

DECISION

IN THE MATTER OF THE APPEAL OF:

DHEMAN ABDI,
Appellant,

vs.

DEPARTMENT OF ECONOMIC DEVELOPMENT, WORKFORCE DEVELOPMENT,
and the City and County of Denver, a municipal corporation, Agency.

I. INTRODUCTION

The Appellant, Dheman Abdi, appeals her dismissal from the Office of Economic Development (Agency) on September 5, 2007, for alleged violations of specified Career Service Rules. A hearing concerning the appeal was conducted by Bruce A. Plotkin, Hearing Officer, over four days, November 15, 2007, November 27, 2007, December 13, 2007 and January 3, 2008. The Agency was represented by Karla Pierce, Assistant City Attorney. The Appellant was represented by Dennis Champine, Esq. Agency Exhibits 1-10, and 12 were admitted. Appellant's Exhibits A-D and F-I were admitted. The Agency called Michael Nunn, Francisco Salazar, Barbara Smith, Tammy Larimore, and Abdi Dulane to testify. The Agency also called the Appellant as its witness. The Appellant testified in her own case-in-chief, and presented no other witness.

II. ISSUES

The following issues were presented for appeal:

- A. whether the Appellant violated any of the following Career Service Rules: 16-60 D., E., M., O., X., Y., or Z.;
- B. if the Appellant violated any of the aforementioned Career Service Rules, whether the Agency's decision to dismiss the Appellant conformed to the purposes of discipline under CSR 16-10;
- C. whether the Agency terminated the Appellant was based upon unlawful discrimination.

III. FINDINGS

The Appellant, a Somali native who immigrated to Colorado in 1995, was employed by the Agency in the Division of Workforce Development for seven years. Her primary assignment was to assist refugees from Ethiopia and Somalia who had multiple and complex barriers to employment. She provided career guidance and assistance. She also determined client eligibility for programs under the Workforce Investment Act, the Wagner-Peyser Act and other federal workforce development programs. She was well-versed in public assistance programs for her clients.

The Appellant had been sending money to Africa to assist one of her 11 siblings, a sister named Rukia Abdi. In 2003, Rukia came to Denver with two of her children. Rukia obtained asylum based, in part, upon her representation that she suffered an abusive marital relationship. The Appellant assisted her sister's efforts to obtain asylum. She sought an immigration attorney and accompanied Rukia to meetings with the attorney. She wrote an affidavit on behalf of Rukia affirming she faced persecution if she returned to Somalia. [Exhibit A].

The Appellant also assisted Rukia in applying for and receiving public assistance in Arapahoe County by filling out some applications for her and for all the rest of Rukia's applications, by advising, interpreting, and translating Rukia's successful applications for food stamps, TANF, and Medicaid benefits through the Arapahoe County Department of Human Services. From August 31, 2004 through June 2, 2007. Rukia received public assistance benefits totaling \$39,575.47. Neither Rukia nor the Appellant reported that, at the same time Rukia was receiving benefits from Arapahoe County, she was married to and receiving monthly financial support from Rukia's husband, the Ethiopian Ambassador to Japan. Neither sister revealed their sibling relationship to immigration officials, to the immigration attorney who assisted Rukia's asylum application, or to Arapahoe County social services.

Abdirashid Dulane, Rukia's husband, was president of the Somali National Regional State known as Zone 5, in Ethiopia from 2000 to 2003. He was then appointed as vice-minister of the federal Ministry of Water Resources Development, and then was appointed as the Ethiopian Ambassador to Japan in April 2004. He remained in that position through the hearing dates. Rukia has six children, all with Abdirashid Dulane (hereinafter "the Ambassador"), including the two children with whom she immigrated to Colorado.

In seeking and receiving asylum and welfare benefits described above, the Appellant and Rukia represented to Rukia's attorney, immigration officials, and Arapahoe County Human Services, that Rukia Abdi's name is Istahil Raghe. They also represented, in Rukia's applications for asylum and for welfare benefits in Arapahoe County, that the two children Rukia brought to the U.S. are named Ahmed Duale and Ayan Duale, although their birth names are Mohamed Abdirashid Dulane, and Hamdi Abdirashid Dulane, respectively.

The Appellant assisted Rukia in completing an application for public assistance on February 16, 2006 with the knowledge that the information provided was false, in particular Rukia's name, her children's names and their failure to identify and provide the location of the absent parent. [Exhibit 5-6]. The Appellant was aware that Rukia was married to the Ambassador, was aware the Ambassador was the father of Rukia's six children, and was aware of Rukia's real name and her children's real names. [Exhibit 5-7].

On July 5, 2007, the Ambassador's brother, Abdi Dulane, a naturalized U.S. citizen living in Denver, called the Denver Department of Human Services to report welfare fraud committed by Rukia and the Appellant. He reported Rukia changed her name to disguise her marriage to the Ambassador in order to qualify for public assistance benefits. A subsequent investigation was conducted by Francisco Salazar and Brian Knight. They interviewed Abdi Dulane and Hodan Abdi together. Abdi Dulane stated he is married to Hodan Abdi but does not live with her so that she could receive public benefits for herself and their children. [Abdi Dulane testimony].

Based upon information the investigators received from interviews with Abdi Dulane, Hodan Abdi, and Rukia Abdi, they expanded the investigation of Rukia Abdi to include the Appellant to find out if she had a role in Rukia's application for public assistance benefits. On July 16, 2007, the investigators conducted an interview with the Appellant at her workplace. The Agency authorized the interview, there was no advanced notice to the Appellant, and she was unrepresented at that time.

During the interview, the Appellant acknowledged to the investigators that she helped her sister to complete all applications for assistance in Arapahoe County. [Exhibit 5-9]. The Appellant further stated she encouraged her sister to apply for public assistance, [Exhibit 5-9], acknowledged she was aware of the requirement to identify properly parents and children, and acknowledged she and her sister did not correctly identify the children's and Ambassador's names.

The Appellant told the investigators that Rukia fears and does not love the Ambassador, but acknowledged she (the Appellant) was aware of protections afforded custodial parents who feel threatened by the absent parent. [Exhibit 5-9, 5-10]. When asked why she did not assist her sister to seek out such services, the Appellant replied her sister wished to distance herself from the Ambassador she did not love, and feared.

In Rukia's applications for public assistance on February 15 and 16, 2007, Rukia and the Appellant identified the father of Rukia's children as "Duale," whereas the Ambassador's family name is "Dulane." The Appellant explained to the investigators that Abdirashid Duale is the name of her Rukia's true love and the man Rukia wished had fathered her children. [Exhibit 2-3, 5-10].

The Appellant acknowledged she initiated an investigation into welfare fraud by Hodan Abdi. She stated Hodan is her client and is married to Abdi Dulane, the

Ambassador's brother. Asked why she referred Hodan for investigation, the Appellant stated Hodan resides in a mansion under section eight housing while her sister Rukia, the wife of an Ambassador, lives in a two-bedroom apartment and cleans carpets for a living. [Exhibit 5-10]. She later explained Hodan cared for two of Rukia's children when Rukia traveled to Ethiopia because "Hodan was a stay-at-home, and... enjoying all the food stamps that she can get!" [Exhibit 13, Appellant interview 7/16/07].

When the Appellant accompanied Rukia to apply for public assistance in Arapahoe County, she represented to Rukia's eligibility worker, Michael Nunn, that she (Appellant) was Rukia's translator and led Nunn to believe the Appellant was acting in her official capacity as a case manager for African refugees. The Appellant did not identify herself as Rukia's sister. [Exhibit 2-4, Nunn testimony].

