled "Grievance Form," which is a boilerplate document indicating all the above items. The agency has ten days to respond to the grievance. CSR 18-12 2. If the supervisor does not respond, the employee is required to file a second-level grievance with the agency head within ten days of when the supervisor was supposed to respond. CSR 18-12 3. The employee must appeal the grievance to the Hearings Office within ten days of when the agency response was due. CSR 18-12 4.

Finally, the allegation that the underlying action (in this case the deduction of sick leave) was an act of discrimination, must be articulated in the initial grievance in a manner sufficient to give the Agency notice and an opportunity to respond during the grievance process. A claim of discrimination cannot be raised in the first instance in the *appeal* of a grievance. *See, In the Matter of Martha Douglas*, Appeal No. 317-01 (opinion entered 3/22/02).

In the Affidavit attached to her Response, Appellant states that the date she was notified her sick leave was docked was December 20, 2001. Therefore, her grievance of the sick-leave issue was due ten days later, on December 30, 2001. However, instead of filing a grievance, Appellant sent a memo to Ms. Stubbs on December 20, 2002. Appellant claims that the event triggering the timely filing deadline was Ms. Stubbs' January 16, 2002 memo in response to her December 20, 2002 memo.

In addition, Appellant filed an appeal of the January 16, 2002 memo directly to the Hearings Office. Even assuming the memo constituted a "grievance," which it clearly does not, Appellant would have had to forward the memo to the agency head within ten days after Ms. Stubbs' response to her first grievance was due. Appellant cannot delay the filing deadline of an action by sending a memo on the issue and then waiting several weeks for a response. The rules governing the timely filing of grievances and appeals afford the hearing officer no latitude to waive these requirements. Timely filing is therefore essential for the hearing officer's jurisdiction to hear the merits of the case. It is well established that the failure to timely file is a fatal procedural flaw because it destroys the hearing officer's jurisdiction over the case. *See, Widener v. District Court*, 200 Colo. 398, 615 P.2d 33 (1980); *In the Matter of Hope Connie Carranco*, Case No. 109-00 (Order of Dismissal entered June 21, 2000).

Finally, Appellant failed to make any mention in her memo to Ms. Stubbs that she was alleging the act complained of was one of disability discrimination under CSR 19-10 c). This claim therefore has not been preserved on appeal. *See, Martha Douglas, above.*

Appellant therefore has not shown she has exhausted the grievance process, which would have been necessary to file an appeal under CSR 19-10 d). She further failed to timely raise and preserve her disability discrimination claim during a grievance process. These claims must be dismissed with prejudice as untimely.

#### **4. Discrimination on the basis of sex or gender.**

Appellant next argues that the hearing officer has jurisdiction over this case as one of discrimination on the basis of her status as a female. She states with specificity that she believes the Agency has failed to provide equal pay for equal work assigned to her on an allegedly

temporary basis. She alleges that other male employees doing similar assignments have received resources and pay which she has not received.

The Agency's specific, formal actions in the assignment of temporary work to Appellant resulting in unequal compensation may have constituted the underlying Agency action appealable as discriminatory under CSR 19-10 c). However, for the reasons set forth above, Appellant's filing on a basis of discrimination through unequal pay is also untimely. Temporary assignments, such as the one comprising the factual basis for Appellant's claim of unequal pay, are governed by CSR 7-80 (set forth below in relevant part, also cited by Appellant in her Response). Once again, there is no specific jurisdictional grant of jurisdiction over CSR 7-80. Therefore, once again, jurisdiction over a claim under CSR 7-80 can only be established through the filing of a *grievance*.<sup>6</sup> Appellant therefore would have to file a grievance alleging the violation of CSR 7-80.<sup>7</sup> The grievance in turn would have to be timely pursued as set forth in CSR 18-12, governing grievances. And once again, the 19-10 c) discrimination claim must be articulated in the initial grievance in a manner sufficient to give the Agency notice and an opportunity to respond to the allegations of discrimination. *See, Martha Douglas, above.*

Furthermore, the Hearings Office historically has not allowed employees to establish jurisdiction over a case simply by uttering the term "discrimination." Appellant had to offer some set of facts tending to suggest that that action complained of was taken against her *because of* her protected status. *See, CSR 19-10 c); accord, In the Matter of Carlos Hull, Appeal No. 139-02 (Dismissal entered 9/18/02).* In Appellant's prior documentation concerning her complaints of unequal pay, she alleged that prior employees paid at a higher rate than she were both male and female. Even assuming these underlying facts were true, they do not suggest that the Agency's actions are motivated by Appellant's gender. Appellant's facts do not establish a colorable claim of discrimination sufficiently for the hearing officer to determine she has jurisdiction over such a claim.

