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BEFORE THE CIVIL SERVICE COMMISSION
FOR THE CITY OF SEATTLE

MAMIE D. HILL, Appellant, v. CITY OF SEATTLE, PUBLIC SAFETY CIVIL SERVICE COMMISSION, Respondent.	)	No. 00-07-026 ORDER AFFIRMING HEARING EXAMINER'S ORDER OF DISMISSAL

ORDER

This appeal came before the Civil Service Commission on November 22, 2002 for consideration of Appellant's Petition for Review.

The Commission notes that Ms. Hill's Petition fails to comply with the requirements Rule 8.05 of the Commission's Rules of Practice and Procedure. There is no record that Ms. Hill served a copy of the petition for review on the Department. The Petition does not set forth with specificity what errors Ms. Hill claims were made by the Hearing Examiner.

Despite these procedural failings, the Commission on its own motion reviewed the Hearing Examiner's decision in light of Ms. Hill's Petition. Finding no error, the Commission **affirms** the Hearing Examiner's Decision.

As such, the above referenced appeal is hereby **DISMISSED WITH PREJUDICE.**

Kenneth R. Morgan, Chair

Ellis H. Casson, Commissioner

Elizabeth Ford, Commissioner

BEFORE THE CIVIL SERVICE COMMISSION
FOR THE CITY OF SEATTLE

MAMIE D. HILL, Appellant, v. CITY OF SEATTLE, PUBLIC SAFETY CIVIL SERVICE COMMISSION, Respondent.	)	No. 00-07-026 ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT OF DISMISSAL

This matter comes before the Commission, by and through the undersigned Hearing Examiner, upon Respondent City of Seattle's Motion for Summary Judgment filed with the Hearing Examiner on July 9, 2002, requesting to dismiss the appeal of Appellant Mamie D. Hill. Having reviewed and considered Respondent's Motion and the attached Exhibits 1-25, Appellant's Motion to Deny Summary Judgment filed with the Hearing Examiner on July 15, 2002, Respondent's Reply in Support of Motion for Summary Judgement and the attached Exhibit 1, filed on August 5, 2002, as well as the file in this appeal, IT IS HEREBY ORDERED that

Respondent's Motion for Summary Judgment of Dismissal is GRANTED.

PROCEDURAL BACKGROUND

The matter before this Hearing Examiner is limited to the issue raised in Appellant's Notice of Appeal No. 00-07-026 filed with the Civil Service Commission on November 1, 2000. Specifically, Appellant complained of the following:

> The City of Seattle Law Department has notified me that I have been implicated in creating a hostile work environment for the Public Safety Civil Service Commission staff. I have been asked to sign a Fair Credit Reporting Act form in order to have my statement be considered by the Consultant Firm conducting interviews of staff in this matter.
> . . .
>
> I do not believe my credit history is relevant in this matter. I have received (what I believe is inappropriate) pressure from the Law Department and Public Safety Civil Service Commission to sign the form, been retaliated against, been intimidated and received verbal warnings and written warning of possible disciplinary action.

Appellant did not allege that any disciplinary action had been taken against her at the time she filed this appeal on November 1, 2000. Appellant did not identify in her Notice of Appeal any specific personnel ordinance(s) or rule(s) alleged to have been violated.

On December 7, 2000, the Commission's Executive Director entered an Order in this appeal and framed the issue before the Commission as follows:

> Whether or not the requirement that a person being investigated for any reason must be be [sic] required to sign the Fair Credit Reporting Act Notification Disclosure form and if so, does the requirement of signing the form violate the City Charter, Municipal Code or any rules.

Additionally, the Executive Director found there was a conflict of interest involving the then assigned Hearing Examiner and Assistant City Attorney and ordered an indefinite postponement of the appeal until a pro tem Hearing Examiner was appointed and a new attorney was assigned to represent the City.

In early 2001, Appellant received a written reprimand. The reason given for the reprimand was Appellant's failure to follow direction and sign the Fair Credit Report Act (hereinafter "FCRA") disclosure notification form and cooperate in the investigation related to the Public Safety Civil Service Commission (hereinafter "PSCSC") workplace. On February 1,

2001, Appellant Hill filed a new appeal (Appeal No. 01-07-002), complaining as follows:

> On February 1, 2001, the following action took place: Written reprimand.
> . . .
> Appellant is aggrieved by said action for the following reasons: Violation of Civil Rights, Harrassment [sic], Retaliation.