The Appellant stated she owned the apartment Rukia lived in, and Rukia would pay rent to her when she could. When asked if Rukia's rent payment came from public assistance funds, the Appellant could no longer remember if Rukia paid anything to her. [Appellant direct exam by Agency 11/27/07].

At the conclusion of her interview with investigators on July 16, 2007, the Appellant wrote and signed a statement affirming the following:

Rukia is her sister;

Rukia has been married to the Ambassador since her arrival in the U.S.;

the Appellant assisted Rukia to apply for benefits in Arapahoe County;

she and Rukia provided incorrect information in Rukia's applications;

Rukia does not want to be married to the Ambassador, but wants to marry the man of her dreams, Abdirashid Duale.

[Exhibit 5-129, 5-130].

The following day, the Appellant sent an unsolicited email to the investigators to provide additional information regarding welfare fraud committed by Hodan Abdi and her husband, Abdi Dulane. [Exhibit 5-131].

Information concerning Hodan was kept in the Agency's CBMS computer system. On May 17, 2007, the Appellant updated Hodan's address on the CBMS system, but her access to it had expired in March 2007 for lack of use. Also, she signed the investigation referral regarding Hodan Abdi as Hodan's "worker." [Exhibit 5-11, Larimore testimony 12/13/07, Exhibit 5-139].

The Appellant approached Hodan's eligibility worker, Baker, in April 2007, showed Baker her Office of Economic Development employee badge and represented that Hodan was a current client. The Appellant told Baker that Hodan was suspected of welfare fraud. Based upon those representations, Baker agreed to give the Appellant Hodan's file. Using the information in that file, the Appellant filled out an investigation referral form concerning Hodan, signed the form as "worker," and attached a copy of Hodan's driver's license which the Appellant obtained from Hodan's Department of Human Services file. The Appellant then provided the referral form to her supervisor, Larimore, for her required signature without revealing that Hodan was not a current client of the Agency. [Exhibit 2-6].

Larimore investigated the fraud referral by the Appellant and discovered Hodan had not been the Appellant's client since 2002. Any work conducted on the file by the Appellant was therefore outside the scope of her job requirements and duties. When the Appellant was re-interviewed on July 30, 2007, she acknowledged Hodan Abdi had not been a client of the Agency since 2002. [Exhibit 2-5].

A pre-disciplinary meeting was held on September 4, 2007. The Appellant attended with her attorney. The Appellant presented a written statement, Exhibit 6. The Agency then dismissed the Appellant from employment on September 5, 2007. This appeal followed on September 12, 2007.

IV. ANALYSIS

A. Jurisdiction and Review

Jurisdiction is proper under CSR §19-10 A. 1. as a direct appeal of a dismissal. I am required to conduct a *de novo* review, meaning to consider all the evidence as though no previous action had been taken. Turner v. Rossmiller, 532 P.2d 751 (Colo. App. 1975).

B. Burden and Standard of Proof

This case contains a mixed burden of proof. The Agency retains the burden of persuasion, throughout the case, to prove the Appellant violated one or more cited sections of the Career Service Rules, and to prove its decision to terminate the Appellant's employment complied with the purposes of discipline, CSR 16-20. The Appellant retains the burden of persuasion, throughout the case, to prove the Agency's decision to terminate her resulted from unlawful discrimination based upon her nationality, Somali. The standard by which each party must prove its claims is a preponderance of the evidence.

C. Career Service Rule Violations

1. CSR 16-60-D. Unauthorized operation or use of any vehicles, machines, or equipment of the City or of any entity having a contract with the City,

including, but not limited to, the unauthorized use of the internet, email, or telephones.

Bobbi Smith is the Office of Economic Development's Manager of Operations for the Office of Workforce Development. She was the ultimate decision-maker in the Appellant's termination. Smith stated the Appellant violated this rule for using Agency letterhead, fax machine, and identification as an OED employee to do work on her sister's behalf to obtain benefits under false pretenses in Arapahoe County. There was no evidence, other than Smith's statement, that the Appellant used any of these devices; nor is it apparent, even if the Appellant used Agency letterhead or showed her OED identification, that the use of either would constitute a violation of this rule.

Smith also claimed the Appellant violated this rule by using, and causing others to use, agency computers to access and change information about Hodan Abdi, as the Appellant was not in a current worker/client relationship with Hodan. [Smith testimony 11/27/07]. Specifically, the Agency's claims include (1) the Appellant's use of the Joblinks system to update Hodan Abdi's address, [Exhibit 5-139]; (2) providing Hodan's driver's license and social security number to investigators; (3) the Appellant's inducement of a co-worker to access Hodan's information; and (4) the Appellant's inducement of Tammy Larimore to sign off on the Appellant's fraud claim against Hodan.

The Appellant did not dispute the Joblinks system contains confidential information which may not be accessed by those without authority. She acknowledged she checked the Joblinks system to see if Hodan was receiving public assistance, [Appellant testimony 11/27/07], and acknowledged updating Hodan's address. *Id*, and [Exhibit 5-139]. The Appellant claimed she considered Hodan was a current client when she updated Hodan's information in Joblinks in May 2007. She explained that she provides ongoing support to former clients such as interpreting, copying, or faxing services, and referring them to other resources. [Appellant testimony 12/13/07]. However, Hodan had not been a client of the Agency since 2002, so whether the Appellant considered Hodan a current client is irrelevant, since the Appellant's view would render it permissible even for a terminated employee to access or cause others to access confidential Agency information. In addition, the Appellant had lost her access to the Agency computer records for lack of use several months before she updated Hodan's information. These facts make it evident the Appellant engaged in unauthorized use of Agency equipment in violation of CSR 16-60 D.

The Agency's next claim under this rule was that the Appellant wrongfully obtained confidential information, Hodan's driver's license and social security number. The Appellant replied she believed she was only complying with the investigator's request to provide that information at their request. A review of the Appellant's interview did not make it clear one way or the other whether the investigators specifically requested the Appellant provide that information. However the information did assist the fraud investigation into Hodan Abdi, and is consistent with some

statements made during the Appellant's interview where she offered to provide further information. In addition, Larimore testified she found no impropriety in the Appellant's providing such information. [Larimore cross-exam 12/13/07]. For these reasons, the Agency did not prove the Appellant's providing Hodan's driver's license and social security information to investigators was a violation of this rule.

The Agency also accused the Appellant of causing a co-worker to provide her with Hodan's file. This claim does not constitute a violation of CSR 16-60 D since no city vehicle, machine or equipment was alleged to have been misused. Instead, this claim is covered by allegations of dishonesty.

2. CSR 16-60 E. Any act of dishonesty, which may include, but is not limited to... 1. Altering or falsifying official records or examinations...3. Lying to supervisors or falsifying records with respect to official duties...

Smith stated the Appellant violated this rule by helping Rukia present false information on her application for benefits in Arapahoe County, including (1) failing to disclose her sibling relationship to Hodan's case worker, (2) failing to reveal that Hodan was no longer the Appellant's client, (3) concealing Rukia's marriage and financial support to Rukia, (4) falsifying Rukia's children's names, and (5) falsifying the circumstances of Rukia's request for asylum and benefits, including her name and whether she was abused. [Smith testimony 11/27/07, Exhibit 2, Exhibit 5].

The Appellant encouraged and assisted Rukia's request for asylum. [Appellant testimony 11/27/07, Exhibit 7]. In addition, the Appellant filled out two applications for public assistance on behalf of her sister, Rukia. [Exhibit 5-34 through 5-39, Appellant testimony 11/27/07, Exhibit 5-40 through 5-64]. The Appellant also assisted Rukia in all other applications for public assistance in Arapahoe County. [Exhibit 5-66 through 5-71, Exhibit 5-72 through 5-96, Exhibit 5-97 through 5-102, Exhibit 5-103 through 5-128, Exhibit, Exhibit 5-9, Exhibit 13, Interview with Dheman Abdi 7/16/07].