Finally, the Agency has already expressed its intent to make the new duties permanent, and its willingness to cooperate in seeking an audit of Appellant's position to take into account her new permanent duties. Yet apparently for reasons of her own doing as set forth below, Appellant's position remains to be audited.

##### **5. Appellant has not cooperated with the Agency in the audit process under CSR 7-20.**

Appellant asserts that the Agency has failed to audit her position and adjust her pay status under CSR 7-20. However, Appellant has not provided documentation tending to demonstrate that

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<sup>6</sup> Recent changes to CSR Rules 7 and 19-10 a) have eliminated Hearings Office jurisdiction over classification decisions by the Career Service. However, the hearing officer recently concluded in *In the Matter of Eleanor Garcia, Appeal No. 144-02 (Order entered November 4, 2002)* that those changes did not eliminate Hearings Office jurisdiction over actions by *appointing authorities*, including those covered under CSR 7-80, as distinct from classification decisions by the *Career Service*. An agency's failure to observe the requirements set forth in CSR 7-80 are therefore grievable and appealable.

<sup>7</sup> The method of timely pursuing a violation of CSR 7-80 is discussed fully below.

she has cooperated in the process necessary to achieve an audit of her position.<sup>8</sup> On the contrary, the Agency determined that the duties should become permanent and informed Appellant as much on December 20, 2001, by her own argument. The Agency then asked Appellant to prepare a reallocation form and Appellant refused (see, "Plaintiff's Exhibit 1" attached to Appellant's Response). She apparently felt that the Agency should undertake this responsibility, and even went so far as to claim the Agency's request constituted "harassment."

Employees are expected to assist in the preparation of paperwork when seeking reallocation requests, and typically do so without question. It is incumbent upon the employee as the person most familiar with the duties to provide this information. See, e.g., In the Matter of Penny Dougherty, et al., Appeals Nos. 44-00 and 49 through 52-00 (decision entered 6/28/00).

Appellant has offered no reasonable explanation as to why she refused to do this after months of complaining about her additional duties. Appellant is accountable for the subsequent delay by her own refusal to provide the very documentation requested by the Agency in its attempt to solicit an audit. Her refusal to discharge her own obligations while persisting in this appeal is groundless, frivolous and stubbornly litigious. Furthermore, through her refusal she has forfeited the right to seek any back-pay differential to which she might have otherwise been entitled in this forum. See, Eleanor Garcia, below. Appellant's present allegations of a violation of CSR 7-20 will therefore be dismissed.

#### 6. Appellant's allegations of a violation of CSR 7-80.

Appellant's appeal indicates that the additional duties in question were assigned to her on May 9, 2001. Appellant alleges in her Response that the Agency has violated CSR 7-80 in the ongoing assignment of duties to Appellant outside her classification.<sup>9</sup> CSR 7-80 states as follows in relevant part:

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<sup>8</sup> The recent changes to CSR Rule 7 suggest that power of review of decisions under CSR 7-22 has been placed in the hands of the Personnel Director. See, e.g., CSR 7-22, which states as follows in relevant part:

...Once the audit review is initiated, the requesting department or agency shall follow procedures *described by the Personnel Director* for proper review and classification of the position.

*The Personnel Director shall review the changes and recommend proper classification of the position.*

An employee may petition an appointing authority for the purpose of asking for reconsideration of an appointing authority's denial to request an audit. *The employee may send a copy of the petition to the Personnel Director...*

(Emphasis added.)

Thus, even if Appellant had shown she requested an audit and was denied, the hearing officer would presume that she has no jurisdiction over this issue as reviewable by the Personnel Director *vis* the Hearings Office, in light of the recent changes to the Career Service Rules. Such a determination would depend on whether the employee can show that the Agency violated the rules governing audit requests in a manner that the Hearings Office could remedy. The burden of demonstrating jurisdiction lies at all times with the Appellant.