She did not identify in her Notice of Appeal any specific personnel ordinance(s) or rule(s) alleged to have been violated. By letter to Appellant Hill dated February 2, 2001, the Commission's Executive Director determined that under Commission Rules of Practice and Procedure Rule (hereinafter "Commission Rule") 7.03(b)(2)[1] , Appellant's appeal of the written reprimand (Appeal No. 01-07-002) did not constitute a final disciplinary action and, therefore, her appeal could not be heard "at this time". She indicated that there were additional allegations cited in the appeal, *i.e.*, "a violation of civil rights, harassment and retaliation", and referred Appellant to the City's Office of Civil Rights.

With regard to the instant appeal, after hearing oral argument on Respondent's motion to dismiss this appeal,[2] the Commissioners entered an Order on May 15, 2001, finding that this Appeal No. 00-07-026 in its entirety was premature and stayed the proceedings "until the action becomes final." See Commission Rule 7.03(b)(2).

Notwithstanding the Commissioners' Order, the Commission's Executive Director entered an Order on August 24, 2001, that re-framed the issue of Appeal No. 00-07-026 and separated the allegations of intimidation and retaliation from the allegations of warnings of

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[1] Commission Rule 7.03(b)(2) states "Premature appeals: In the case of an action that is not final, the appeal shall be stayed until the action becomes final."

[2] The record before me does not contain an original or a copy of this motion. Presumably, therefore, Respondent through its counsel made this motion orally before the Commissioners during an April 24, 2001, prehearing conference. According to the Commissioners' Order, Respondent sought dismissal of Appellant's instant appeal on the ground that it was not a final action under SMC 4.04.260(A).

possible discipline as follows:

> Whether the actions taken by the City after appellant refused to sign a Fair Credit Reporting Act disclosure form were intimidating and/or retaliatory in violation of the City Charter, Article XVI, Section 4, and the Seattle Municipal Code, including but not limited to SMC 4.04.040, 4.04.070(I), 4.20.810(3)(C)(1), and 4.04.850(C) [sic].

In the Order, the Executive Director set a discovery calendar as to the allegations of intimidation and retaliation.

On September 26, 2001, the Commission's Executive Director entered an Order dismissing Appellant's Appeal No. 01-07-002 (appeal of written reprimand) in its entirety inasmuch as more than six months had passed from the filing date of the appeal and Appellant had not filed a charge of discrimination with the City's Office of Civil Rights.[3]

On November 1, 2001, Respondent filed a Motion to Disqualify Rhea Rholfe [sic], Miriam Moses and Mary Effertz. On December 11, 2001, the Commissioners entered an Order deferring any decision on Respondent's motion to the assigned Hearing Examiner. On that same date, Hearing Examiner Rolfe partially granted Respondent's Motion, *i.e.*, she recused herself from any further involvement in this appeal. However, she did not disqualify Executive Director Moses and Staff Assistant Effertz. On December 17, 2001, Respondent, by its counsel, served its Petition for Partial Review of Order on Motion to Disqualify Rhea Rolfe, Miriam Moses and Mary Effertz on Appellant Hill and on the PSCSC. Apparently, however, the Civil Service

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[3] The record reflects that Appellant filed a joint discrimination charge alleging race discrimination and retaliation with the U.S. Equal Employment Opportunity Commission (hereinafter "EEOC") and the Washington State Human Rights Commission (hereinafter "WSHRC") on August 15, 2000, when she first was requested by the PSCSC Chair to authorize FCRA disclosure. The record reflects that the WSHRC issued a no cause finding on July 30, 2001, that included findings about the written reprimand Appellant received on or about January 17, 2001. The record also contains an October 12, 2001, determination by the EEOC that after conducting an investigation the evidence did not establish a violation of Title VII.

Commission did not receive Respondent's Petition until January 23, 2002, beyond the 14-day period for filing reconsideration requests as per Commission Rule 8.24.

On March 8, 2002, this Hearing Examiner sent the parties notice of her assignment to this appeal. All further processing of this appeal has occurred through the Hearing Examiner's law office.