The Appellant responded she and her sister were coerced into making such admissions during their respective interviews with investigators. She also claimed Abdi Dulane, who telephoned concerning Rukia's welfare applications, cannot be trusted.

Insofar as the investigators dictated to Rukia and to the Appellant what to write in their post-interview statements, [Exhibit 5-65, and 5-129 to 5-130], I disregard their written statements for the truth of the matters asserted therein. However, it does not follow, as the Appellant argued, that any impropriety during each interview renders the entire interview coercive and inadmissible as "fruit of the poisonous tree," [Appellant's closing statement], a concept imported from criminal law. The Appellant failed to establish that such doctrine applies in the civil arena. Instead, I considered each interview, listening for signs of improper influence over the interviewees' answers. I

find the following portions of Rukia's interview with investigators relevant as to whether her answers were coerced or voluntary. Since it was not possible to tell which investigator was asking the question, I have simply stated "Investigator" for both Salazar and Knight.

Investigator: If you lie to us, we continue the investigation, and we'll come back and you could be charged with providing false information to officials, and then we'll take it to immigration and then you end up in immigration court. You understand? Now are you going to be truthful with us today?

Rukia: Yes.

Investigator: Once again, I'm going to ask you, what is your husband's name?
[There was no recorded prior reference to Rukia Abdi's husband]

Rukia: Abdirashid.

Investigator: Abdirashid? And what's his last name?

Rukia: Dulane.

Investigator: Dulane? Is he the Ethiopian Ambassador to Japan?

Rukia: [unintelligible].

Investigator: Could you state that more clear?

Rukia: Yes [he is].

...

Investigator: When you applied for asylum did you identify your husband correctly?

Rukia: I did not say correct.

Investigator: What was the reason for you not identifying your husband correctly?

Rukia: there was a problem where I come from.

...

Investigator: Is [the Ambassador] the father of all your six children?

Rukia: Yeah.

...

Investigator: Why are the children named Duale, D-U-A-L-E, instead of Dulane?"

Rukia: At first we made a mistake on spelling.

Investigator: [unintelligible] At least two of them, Ahmed and Ayan are spelled DUALE, D-U-A-L-E. Why it's spelled?

Rukia: Some of my kids were at home and I didn't want to be harmed.

Investigator: OK, what do you mean she didn't want to be harmed?

Rukia: [unintelligible] and I didn't want my kids to be identified with the government.

Investigator: With the name of Dulane?

Rukia: Yes.

...

Investigator: [In your application for asylum] is the father identified as Abdirashid Dulane?

Rukia: No.

Investigator: O.K. Is he the father of all the children?

Rukia: Yeah.

Investigator: OK...We know now that you applied for asylum with false information. O.K. That's a serious offense, as you probably know. O.K. now we don't want to go any further than this room with that information. We are not immigration. O.K. although we can report the information to immigration and we're required to, it doesn't mean that we have to, we won't do it, O.K.? Depending on how you assist us and our investigation will determine on, how we help you in your case.

Rukia: [after 3 second translation] O.K.

...

Investigator: Did [the Appellant] help you on your immigration application?

Rukia: Yes.

Investigator: Did she fill out documents on that application, and information? Did she complete the application for you?

Rukia: Yes.

Investigator: O.K. Now, if she completed the application for you then she knew the information was incorrect.

Rukia: I have no idea. Ask her.

Investigator: O.K. What we're gonna do is we're gonna review the application. Now we're asking you. If we have to go and investigate further, we're not gonna be so nice with this case. We will go to immigration. And immediately once we tell them you lied on your application, you know what's gonna happen?

Rukia [without interpretation]. I don't know.

Investigator: Yeah, well immigration doesn't take that very, very kindly. You don't allow people to stay in the country if you lie on your application. All I wanna know is did [the Appellant] assist you on completing any applications with this department or immigration?

Rukia: Yes, she help me.

Investigator: O.K. What applications specifically?

Rukia: She apply for the kids.

Investigator: She applied for the kids? When you applied for food stamps? She completed the application for you?

Rukia: Yes.

Investigator: These are the applications. I need you to tell me which ones she assisted you on, O.K? [1:44:00]

[Rukia acknowledges Appellant assisted her in applications on February 15 and 16, 2006]. [States she completed December 3, 2004, and May 2, 2007 application by herself. Investigator has her write same on the application].

...

Investigator: Are you receiving any other money from any other sources?

Rukia: I work now.

Investigator: O.K. you work now? What did you receive your money before you worked?

Rukia: [unintelligible] get help from him here].

Investigator: How does she afford to buy a car?

Rukia: Well, I get help from him.

Investigator: So how much money does Mr. Dulane give her a month?

Rukia: A thousand.

Investigator: A thousand dollars a month?

Rukia: eight hundred?

Investigator: O.K., so eight hundred to a thousand dollars? O.K. and have you reported, why hasn't she reported this money?

Investigator: Does she know she was required to report that money?

Rukia: Yes.

Investigator: we have information stating that you received more than a thousand dollars a month. You receive two thousand five hundred dollars a month. Is that correct?

Rukia: Yes, that's correct.

Investigator: O.K. so where do you make these deposits? We have information that you use Wells Fargo's Bank. Is there any other bank that you use?

Rukia: [unintelligible] [1:59:38].

Investigator: O.K. I just want to say now I want the truth 'cause she already told us a lie. We just caught you in a lie. You just told me that that in two minutes ago eight hundred to a thousand dollars a month. You told Mr. Francisco there was twenty five hundred dollars. So we want no more of this. O.K. we want the truth. So, ya see we want to work with you. We want to get this resolved, this issue resolved. We don't want to cause you problems, O.K.? The more problems you cause us, the more problems we cause you, O.K.? So you, if you are helpful with us we'll be helpful with you, O.K.?

Rukia: [without translation]. O.K.

Investigator: We're just here to find out the truth, O.K.?

Rukia: [without translation] O.K.

...

Investigator: Your sister knew that you were receiving money from Japan from your husband, is that correct?

Rukia: Yes.

Investigator: O.K. and she listed on your application that you had no money, is that correct?

Rukia: Yes... when she was, you know, filling that, the case was, I did not help, did not get any money.

Investigator: O.K. when you filled out the application in 2004 were you receiving any money from your husband?

Rukia: No.

...

Investigator: So he started sending money to you when he became the Ambassador to Japan?

Rukia: Yes.

Investigator: Has he visited you in the United States?

Rukia: [without interpreter] Yeah.

Investigator: Several times, or how many times has he...

Rukia: [interrupting without interpreter]. Several times.

...

Investigator: [Your sister] knows you've been receiving benefits?

Rukia: [without interpreter] Yeah.

Investigator: And she knows your husband's come here to the United States to visit you and the children, correct?

Rukia: [without interpreter]. Hmmhmm.

Investigator: And she knows the name of your fath..husband, correct?

Rukia: [unintelligible]

Investigator: Is that a yes?

Rukia: [without interpreter] Yes.

Investigator: O.K. and she knows that he is the Ambassador to Ethiop.. Ethiopian ambassador to Japan?

Rukia: Yes.

Investigator: All right. All right. On your child support enforcement when you applied at the Colorado Works, you indicate that your husband was from to come over here to the United States. What country did you say he was currently in?

Rukia: Kenya.

Investigator: O.K., and where was he really?

Rukia: When:[2:05:47]

Rukia: You want me to provide the same information as you said? [2:07:26].

Investigator: No. Provide the correct information.