<sup>9</sup> Although Appellant did not actually cite CSR 7-80 in her appeal form, the hearing officer finds the facts she set forth in the appeal clearly articulate a violation of the rule. Appellant further cited CSR 7-80 in her Response to the Show-Cause Order. See, CSR 19-22 b) 1), which states: "Every appeal shall be on the form prescribed by the

### Section 7-80 Work Assignment Outside of Job Classification

An appointing authority may assign the duties of a vacant higher-level job classification to an employee in a lower job classification for a period of 180 consecutive working days. Assignments for periods longer than 180 consecutive working days require the approval of the Personnel Director or designee.

- A) Assignments outside of the job classification can be made for up to thirty (30) consecutive calendar days without a change in pay status of the affected employee. On the 31<sup>st</sup> day, and for the duration of the temporary assignment, the employee shall receive 6.9% above his or her regular pay. However, the employee's job classification will not change when the 6.9% pay increase goes into effect.
- B) An employee assigned work above his or her job classification must meet the following criteria:
1. Demonstrated ability to perform all of the duties and accept all of the responsibilities for the higher level assignment; and
  2. Receive approval of the appointing authority.

Whereas CSR 7-20 addresses the process for adjusting classifications when there has been a *permanent* change in duties, CSR 7-80 governs the manner in which *temporary* duties are to be treated. A determination of whether the duties were supposed to be temporary or permanent would be necessary to determine which rule applies.

Appellant argues that she believed the duties to be permanent from the beginning, not temporary. She apparently sought an audit to adjust her classification in August of 2001. She asserts her first notice that the Agency had considered the duties temporary was December 20, 2001, when she received her PEP Plan of December 19, along with a memo from Ms. Stubbs announcing the intent to make the duties permanent. She responded with a memo to Ms. Stubbs the following day. Ms. Stubbs allegedly did not respond until almost a month later, on January 16, 2002. Appellant argues that her appeal was filed in response to Ms. Stubbs' January 16, 2002 memo, presumably making it timely.

Appellant's appeal cannot be considered timely on this basis for several reasons. First, as explained above, Ms. Stubbs' memorandum is not the event tolling the timely filing of Appellant's appeal of the assignment of duties, permanent or temporary. The event tolling the timely filing period is Appellant's notification that the Agency violated the rules governing her classification and pay. An employee cannot resurrect timely filing by engaging in a protracted series of academic memoranda about the issue under appeal.

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hearing office and shall include the name and address of the appellant, *the action which is the subject of the appeal*, the reason for the appeal, and a statement of the remedy sought."

Second, as set forth above, there is no express jurisdiction over CSR 7-80 claims in CSR 19-10. Therefore, Appellant was required to timely pursue the grievance process governed in CSR 18-12, and then timely appeal the grievance under 19-10 d). Since there has been no grievance in this case, Appellant has not established the basis for an appeal.

However, in a recent decision the hearing officer has determined that in cases alleging a *continuing* violation of CSR 7-80, the employee receives new notice of another pay period in violation of that rule upon the receipt of each new payroll check. Each new paycheck evidences the Agency's failure to adjust the employee's pay in accordance with the rule. See, In the Matter of Eleanor Garcia, Appeal No. 144-02 (Order entered November 4, 2002). The Agency cannot continue to benefit indefinitely from the assignment of additional "temporary" duties to an employee, simply because the employee missed the window of protest. Likewise, however, the burden of initiating a timely action against an agency for such a violation lies with the employee. The employee cannot sit on a continuing violation for several months, and then retroactively seek the recovery for any portion of the violation that occurred before the beginning of the paycheck used to initiate the grievance. The remedy begins with the paycheck in question. Id.

An employee's first notice that an agency is out of compliance with the 6.9% pay differential in CSR 7-80 would typically be the first paycheck the employee receives after thirty days have passed since the assignment of the additional duties. Furthermore, the employee is on notice that the agency is out of compliance with CSR 7-80 A) limiting temporary assignments to 180 days, after those 180 days have passed and the employee still has the additional duties. Id.

In this case, Appellant asserts she did not know the duties were temporary until December 20, 2001. She should have filed her grievance within the next ten days.<sup>10</sup> However, assuming she still carries the extra duties but is receiving no pay differential as required under CSR 7-80 A), she continues to receive notice of the violation anew with each paycheck.