LEGAL AUTHORITY

A motion for summary judgment will be granted if the pleadings and any admissible evidence submitted by the parties and contained in the record show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Civil Rule 56(c). "A motion for summary judgment will be granted only if, after considering the evidence in the light most favorable to the non-moving party, 'reasonable persons could reach but one conclusion.'" Overton v. Consolidated Insurance Company, 145 Wn.2d 417, 429 (2002), quoting Reynolds v. Hicks, 134 Wn.2d 491, 495, 951 P.2d 761 (1998); Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). When a motion for summary judgment is made, the non-moving party may not rest upon mere allegations or denials to defeat the motion, but must set forth specific facts showing there is a genuine issue of material fact to be decided. Such facts are evidentiary in nature. Statements of ultimate facts or conclusions of fact are insufficient. See Civil Rule 56(e); Overton, *supra*, 145 Wn.2d at 430. Respondent, the party seeking summary judgment, is the moving party; Appellant Hill is the non-moving party.

As a threshold matter, Respondent moves to dismiss this appeal, contending that the Commission has no jurisdiction over this appeal because there is no appealable final action, and to the extent that Appellant's Appeal No. 00-07-026 raises civil rights, discrimination and/or

retaliation claims, jurisdiction resides exclusively with other agencies and not the Commission.

The Commission's authority to hear and decide appeals pursuant to the City's civil service system arises from the Seattle City Charter, Article XVI, and SMC 4.04.250(L)(3). SMC 4.04.260(A) provides in part that

> A regular employee who is aggrieved thereby may appeal to the Civil Service Commission his/her demotion, suspension, termination of employment, or violation of this chapter or rules passed pursuant thereto;....

In accordance with SMC 4.04.260(A), Commission Rule 7.01 sets forth the types of appeals that may come before this Commission.[4] Commission Rule 7.01(1) states "Any regular employee who is demoted, suspended, or terminated may appeal such action to the Commission." Commission Rule 7.01(3) states that

> Any individual or department adversely affected by an alleged violation of Article XVI of the Charter of the City of Seattle, the Personnel Ordinance or the administration of the personnel system may appeal such violation to the Commission.

On an appeal from a demotion, suspension or termination, Commission Rule 7.19 places the burden on the disciplining authority to show justifiable cause for issuing the disciplinary action. In appeals of other actions, it is the appellant-employee who has the burden of proof by a preponderance of the evidence. Id.

ANALYSIS

The instant appeal alleges that Appellant has been subjected to: (1) inappropriate pressure from the Law Department and the Public Safety Civil Service Commission to sign the FCRA

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[4] Commission Rule 7.01(2) is not relevant here inasmuch as it pertains to probationary employees.

disclosure notification form; (2) unspecified retaliation; (3) unspecified intimidation; and (4) verbal and written warnings of possible discipline.[5]

Warning of Possible Discipline

Turning first to Appellant's allegation in her appeal that she had been subjected to verbal and written warnings of possible discipline, I find that these warnings of possible discipline do not constitute discipline of a nature appealable under SMC 4.04.260(A) and Commission Rule 7.01(1). The possible discipline Appellant complained of in her November 1, 2000, Notice of Appeal took the form of a written reprimand on which she based her later, February 1, 2001, Notice of Appeal. I find that the written reprimand Appellant received was a final action – it was the ultimate discipline that resulted from Appellant's not complying with the directive to sign the FCRA form and to cooperate in the investigation of the PSCSC workplace. Therefore, that the portion of Appeal No. 00-07-026 pertaining to the possibility of her being subjected to future discipline, I find, was subsumed into Appeal No. 01-07-002 (appeal of written reprimand) and rendered moot. Although the written reprimand was a "final action", it was not an action appealable to the Commission under SMC 4.04.260(A) and Commission Rule 7.01(1). Therefore, it is proper to dismiss on summary judgment the allegation pertaining to possible discipline.