Rukia [Speaks in Amharic without interpretation]

Investigator: One question we have. What is your real name?

Rukia: Rukia [unintelligible]. [2:07:47].

Investigator. O.K. Could you write down your real name? We're not really sure what your real name is. I just need you to write, [aside to other Investigator, then resumes to Rukia] O.K., write you real name right here and then state "my real name is" just put your name right here and then put "my real name is."

Rukia: [without interpreter] First or first and last?

Investigator: First and last. [2:08:18].

[Investigator then dictates Exhibit 5-65 to Rukia, including telling her to sign both names].

[Exhibit 13, CD, interview with Rukia Abdi 7/13/07].

Salazar's dictation to Rukia of what she wrote in her post-interview statement, Exhibit 5-65, precludes its utility for truthfulness. Despite this obvious error, the entire interview is not automatically compromised. Rather the interview must be considered carefully in the context of the available evidence: the words used by each party, the intonations of expression, and Rukia's apparent comprehension of the proceedings. When viewed in its entirety, the Appellant's claim of coercion is not borne out by the interview. While Salazar impressed on Rukia the importance of telling the truth, and warned her she could face immigration consequences for lying, he did not tell her what to answer nor infer what her answers should be during the critical, early part of the interview. Indeed, his first question, after warning her of potential dire consequences for lying, was "[n]ow are you going to be truthful with us today?" Rukia's most important answers were:

Rukia's husband's name is Abdirashid Dulane;
she did not identify her husband correctly when she applied for asylum or in applying for public assistance;
Abdirashid Dulane is the father of all six of her children;
Rukia and the Appellant "made a mistake" in listing her children's names incorrectly in her application for public assistance.

I conclude from Rukia's statements, above, and from listening to the entire interview, that she was not improperly coerced. The investigator's warning that she could be turned over to immigration authorities if she did not tell the truth did not suggest any particular answers. In addition, Rukia showed open defiance to the investigators when they asked if the Appellant knew the information in Rukia's applications for public assistance was incorrect when she answered "I have no idea. Ask her." This exchange shows Rukia was not intimidated by the investigators into changing her answers to conform to an agenda. Importantly, Rukia did not testify at hearing to state she was improperly coerced into changing her answers, and the Appellant was not present at Rukia's interview, so her later statement that Rukia was improperly coerced carries little weight. Thus, while Rukia's written statement must be disregarded for the truth of the matters it contains, there is no indication, by a preponderance of the evidence, that the answers she provided directly to the investigator's questions were anything other than truthful.

I find the following segments of the investigators' interview with Abdi Dulane were significant in determining his credibility.²

Abdi Dulane: [Rukia is] giving us a hard time so we gonna go after her and her sister. [10:48:35].

² Abdi Dulane dominated the interview. When Hodan gave a long answer in her native language, Abdi would give stunted answers in English, and conversely, long answers to Hodan's short replies. Thus I assume most answers, unless given directly by Hodan in English, as she did at times, were Abdi Dulane's answers and not necessarily those of Hodan Abdi. For these reasons, I judged his credibility and not that of Hodan Abdi.

...

Abdi Dulane: They're [Rukia and App] making your [Rukia's] life miserable, so let's go ahead and make their life miserable too. [10:56:35].

Abdi Dulane : She [Hodan Abdi] is my girlfriend. [10:57:02].

[Interview with Abdi Dulane 7/11/07].

Abdi Dulane's answers strongly suggest his motivation to report wrongdoing by the Appellant and Rukia was motivated by revenge against the Appellant. In addition he had been convicted and jailed for a crime of dishonesty. [Abdi Dulane cross-exam 1/3/08]. Finally, he could not decide, during his interview and at hearing, whether Hodan Abdi was his girlfriend or his wife. [Exhibit 13, Interview with Hodan Abdi and Abdi Dulane July 11, 2007, Abdi Dulane cross-exam 1/3/08]. For these reasons, Abdi Dulane's testimony lacks credibility, and I disregard his testimony.

The Appellant claimed she was coerced into making damaging admissions during her interview with Salazar and Knight. I find the following portions of the Appellant's July 16, 2007 interview pertinent to the issues of credibility, dishonesty, and whether her answers were coerced.³

Appellant: [raised on her own, unprompted] "She [Rukia] left a marriage that she was forced to marry." [9:59:21].

Investigator: [Referring to Rukia's application, Exhibit 5-34 through 5-64]. Now there's one document in here that's specifically signed by you indicating that you assisted [your sister, Rukia] in the application process.

Appellant: Absolutely. [9:57:37].

Investigator: A quick question, if you don't mind me asking, you mentioned that she's...trying to get...is she going through a divorce, or how...

...

Appellant: She's trying to get away from her husband. [9:59:50]....We are trying to get the children of the husband. [10:00:33]. And I also advised her to go back home, pretend that she's...she lost this guy and wants to have children with him.

³ I have tried to capture all the speaking miscues as well as the underlying question or answer in order to reflect more accurately the difficulty the Appellant might have understanding a question, or her hesitation in answering. It is hard to overestimate the speed of Salazar's speech. He frequently stumbled over his words making it difficult to understand the question without repeatedly replaying the recording which, in addition, was of poor quality. Nonetheless, the Appellant did not appear to have excessive difficulty understanding him, so I presume the poor quality of the recording had a greater impact on the overall effect than his speech.

Appellant: She hasn't been married even when we applied for political asylum. She has not been married at all.

Investigator: She never married the amba...?

Appellant: Well...she... she...well the Ambassador just became...ahh...he became Ambassador last year. She comes... I mean he came twice since he became... her... him... she's...he become, uhhh, an Ambassador. He came [unintelligible]...trying to have some kind of relation with the kids and everything. And my sister always acted [sigh] but she wants to gain, not exactly, but she wants to get back to him and love him and, you know, marry him and, and live with him. No, I believe that they divorced, either 2003, as soon as she get her papers.

Investigator: And where was this divorce? Where did it take place?

Appellant: Ahm...I believe over the phone. And it did happen through [unintelligible] that contacted him. But she couldn't get her other 3 children until, uhm, [sigh], until she... she went back and had sex with him and pretend she [unintelligible] and that's how she [unintelligible] who...who's the only one who's scared of his last name. He wasn't sending any money and was [unintelligible] her, and look at my credit car...credits...zero.

Investigator: O.K. she claims that he sent her...

Appellant: [interrupting] He started...

Investigator: [continuing]...twenty five hundred dollars per month.

Appellant: I don't believe that's true. I know that her debt before...but I know he started when he became...Ambassador. I know that he started sending her five hundred and eight hundred. And you can check with Wells Fargo account, and I have nothing to do...you can check my account by the way.

Investigator [interrupting] Why, why, if she was fleeing him...because...if...ah, for... 'cause she wanted to...why did she apply, uhm, under a false name, to immigration?

Appellant: She did not apply a false name. She got two names. She does have Istahil Raghe, that's the name that sh...the family that...that...my family is, so large. We were 12 children, and some of us were raised by other, other people, other tribe, and we have to take the names of that family. So she was raised by a teacher... I mean family...whose father was "Raghe." And then I know she had that, that that name even back home. I know who...that the name was Ista...was Rukia Abdi...she... I mean it's not a lie...I mean I can bring you a copy of her [sigh] of her affidavit that I know she applied for political asylum.

...

Investigator: Did [your sister] report that she was married to, eh...at the time that, uh...

Appellant: She didn't want this guy. [Unintelligible]. The guy that she put under her children's name was the guy that she loves and lives in Kenya. The guy that she put under her, the name...she loves another guy....

Investigator: However did she report that she was married to...Abdirash...