Appellant theoretically should have been able to file a grievance within ten days after receipt of any paycheck she receives in alleged violation of CSR 7-80. However, the record in this case clearly suggests that the Agency intended to make Appellant's assignment permanent, and that Appellant has thwarted that process herself by refusing to prepare the reallocation request documentation necessary for the audit process to proceed. Therefore, there is a standing presumption in the case of Appellant that CSR 7-80 (which applies to the temporary assignment of duties, not a permanent classification change) does not apply to Appellant. Appellant will have to overcome this presumption in order to establish Hearings Office jurisdiction over a CSR 7-80 claim.

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<sup>10</sup> Apparently, Appellant did ask for an Administrative Review in August of 2001, and received an "Administrative Review decision" dated October 21, 2002. This issue was raised in Appellant's first appeal, Appeal No. 357-01, filed October 31, 2001. Appellant asserts that the issue of her additional duties was not addressed in the Administrative Review and should therefore stand as separate from her first appeal. However, the Appellant asserts she requested the audit leading to the Administrative Review for the very reason of addressing the additional duties. The hearing officer is confounded as to why Appellant would not include the alleged failure to address the very issue she requested the audit as part of her appeal to that audit. Clearly the fact that those duties were not included would have been part of the basis for the first appeal, 357-01. The issue has been dismissed along with that appeal and the hearing officer has been given no reasonable explanation why it should not be resurrected.

**7. Appellant has failed to state any set of facts in support of her allegations of workplace violence.**

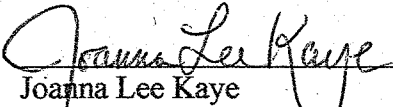
Appellant cited CSR 15-110 in her appeal. She further references the corresponding Executive Order 112, prohibiting violence in the workplace, in her Response to the Show-Cause Order. She describes additional potential injury arising from the Agency's failure to accommodate her injuries as the "threat of further injury by my employer," continuing that she actually made police reports of such "threats...in accordance with Executive Order 112."

The hearing officer finds Appellants attempt to tie such facts to a claim of workplace violence *frivolous*. If the hearing officer had the power to award attorney fees, she would probably have done so in the face of such a claim. CSR 15-110 and Executive Order 112 are clearly designed to eliminate from the workplace direct acts or threats of action that a reasonable person would construe as "violent." It should be obvious that in the ordinary English lexicon, this term refers to the use of physical force by one individual against another. *See*, Merriam-Webster Dictionary, Home and Office edition; *accord*; In the Matter of John Johnson, Appeal No. 83-02 (Dismissal entered 6/13/02); In the Matter of Charlotte Marin, Appeal No. 64-02 (Dismissal entered 5/19/02). Appellant has failed utterly to describe any circumstances tending to support such a claim. It will therefore be dismissed with prejudice.

**ORDER**

For the reasons set forth above, this appeal is DISMISSED.

Dated this 8 day of November, 2002.

  
Joanna Lee Kaye  
Hearing Officer for the  
Career Service Board

**CERTIFICATE OF MAILING**

I hereby certify that I have forwarded a true and correct copy of the foregoing **ORDER OF DISMISSAL** by depositing same in the U.S. mail, postage prepaid, this 14 day of October, 2002 addressed to:

Jeffrey Menter  
Attorney at Law  
26 W. Dry Creek Circle Suite 470  
Littleton, CO 80120

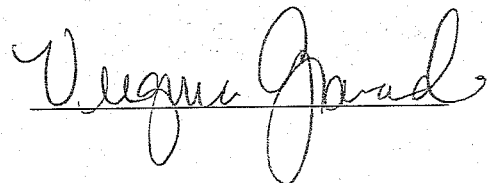
Joyce Montabon  
15748 W. 2<sup>nd</sup> Ave.  
Golden, CO 80401

I further certify that I have forwarded a true and correct copy of the foregoing **ORDER OF DISMISSAL** by depositing same in the interoffice mail, this 14 day of October, 2002, addressed to:

Jack M. Wesoky  
Assistant City Attorney  
Employment Law Section

Cheryl Cohen  
Department of Revenue

Steve Hutt  
Treasury Division

  
Virginia J. Goad