Inappropriate Pressure, Intimidation and Retaliation

Turning next to Appellant's allegations that she was subjected to inappropriate pressure

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[5] The record contains evidence that in November, 2001, Appellant was investigated by the Seattle Ethics and Elections Commission for alleged improprieties and that in late December, 2001, Appellant's position at the PSCSC was eliminated by the City Council. Appellant has urged this Hearing Examiner to incorporate these actions into this instant appeal. They, however, occurred following the filing of this appeal and, therefore, are beyond the scope of this appeal and will not be considered by this Hearing Examiner.

to sign the FCRA disclosure notification form as well as to intimidation and retaliation, these allegations as set forth in her Appeal No. 00-07-026 arose from her having received a memorandum dated October 23, 2000, from an Assistant City Attorney informing her and other PSCSC staff that PSCSC Commissioners were directing all of them to sign the FCRA disclosure notification form and to meet with investigators from The Washington Firm who had been retained to investigate allegations of a hostile work environment in the PSCSC workplace. The October 23 memorandum explicitly states that "*failure to sign the FCRA disclosure notification form and/or cooperate in this investigation may lead to discipline.*" [Emphasis in original.] The issue before me, then, is whether under SMC 4.04.260(A) Appellant has been "aggrieved" by a violation of SMC 4.04 or its interpretative rules or whether under Commission Rule 7.01(3) Appellant has been "adversely affected" by an alleged violation of Article XVI of the City Charter, the Personnel Ordinance or the administration of the personnel system.

SMC chapter 4.04 does not contain a definition of "aggrieved"; nor is "adversely affected" defined in Commission Rules. Absent express definitions of these terms, it is appropriate to rely on the well-established rules of statutory construction. One of the basic rules of statutory construction is that words are to be given the meaning expressed in the statute or, in the absence of specific definition, their ordinary meaning. State v. McDougal, 120 Wn.2d 334, 350, 841 P.2d 1232 (1992); State v. Standifer, 110 Wn.2d 90, 92, 750 P.2d 258 (1988); Seattle v. Auto Metal Workers, 27 Wn. App. 669, 689, 620 P.2d 119 (1980), review denied (1981). It is well-settled that the same rules of statutory construction that apply to state statutes also apply to municipal ordinances. Spokane v. Fischer, 110 Wn.2d 541, 754 P.2d 1241 (1988), citing Puyallup v. Pacific Northwest Bell Tel. Co., 98 Wn.2d 443, 448, 656 P.2d 1035 (1982).

In her Notice of Appeal, Appellant did not identify or cite the specific ordinance or personnel rule or section in the Charter that she believes was violated. Nonetheless, the Commission's Executive Director in her Order dated August 24, 2001, listed the following bases for Appellant's alleged violations: Article XVI, Section 4 of the City Charter, SMC 4.04.040, 4.04.070(I), 4.20.810(3)(C)(1) [sic] and 4.04.850(C) [sic].[7]

Article XVI, Section 4 of the City Charter provides in part,

> The personnel ordinance [footnote omitted] shall provide that the civil service shall be administered in accordance with the following merit principles:
> . . .
> Assurance of fair treatment of applicants and employees with proper regard for their privacy and constitutional rights as citizens; ....

SMC 4.04.040 pertains to the City's personnel system and enumerates the job duties and responsibilities of the City's Personnel Director.

SMC 4.04.070(I) states,

> Employees have the right to report an "improper governmental action" to an "auditing official," another government official or a member of the public, to cooperate in an investigation, and to testify in a proceeding thereon, and to be protected from "retaliatory action" for doing so. (Each term in quotation marks is defined in Section 4.20.850.)

SMC 4.20.810 and 4.20.850 are sections within the City's Whistleblower Ordinance. See SMC 4.20.800, *et seq*. Specifically, SMC 4.20.810 pertains to reporting improper governmental action and protections afforded to employees who engage in conduct protected under the ordinance. SMC 4.20.850 lists the operative definitions. SMC 4.20.850(A) defines the appropriate auditing official depending on the type of improper governmental action complained

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[7] There is no SMC 4.20.810(3)(C)(1) or SMC 4.04.850(C). The correct citations are SMC 4.20.810 and SMC 4.20.850(C).