Appellant: [interrupting] [Unintelligible] She never felt that she had any marriage, because she was given to [him] by this [unintelligible] family, to this family.

[Appellant continues to speak, becomes emotional, crying, but not in response to any questioning].

Investigator: So, you encouraged her to apply for benefits?

Appellant: I did when she did not...when she told me that she didn't have ANY MONEY....

Investigator: Now, when she applied for benefits, did you assist her in the application process?

Appellant: I did explain to her everything...

Investigator: O.K. O.K., so you read, so you read to her...you read to her an application and all the questions and she answered, and she answered the questions?

Appellant: Absolutely.

...

Investigator: But you did assist her in all the application processes, is that correct?

Appellant: I did assist her on all applications processes and make sure that she's, she's putting in application. I go to her home and I did fill out her applications.

Investigator: Did you also help her fill out all the MSRs?

Appellant: Ah...not always... [10:16:37].

...

Investigator: Now, eh...in all the applications from the time that she applied, which is back on December of 2004, the information you provided to the department was not correct.

Appellant: Was not?

Investigator: No. In a...

Appellant: [interrupting] I mean whatever she told me is was what I always report to you honestly, and I'm not...

Investigator: [interrupting] Actually, that's... uh, on all the applications, the ch... kids' last names, did you know the real last names for the children?

Appellant: The real last name is Dulane. [10:17:39]. It's the same...he's...

Investigator: [interrupting] So...on the application that you signed...ah, she put "Duale."

Appellant: Du...well it's...let me tell you one thing. The last name of the baby...the smallest child is what...

Investigator: Is the correct last name, is that correct?

Appellant: Is the correct one she provided because...but everything else she wanted to avoid this family. She wanted to get as far away as she possibly can from this family...[unintelligible].

Investigator: O.K., eh, so, uh, the names of the children that she provided on these applications are not, not the correct names, is that correct?

Appellant: The children? Whatever, whatever she did, ah, tell me, by the way her children were born, and...some of them were born while I was in Colorado... whatever she tell me were the children's names I went by that. And then I haven't...by the way I have never been to Ethiopia, and I do not know the truth of the children's names but I know that she's trying to get away to avoid... having any contacts with his family. She can do whatever she can consider...whatever she can consider...

Investigator: But you do know the name of her husband?

Appellant: I do know, yeah, her, her former husband's name is Abdirashid Dulane. She doesn't want her associated with [unintelligible] husband by the way.

Investigator: Now, on these applications it states the father's in a refugee camp in Kenya, Africa,

Appellant: Right.

Investigator: O.K., now, eh, when you wrote that...you mean that was...incorrect?

Appellant: No no no. It's not incorrect. She don't [unintelligible] Abdirashids. The guy she loves and the guy wants to be ... st... still in the refugee camp.

Investigator. That's not the question I asked. At the time you completed this application this statement here is not correct.

Appellant: Well, no. It IS correct because Rukia, even though she did have children with this guy... with him...

Investigator: Abdirashid?

Appellant: ...Rashid, yuh...Rukia does not want to be involved with that guy. And the guy she loves is still...and she hopes that she will live someday with him, and he is still in refugee camp. [10:19:56].

Investigator: These applications are not designed...and does not...ask questions...on what...you WISH it him, to state. [over the Appellant] It just asks who is the father of the children. That's the only question that it asks. And the answer here is the father resides in a refugee camp.

Appellant: Cause she doesn't wanna involved with Abdirashid. That's one thing I know for sure. She, there IS a guy that she's involved with, [talking over Investigator] and he's in a refuge camp.

Investigator: Was she supposed to put that father on the children on this, though?

Appellant: Absolutely.

Investigator: She reported correctly? She reported the father as Abdirashid.

Appellant: [talking over Investigator] We don't know even...Abdirashid himself, we don't know whether he was in refugee camp or not, or whether he immigrated to Ethiopia.

Investigator: This application's 2006.

Appellant: Is that 2006?

Investigator: Right, that's the application that you signed, is, is dated 2006. He was the Ambassador at that time.

Appellant: No no, that's not correct. And even if he was, she doesn't want to involve him as [unintelligible] Ambassador.

Investigator: So, basically this is the wrong information in the application?

Appellant: I know what you guys saying. You are... I mean I'm not denying this evidence, but what I'm saying is Rukia wanted to stay away from that family as far as she can...and [unintelligible].

...

Investigator: The only question we have is that, that, what is this, is this application correct, and obviously it's not correct.

Appellant: Well most of the time it is [unintelligible], Ninety five percent, trust me. I swear to God.

Investigator: O.K., well we have all these applications and not one single application identifies Abdirashid, containing as the father of ANY of the kids.

Appellant: We try to avoid him, and that's why today you have his own brother chasing Rukia....

Investigator: Now, let me ask you, O.K., you keep bringing that up that she doesn't want to be associated with him. Did she tell anybody at Arapahoe County about that, her situation?

Appellant: Did she tell anybody? Will she be able to get any help from Arapahoe County?

Investigator: Well, did she notify her technician that she's [over Appellant] scared of prosecution, or persecution the father of the children? Did she notify our agency about that?

Appellant: Well...ah...and that's a good question. I do not know...

...

Appellant: He [Ambassador], he sends her [Rukia] [unintelligible] some money, but she tries to avoid. [10:33:50] She tri...and she doesn't know when he's gonna cut it.

...

Investigator: All right, O.K., so, uh, I pretty much understand... the situation now. Uh, it gives me a better, clearer picture of what's going on. Now I'm gonna recap to you, recap what we talked about so that we can, so that I can have a clearer understanding of, of your situation and the reason, and...you know, regarding the applications and everything, O.K.? And before we end today what I wanna get

is...we're gonna put this on, on paper. We're gonna get a statement from you, O.K., regarding everything we talked about today, O.K.? In more or kinda... a syn...summary type issue, O.K.? But we wanna make sure it's correct. Um, what I ge... with the information I got from you – correct me if I'm wrong – I'm gonna try to recap what we've gone over today, is that, that, uh, that due to the fact that...umm... Rukia...ummm felt... persecuted from her husband, [Appellant begins crying] she, she, she left she left Ethiopia...

Appellant: [interrupting] She...he never gave her any citizenship to live in Ethiopia. That's why she want to [unintelligible]. [Crying] That's why I was sending money to pay her... for a while....

Investigator: O.K. O.K. so what was... on a recap of the information that we, that we've got, O.K.?

Appellant: [interrupting] I'm sorry to disturb you.

Investigator: No, that's O.K., I understand. Umm...so anyway she came from, she came from Ethiopia, eh, to...to avoid marriage with her husband, Abdi... Abdirashid Dulane. O.K., she came through Kenya to, and she came illegally through Mexico, O.K.?

Appellant: Right.

Investigator: Upon arrival here she came to Denver, met with you, applied for asylum. When she applied for asylum she did not list that she... that she was married to Abdirashid Dulane, umm... she did not list the children...umm father by name. She used instead she used the name Rukia...uh... Istahil.

Appellant: Istahil, yeah. That's...that's her [unintelligible].

Investigator: And... which she did obtain... obs... er... she did obtain asyl... which she did absa... obtain her resident...residency here through... eh ... as an asylee, is that correct? [10:37:05 – 10:37:14].

Appellant: Asylum, yeah, but the... the name...but the name is Istahil Raghe, and that is the name that she was given by the family who raised her, so not a name that we made up.

Investigator: She was given, she was given asylum under that name, and the children were given asylum under the names that she provided, and not the correct ones, is that correct?

Appellant: For her own safety, yes.

Investigator: I understand, O.K. And she applied for benefits under that, that, that false name, under Istahil Raghe.

