

CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER, STATE OF
COLORADO

Appeal No 14-10 A.

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

James Ronald Smith,

Appellant/Respondent,

vs.

DEPARTMENT OF EXCISE AND LICENSE, ALARMS PERMIT DIVISION, and the
City and County of Denver,

Agency/Petitioner.

This matter is before the Career Service Board on the Agency's Petition for Review. Appellant did not file an answer brief or otherwise participate in this appeal. The Board has reviewed and considered the full record and **REVERSES** the decision of the Hearing Officer, dated June 4, 2010, on the grounds outlined below.

I. FACTUAL BACKGROUND

Appellant and his supervisor had frequent disagreements about Appellant's work. During one of these disputes, Appellant stated, "I quit", and his supervisor accepted his resignation. Within a few minutes, Appellant wanted to retract his resignation. His supervisor allowed him to do so, but warned him that if he threatened to quit again she would accept his resignation. Appellant and his supervisor then met with the Agency Director where the dispute continued. During this meeting, Appellant again said, "I quit". The Director accepted the resignation. The Hearing Officer found that Appellant's resignation was involuntary and as a result, the Agency's acceptance of that resignation was an improper dismissal.

II. FINDINGS

As the Hearing Officer recognized, resignations are presumed to be voluntary. However, based on the evidence in the record, we cannot agree with the Hearing Officer's conclusion that Appellant's resignation was involuntary.

Unlike the ambiguous voice message in *In re Augustine*, CSB 05-09 ((9/30/09), the words used by Appellant here were clear and unambiguous: I quit means I quit. The fact that Appellant had threatened to quit in the past and the Agency did not accept his resignation does not change the meaning of the words he used, nor does it transmogrify the Agency's acceptance into a "gottcha" dismissal. Appellant had just been warned by his supervisor that if he threatened to quit again his resignation would be accepted. The fact that Appellant quit again, despite the warning, expresses a clear intent to resign.

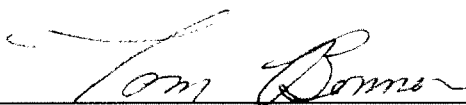
Unlike the situation in *Augustine* – where the Agency placed the employee in a no-win situation by scheduling a dual purpose meeting to discuss whether it should rescind its acceptance of the employee's resignation or impose discipline instead – here, the Agency did nothing to interfere with Appellant's freedom of choice. The record supports the conclusion that Appellant voluntarily chose to resign and on appeal Appellant provides no argument to the contrary.

III. ORDER

IT IS THEREFORE ORDERED that the Hearing Officer Decision of June 4, 2010, is **REVERSED**.

SO ORDERED by the Board on October 21, 2010, and documented this
4th day of November, 2010.

BY THE BOARD:



Co-Chair

Board Members Concurring:

Tom Bonner
Nita Henry
Colleen Rea
Patti Klinge

Felicity O'Herron did not participate in the Board's decision.

CERTIFICATE OF DELIVERY

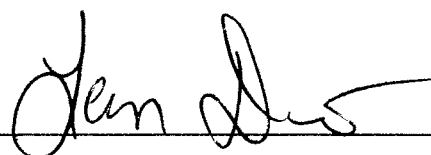
I certify that I delivered a copy of the foregoing **FINDINGS AND ORDER** on November 5, 2010, in the manner indicated below, to the following:

City Attorney's Office dlefilng.litigation@denvergov.org (via email)

James R. Smith, 7150 W. 20th Ave. #203, Lakewood, CO. 80214 (via U.S. mail)

Penny May, Director, penny.may@denvergov.org (via email)

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Leon Duran