Inasmuch as neither "aggrieved" nor "adversely affected" is defined within the Municipal Code or the Commission's own Rules of Practice and Procedure, it is appropriate to look at how the terms are commonly defined and used.[6] Webster's Unabridged Third New International Dictionary 41 (1981) defines "aggrieved" as follows: "troubled or distressed in spirit; showing grief, injury, or offense; or having a grievance; specif: suffering from an infringement or denial of legal rights." Black's Law Dictionary 87 (5th ed. 1979) defines "aggrieved" to mean "Having suffered loss or injury; ...injured.". It defines "aggrieved party" as "one whose legal right is invaded by an act complained of, or whose pecuniary interest is directly affected by a decree or judgment.... The word 'aggrieved' refers to a substantial grievance, a denial of some personal or property right, or the imposition upon a party of a burden or obligation." Id.

As to the common meaning of "adversely affected", Webster's defines "adversely" to mean "in an adverse or hostile manner, with hostile effect: UNFAVORABLY, DISADVANTAGEOUSLY" and "affect" to mean "to act upon: to produce an effect (as of disease) upon [or] to produce a material influence upon or alteration in; to have a detrimental influence on; to make an impression on: INFLUENCE." Webster's Unabridged Third New International Dictionary, at 31. Black's Law Dictionary defines "adverse" to mean "Opposed; contrary; in resistance or opposition to a claim, application, or proceeding" and "affect" to mean "To act upon; influence; change; enlarge or abridge; often used in the sense of acting injuriously upon persons and things." Id. at 73.

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[6] I have not relied on the Administrative Procedure Act, RCW 34.05.530, in determining whether Appellant is "aggrieved" and "adversely affected" because Washington courts have expressly held that the Administrative Procedure Act applies only to actions of state agencies and not to local agencies. Kitsap Fire District v. Kitsap County, 87 Wn. App. 753, 757, 943 P.2d 380 (1997), review denied, 134 Wn.2d 1027 (1998).

of. SMC 4.20.850(C)(1) defines "improper governmental action" as

> any action by a City officer or employee that ... a. [v]iolates any state or federal law or rule or City ordinance, ..., or b. [c]onstitutes an abuse of authority, or c. [c]reates a substantial or specific danger to the public health or safety, or d. [r]esults in a gross waste of public funds.

SMC 4.20.850(C)(2) sets forth specific actions excluded from the definition of improper governmental action, *i.e.*, "personnel actions, including but not limited to : employee grievances, complaints, ... reprimands, violations of ... civil service laws,...." SMC 4.20.850(D) defines "retaliate" and its related terms to include any unwarranted adverse change in an employee's employment status or the terms and conditions of employment, including unsubstantiated letters of reprimand, because of an activity protected under SMC 4.20.810.

Application of SMC 4.04.260(A)

As stated earlier, summary judgment is properly granted when there are no genuine issues of material fact in dispute. Civil Rule 56(c). Examining first whether there are material facts in dispute between the parties to preclude summary judgment as to whether under SMC 4.04.260(A), Appellant has been aggrieved by a violation of SMC chapter 4.04 or the rules interpreting the ordinance, I find there is no evidence to support any finding that SMC chapter 4.04 was violated when Respondent issued the October 23 memorandum and instructed Appellant and other PSCSC employees to sign the FCRA disclosure notification form or face possible discipline.

The Commission's Executive Director in her August 24, 2001, Order cited SMC 4.04.040 as one basis for Appellant's appeal. Viewing the evidence in the light most favorable to Appellant, there is nothing in the record to suggest that the Personnel Director failed to carry out

the job duties set out in SMC 4.04.040 relative to the action about which Appellant complains. I surmise that the Executive Director referenced SMC 4.04.040 in her Order because Appellant had asserted in her October 3, 2000, memorandum to Assistant City Attorney Marilyn Sherron that only she, and no other PSCSC staff, had been requested to sign the FCRA form.[8] The evidence, though, is undisputed that by August 21, 2000, all PSCSC employees except for Appellant, Gloria Marks and Ruby Dell Harris had signed the form. The record contains Appellant's August 16, 2000 memorandum to PSCSC Commissioner Noreen Skagen in which she objected to the City's asking only the three employees accused of creating the hostile work environment to sign the FCRA consent form. It is undisputed that as a consequence of Appellant's objection as well as Appellant's own complaint that a hostile work environment had been created by the three accusing employees, all PSCSC employees were asked and later directed to sign the FCRA disclosure notification form. The record contains copies of FCRA consent forms signed by Rosario Alves, Valerie Harris and Rachel Schade, each dated August 21, 2000, and a consent form signed by Ruby Dell Harris dated November 2, 2000.