Appellant: It's not false name...

Investigator: [Interrupting] O.K. She applied for benefits under "Istahil Rahge, and she applied for benefits for her children also.

Appellant: Right.

Investigator: O.K. She applied for these benefits with your assistance, umm, and you assisted her in completing the applications.

Appellant: Absolutely.

...

Appellant: Can I have your business cards please?

Investigator: Yeah. Before we go today we need to get a statement from you, O.K.?

Appellant: O.K.

Investigator: This is to ensure that we don't misconstrue today the information you provide to us, so that we don't misinterpret the information you provide to us today, O.K.?

Appellant: O.K.

Investigator: And this...this...cord...this recording will go as part of our investigation...umm...and will be obviously, obviously...eh...an important part of it. And this is to ensure that we have the information correct, and insure that you are providing the information correctly...

Appellant: Absolutely.

Investigator: So, I mean, it basically covers you and it covers us, O.K.?

Appellant: O.K.

Investigator: So...we can't go back and say she stated this and your statement says completely different, O.K.?

Appellant: Gottcha.

Investigator: What I need you to do is...umm... I need you to write... ah... write your name here and explain to me that, ah, basically what we talked about that, that your sister came up through... how she came here, how you applied for asy... how she applied for asylum, she applied under a diff... under the name of Raghe and, ah...and ahm... how she went about applying for...for benefits. And we'll kinda...we'll kinda walk you through to make sure we have it co..., the information that we... that we need.

Appellant: Hmmm.

Investigator: We'll try to keep this short we would... we'd make sure we have the correct...

Appellant: [interrupting] Well, well what do you want me to [unintelligible].

Investigator: O.K., I just need you to write that ah... that umm... that... that ah... I am the sister of... you can list her...her... her true... ah... Abdi

Appellant: [repeating slowly as if writing the same] "the sister of..."

Investigator: [Also repeating slowly as if to confirm] "of Istahil Raghe, who also is, whose real n... whose name is... [10:45:05]

Appellant: [interrupting, unprompted] her biological name.

Investigator: Right, whose biological name is [long pause]. O.K. O.K. she... She arrived in the United States...through Somalia...er...whatever...through, through

Appellant: [slowly, as if writing] Through Mex-i-co

Investigator: Mexico, the U Eh...

Appellant: [slowly, as if writing] Ken-ya...and...

Investigator: Arrived

Appellant: Ar-rived

Investigator: In the United States

Appellant: U.S.

Investigator: Illegally [pause]. O.K? She applied for...

Appellant: Il-le-gal-ly.

Investigator: O.K. She applied for... O.K., back in 2003, or whenever she [pause].

Appellant: I think so.

Investigator: O.K.

Appellant: [still as if writing] She was granted...grant-ed political asylum.

Investigator: [repeating] O.K., political asylum, O.K.

Appellant: [as if writing] sy-lum, back in [unintelligible].

Investigator: O.K. Now, I need you to mention here that she was married to Abdi...Abdirashid Dulane [pause]

Appellant: [unintelligible] I don't want to say "married."

Investigator: O.K., but was she married to him?

Appellant: Umm...legally, yes. [10:46:47].

[Investigator continues to dictate, and Appellant repeats slowly, as if writing].

Investigator: O.K. O.K., uhm... state that, uh... she applied...she...she's...she applied for benefits in Arapahoe County with my assistance. [long pause]. O.K., uhm...y could say...O.K. "We provided false information to protect... to protect her from being loc... or whatever, to protect her from her husband." 'Cause I'd ask you, b'cause, there's no doubt the information is false. Now...

Appellant: [interrupting] Not...not as you think, Mr. Salazar. But I do agree...

Investigator: [interrupting] O.K., O.K., O.K., and that's...Yes...O.K., but what I'd ask you, what I'm...I'm doing...I'm giving you the opportunity to...to state WHY the information is false, O.K? There's a big... it goes a long way in...to determine a person's guilt or innocence, O.K? So, the fact that they're false, we know that, O.K? This's your opportunity to state WHY they're false, O.K.? So you say "we provided false information to... on our application to protect..." You feel comfortable in writing that, or not?

Appellant: Huh?

Investigator: Do you feel comfortable in writing that, or not?

Appellant: No, I'm not very comfortable, but I do...I do see your point at some point, I really do, but I wish to you guys would see mine...my side of the story.

Investigator: We do see yours, absolutely. I...I...I totally understand. And that's exactly how I'd advocate your position, is that the reason you provide the false information was because you wanted to protect your sister from... from eh... from a marriage that wasn't wanted by her, O.K.? And...and I would...I would advocate that position. Now...but...but it doesn't change the fact that these applications were false. So we have to EXPLAIN why they're false.

Appellant: O.K., I'm agreed.

Investigator: Because nobody... everybody in the world if, af... upon reviewing this application will know it's false. That can't be changed. But what can be change is the reason WHY they are false, O.K.? [Appellant sighs]. You [untintelligible] under TANF, correct? Colorado Works?

Appellant: Some extent, yes.

Investigator: O.K., and you're aware that...like...they go after the absent parent for child support.

Appellant: Right.

Investigator: Now...uh...are you also aware that if there's... if the person feels like this person will... repercussions, know...then they'll all [unintelligible] ?

Appellant: Absolutely.

Investigator: You're aware of that?

Appellant: Absolutely.

Investigator: So basically, without us knowing that information we can't do that, so that's why, y'know 's like we're giving you a chance to tell us the full truth here, why...so then we can go from there.

Knight: Because what we could is say that [unintelligible] is false and that's it. We'd already proven...we'd already established that.

Appellant: [slowly, as if writing] Because... false...info...because of her safety.

Investigator: Safety, O.K., that's fine.

Appellant [slowly as if writing] And that...chil-dren's fa-ther's bro-ther, Du-lan-e. [10:52:45].

Investigator: You can add...umm...here's...O.K...

Appellant: O.K. what else do you...

Investigator: O.K....umm... 'ts stating...and it stating here this... basically you can state the same reason why you...why she applied for asylum under a false name. You know... you know, she also applied for asylum under a false name because of the safety issue...b'tween...[long pause]. Now it states here for benefits that she be... for asylum...applied for asylum.

Appellant: Well...asylum, she... I mean sh... I mean him leaving them in that asylum is not false, it's just the children... [10:54:17] [Appellant cites what she is writing in Exhibit 5-130. No input from Investigator as to content here].

[Interview ends on friendly tone. Investigator asked Appellant for I.D. and Appellant offers to go get it from her purse. Investigator asks Appellant for information on Agency's referral process in general and Appellant explains].

[Exhibit 13, Interview with Dehman Abdi 7/16/07].

I find the following portions of the Appellant's interview pertinent to her credibility.

1. Rukia's name.

The Appellant remained consistent in her statement that her sister's last name, unlike all eleven other siblings, was changed from "Abdi" to "Rahge" because she was adopted at a young age. She explained her parents could no longer afford to feed all the children. This explanation is not logical, as siblings younger than Rukia were not adopted.

2. Rukia's children's names.

During her interview, the Appellant stated "[t]he guy that she put under her children's name was the guy that she loves and lives in Kenya. The guy that she put under her, the name...she loves another guy....[S]he never felt that she had any marriage, because she was given to [him] by this [unintelligible] family, to this family." Given that the Appellant acknowledged she assisted Rukia on all applications, the more logical explanation is, as acknowledged frequently by both Rukia and the Appellant, that Rukia was not in love with the Ambassador, that she was love with another man, and that she WISHED (emphasis added) that she'd had her children with him rather than with the Ambassador. The Appellant's alternate explanation, that Rukia renamed her children because she feared any association with the Ambassador, appears unfounded, since the youngest child was named "Dulane," the Ambassador's name, and not "Duale." [Exhibit 5-98, Appellant cross-exam]. For this collusion with her sister in re-naming two of her sister's children in applications for asylum and for benefits, the Appellant engaged in a dishonest act in violation of CSR 16-60 D.

3. Whether the Appellant knew Rukia was married to the Ambassador at the time she helped Rukia apply for financial assistance.

During her interview, the Appellant began very confidently talking about her sister, but became tongue-tied when talking about her sister's marriage or lack thereof, and her divorce or lack thereof. In rapid succession, she insisted her sister left a bad marriage, stated her sister was never married, changed the subject, and then when pressed, stated her sister divorced the Ambassador over the phone. It was apparent during her interview and at hearing that the Appellant struggled to explain coherently and consistently whether her sister was married, divorced or separated. These inconsistencies, in conjunction with the Appellant's acknowledgement that the Ambassador sends Rukia at least some money every month, [see below], leads me to conclude, by a preponderance of the evidence, the Appellant was aware Rukia was married to the Ambassador at the time she assisted Rukia in applying for public assistance, a dishonesty in violation of CSR 16-60 D.

4. Whether the Appellant knew Rukia received financial support from the Ambassador at the time the Appellant helped Rukia apply for public assistance.

Rukia acknowledged the Ambassador sent support to her every month since he became Ambassador, and that the Appellant was aware of that support. [Exhibit 13, Interview with Rukia Abdi 7/13/07]. The Appellant acknowledged during her interview on July 16, 2007, that the Ambassador sent money to Rukia, but disputed the amount he sent her. The Appellant later claimed these statements were improperly coerced by investigators. I find no proof, by a preponderance of the evidence, that statements made by the Appellant and her sister prior to the dictation of their written statements were improperly obtained. Abdirashid Dulane became Ambassador on April 21, 2006. [Exhibit 9-1]. Consequently, the Appellant was aware the Ambassador sent money to Rukia when she assisted Rukia to apply for assistance on May 2, 2006, [Exhibit 5-97 through 5-102, and 5-103 through 5-128; Exhibit 13, Interview with Dheman Abdi 7/16/07]. The Appellant's awareness of Rukia's receipt of monthly support conflicts with Rukia's application for public assistance, Exhibit 5-105, #12, in which she states she has no outside support. This false statement constitutes a violation of CSR 16-60 D. for dishonesty.

3. CSR 16-60 M. Threatening, fighting with, intimidating or abusing employees or officers of the City or any other member of the public, for any reason.

Smith alleged the Appellant violated this rule by threatening some members of the Somali community with homelessness. [Smith testimony, referring to Exhibit 2-5, top paragraph]. Hodan did not testify and if she had, her testimony and that of her husband, who did testify, is not more credible than that of the Appellant. Both appear to have committed welfare fraud, and reported the Appellant to authorities only in revenge for the Appellant's reporting their suspicious welfare claims. "[Rukia is] giving us a hard time so we gonna go after her and her sister. [Abdi Dulane Interview 7/11/07 @ 10:48:35]. "They're [Rukia and Appellant] making your [Hodan's] life miserable, so

let's go ahead and make their life miserable too. [Abdi Dulane 7/11/07 @ 10:56:35, Abdi Dulane testimony]. Moreover, Abdi Dulane was convicted of a crime of dishonesty. Because the Agency's claim here depends entirely upon the word of two unreliable witnesses, this claim is not proven by a preponderance of the evidence.

4. CSR 16-60 O. Failure to maintain satisfactory working relationships with co-workers, other City employees, or the public.

Smith testified the Appellant violated this rule in the following ways: by deceiving co-workers Baker and Larimore to look up and process information under the false pretense that she was Hodan's current case worker; deceiving Nunn to look up information on Hodan under the same false pretenses; and threatening members of the Somali community with homelessness. These allegations, even if true do not establish a violation of CSR 16-60 O, since there was no evidence any working relationship was diminished by the Appellant's actions. The Agency failed to establish co-workers' inability to work with Appellant and presented no credible evidence of threats to members of the community.

5. CSR 16-60 X. Divulging confidential or otherwise sensitive information to unauthorized individuals.

Smith testified the Appellant violated this rule by providing Hodan's social security number and her driver's license information to investigators although they did not seek that information, and after they told her not to talk any more about Hodan's case [Smith testimony 11/27/07]. The Appellant replied she believed she did nothing inappropriate and was only responding to the investigators' requests for supplementary information. [Appellant testimony, Exhibit 6-7].

It was unclear, by a preponderance of the evidence, whether the Appellant supplied Hodan's social security number and driver's license to investigators at their request or upon her own volition without their suggestion. The Agency failed to prove this violation by a preponderance of the evidence.

6. CSR 16-60 Y. Conduct which violates the Rules, the City Charter, the Denver Revised Municipal Code, Executive orders, or any other applicable authority.

CSR 15-5. Every employee in the Career Service shall conscientiously fulfill the duties and responsibilities of his or her position. The conduct of every employee during work hours or at any time while representing the agency, department or City shall reflect credit on Career Service and the City and County of Denver (City).

The only Agency evidence on this claim was Smith's testimony that the Appellant violated the CSR 15-5 by using her work time to assist her sister's fraudulent application for benefits in Arapahoe County. She did not state how she determined

what work time was devoted to these improper functions, nor was any evidence adduced as to what applications or how much time was improperly used.

The Agency's evidence is insufficient to prove, by a preponderance of the evidence, that the Appellant's actions discredited the Career Service Authority, the Agency or the City. A theoretical effect of bad conduct is insufficient to establish a claim under this rule. Some actual or reasonably perceived harm is required.

DRMC § 2-67 Use of Public office for private gain. No officer, official or employee shall use his or her public office or position or disclose or use confidential information in order to obtain private gain for himself or herself, for his or her immediate family...

Smith testified the Appellant violated this Rule by helping Rukia to obtain benefits for which she was not eligible. Smith also found the Appellant violated this rule for using her position to threaten and intimidate some unspecified members of the Somali community. [Smith testimony 11/27/07 @ 3:42:43]. The Appellant replied she was acting in her official capacity as an interpreter and as a member of the Agency in assisting her sister's application for asylum and for benefits through Arapahoe County.

For reasons stated both above (see IV. C. 2, above) and below (See V., Conclusions), the Appellant's credibility is suspect. Larimore testified the updating of Joblinks by the Appellant would be outside the scope of her employment, [Exhibit 5-141, Larimore testimony 12/13/07], as Hodan hadn't been an agency client since 2002, and the Appellant's access to agency software had expired. Larimore's credibility was not challenged.

While it was not clear, by a preponderance of the evidence, that the Appellant threatened members of the Somalian community, it was evident she held herself out to Michael Nunn, Rukia's case worker, as an Agency representative, [Exhibits 5-146, 5-143, 144, Nunn testimony 11/15/07], in order to obtain confidential information that assisted Rukia to obtain benefits to which she was not entitled, as concluded above. It was also apparent she held herself out to Donna Baker as Hodan Abdi's caseworker when she sought an investigation into Hodan and her husband. The subsequent investigation into Hodan and Abdi Dulane had the effect of diminishing their credibility and thereby aided her sister's legitimacy in seeking public assistance to which she was otherwise not entitled. The Appellant also deceived a co-worker to gain improper access to Agency software in order to update Hodan's home address, similarly seeking an advantage for her sister. The Appellant's actions described here and immediately above are violations of CSR 2-67, and therefore violate CSR 15-5.

7. CSR 16-60 Z. Conduct prejudicial to the good order and effectiveness of the department or agency, or conduct that brings disrepute on or compromises the integrity of the City.

To sustain this violation, the agency must prove the Appellant's conduct hindered the agency mission, or negatively affected the structure or means by which the agency

achieves its mission. In re Simpleman, CSA 31-06, 10 (10/20/06). An important part of the Agency mission is to help those in need, [Exhibit 1 Supp. 1 p.8 Mission Statement]. The means to accomplish this mission include distribution of finite local, state, and federal resources to those in need. By assisting her sister to obtain public benefits to which she was not entitled, the capacity to assist others with legitimate needs was diminished, a direct affront to the Agency's effectiveness and to its mission. I therefore find the Appellant violated this rule by a preponderance of the evidence.

D. Appellant Claims

1. Discrimination

The Appellant claimed the Agency's termination of her employment was the result of unlawful discrimination based upon her race. The test to establish a *prima facie* case for discrimination was first announced in McDonnell Douglas v. Green, 411 U.S. 792 (1973), and has been adopted by Colorado. Bodaghi v. Department of Natural Resources, 969 P.2d 718 (Colo. Ct. App. 1998) (rev'd on other grounds). Intentional discrimination is proven by evidence of 1) membership in a protected class, 2) an adverse employment action, and 3) evidence which supports an inference of discrimination. In re Johnson, CSA 135-05, 3 (Order 3/10/06).

The Appellant is African American and meets the first criterion. The Agency's dismissal of the Appellant meets the adverse action test. With respect to the third requirement, the Appellant's evidence is the Appellant complained to her supervisors that the Agency had hired only Ethiopian interpreters and no Somali interpreters. [Appellant testimony, Appellant closing statement]. This is insufficient to establish a nexus between the Agency's adverse action and the Appellant's national origin.

V. CONCLUSIONS

The Agency's case, alone, provided sufficient evidence for most of its claims against the Appellant. Much of that evidence derives from the Appellant's and Rukia's interviews with investigators. Thus, the case turns largely upon the Appellant's claim that any negative information she and Rukia supplied to investigators was wrongfully coerced, and that damaging information supplied by Abdi Dulane is untrustworthy. Consequently the competing claims of the Agency and the Appellant turn entirely on credibility.

In addition to findings above regarding credibility, the following evidence was significant in finding the Appellant's credibility lacking.

1. The Appellant claimed in her sworn affidavit in support of Rukia's asylum in 2003 that she (Appellant) had lost all contact with her family, and that she didn't know if her siblings were alive. "I do not know where my other siblings are and until Istahil [Rukia] came I thought I was the only one that made it to the United States." However, the Appellant was the petitioner for asylum for two brothers, Ahmed and Guled, on

February 26, 1997. Exhibit 12].

2. The Appellant claimed the reason for Rukia's name change in seeking asylum was to avoid her identification as the wife of an ambassador who abused her, but in the Appellant's affidavit in support of her sister's asylum in 2003, the Appellant did not mention spousal abuse or her sister's connection to the ambassador, but instead identified her sister's clan as the persecution she sought to avoid. [Exhibit 7-2]. In addition the Appellant and Rukia did not reveal Rukia's birth name or marriage to the Ambassador to Rukia's immigration attorney who assisted with her asylum. There would be no reason, related to abuse, to conceal this information from Rukia's attorney. Indeed, the contrary would seem more appropriate. The more logical reason for this failure to disclose this information is the Appellant's and Rukia's desire to conceal information that would have a negative impact on Rukia's asylum request.

3. The Appellant claimed she never met Abdi Dulane until she came to Colorado, but Abdi Dulane produced photographs she sent to him from Rome in 2004. [Exhibit 11].

4. The Appellant claimed not to know if Rukia survived the war in Somalia, or if she survived the refugee camp, in a sworn affidavit to INS in 2003. However, the Appellant told Salazar she sent Rukia money in Kenya. Her explanation at hearing was that "relatives" told her to send money and therefore she did. It is implausible that the Appellant sent money indiscriminately to a refugee camp simply because she was told to, and more plausible she sent money to Rukia.

5. The Appellant helped her sister fill out all applications for public assistance. On one application Rukia's son was stated to have been born in Somalia, but in Kenya or Nairobi on others.

6. The Appellant did not advise Rukia to check the box for domestic violence in Rukia's applications for public assistance although both of them claimed to investigators and at hearing that Rukia feared contact with the Ambassador. Similarly the box for an absent parent was not checked.

7. The Appellant claimed Rukia was adopted. This seems unlikely because this account would require that only the 9th of 11 children was adopted out for financial reasons, but, in addition, the Appellant stated "some of us were raised by other, other people, other tribe, and we have to take the names of that family" (emphasis added). Later, however, and during hearing, she claimed only Rukia was adopted and raised by a different family. Moreover, during her interview, the Appellant, without any related question pending, offered this statement. "[the ambassador] never gave [Rukia] any citizenship to live in Ethiopia. That's why she want to [unintelligible]. [Crying]. That's why I was sending money to pay her... for a while...." This acknowledgement that she sent money to her sister is contrary to later assertions that she lost all contact with Rukia for 23 years. [Exhibit A-1, Exhibit 6-5, Appellant testimony].

8. The day after her 7/16/07 interview, the Appellant sent an email to the investigators. [Exhibit 5-131]. The tone of the email was friendly, and the email provided unsolicited information about alleged welfare fraud committed by Hodan and her husband. She repeated her accusation that Hodan and her husband live lavishly while her sister lives poorly. It seems unlikely this is the response of someone who feels coerced and intimidated. In addition, the Appellant's interview responses were frequently defiant and assertive. It seems unlikely these are the nature of responses by someone who feels coerced into providing false responses.

VI. DEGREE OF DISCIPLINE

The purpose of discipline is to correct inappropriate behavior if possible. Appointing authorities are directed by CSR 16-20 to consider the severity of the offense, an employee's past record, and the penalty most likely to achieve compliance with the rules. CSR § 16-20.

The Appellant's actions violated the very mission of the Agency, to provide assistance to those who need it most. The Appellant's record was otherwise unblemished; however, in aggravated cases such as this, progressive discipline is not required, particularly where a lesser penalty is unlikely to achieve compliance. CSR § 16-50. The Agency's election to dismiss the Appellant was within the range of reasonable alternatives available to it. The Appellant's continued failure to acknowledge wrongdoing strongly suggests a lesser penalty would not correct the inappropriate behavior.

VII. ORDER

The Agency's dismissal of the Appellant on September 5, 2007, is AFFIRMED.

DONE February 19, 2008.



Bruce A. Plotkin
Career Service Board Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

A party may petition the Career Service Board for review of this decision in accordance with the requirements of CSR § 19-60 *et seq.* within fifteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the certificate of mailing below. The Career Service Rules are available at [www.denvergov.org/csa/career service rules](http://www.denvergov.org/csa/career%20service%20rules).

All petitions for review must be filed by mail, hand delivery, or fax as follows:

BY MAIL OR PERSONAL DELIVERY:

Career Service Board
c/o Employee Relations
201 W. Colfax Avenue, Dept. 412
Denver CO 80202

BY FAX:

(720) 913-5720

Fax transmissions of more than ten pages will not be accepted.

I certify that on February 19, 2008, I delivered a correct copy of this DECISION to the following in the manner indicated below.

Dennis Champine, Esq., dennischampine@qwest.net	(via email);
Ms. Dheman Abdi, dheman_abdi@yahoo.com	(via email);
Carla Pierce, Assistant City Attorney dlefilinq.litigation@denvergov.org	(via email);
Ms. Paula Gomes-Farrell, Department of Economic Development, Workforce Development, Paula.GomezFarrell@denvergov.org	(via email).