The Commission's Executive Director may have referenced SMC 4.04.040 because there was some question whether employees of other City departments had ever been directed to sign FCRA consent forms. SMC 4.04.040(6) states that among the Personnel Director's duties is the duty to "act as the City's central agency for establishing standards for personnel practices which are uniform as is practicable from department to department." Differences, then, in personnel practices are permitted when conformity among City departments would not be practicable.

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[8] In her memorandum Appellant states, "I have refused to sign the Fair Credit Reporting Act disclosure notification form because other Public Safety Civil Service Commission staff (who have been questioned) was [sic] not requested to do so."

There is nothing in SMC 4.04.040(6) that requires the Personnel Director to ensure that every City department (or commission) follows the same personnel practices and procedures. There is no evidence in the record before me regarding other City departments, including whether other departments have utilized outside agencies to investigate employee complaints of a hostile work environment or whether other departments have dealt with FCRA issues. There is no evidence in the record to support even an inference that the Personnel Director violated this particular job duty when the Law Department directed PSCSC staff to sign FCRA disclosure notification forms or face possible discipline. In sum, Appellant has not shown there is any factual basis for asserting that the Personnel Director failed to carry out her job duties and thus establish that SMC 4.04.040 has been violated.

Furthermore, even assuming that a violation of SMC 4.04.040 could be established, Appellant has not produced any evidence to show that she was aggrieved. Applying the common meaning of the term, "aggrieved", there is nothing in the record to indicate that Appellant suffered any loss or injury or was otherwise denied some legal right by the Law Department's issuance of the October 23, 2000, directive that she sign the FCRA disclosure notification form or face possible discipline. It is undisputed that the October 23 memorandum was not discipline. There is no evidence in the record that Appellant incurred any loss of pay or benefits or was in any other manner harmed by being told to sign the FCRA consent form and warned of possible discipline if she refused. Nor has she produced any evidence that the directive contained in the October 23 memorandum caused her some loss or denial of legal rights.

With regard to SMC 4.04.070(I),[9] I find there is no evidence that could support a finding that this section has been violated. SMC 4.04.070(I) authorizes employees to report improper governmental action to an auditing official, to cooperate in an investigation into the improper governmental action, to testify in a proceeding about such action and to be protected from retaliation for doing so. SMC 4.04.070(I) refers specifically to SMC 4.20.850 as the source for defining the operative terms, "improper governmental action", "auditing official" and "retaliatory action." SMC 4.20.850(A) identifies the Executive Director of the Seattle Ethics and Elections Commission (hereinafter "SEEC") as the auditing official to whom a report of improper government action generally should be made. See SMC 4.20.810. There is no evidence that Appellant attempted to report the October 23 directive as an improper governmental action to the SEEC. Moreover, it is unclear that the matter about which Appellant complains in this appeal falls within the definition of "improper governmental action" inasmuch as SMC 4.20.850(C)(2) specifically excludes personnel actions. Therefore, I find there are no grounds on which to base an allegation that SMC 4.04.070(I) was violated under the circumstances presented in this appeal. There being no evidence in the record to support a finding that SMC 4.04.070(I) was violated, I find, for the same reasons discussed above, that Appellant has not shown she is aggrieved.

Application of Commission Rule 7.01(3)

With regard to whether there are material facts in dispute between the parties to preclude summary judgment as to whether under Commission Rule 7.01(3), Appellant has been adversely

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[9] SMC 4.04.070(I) was cited in the August 24, 2001, Order entered by the Commission's Executive Director as another basis for Appellant's appeal.

affected by alleged violations of the City Charter, Personnel Ordinance or the administration of the personnel system, I find that there are no material facts in dispute and that the evidence in the record does not support Appellant's claim.

As to the allegation that the Respondent engaged in conduct violative of Article XVI, Section 4 of the City Charter, having viewed the evidence in the light most favorable to Appellant, I do not find any evidence to support any finding that the City Charter was violated, *i.e.*, that as a result of the actions taken by Respondent when Appellant refused to sign the FCRA disclosure notification form, there was any breach of the assurance that employees will be fairly treated with proper regard for their privacy and constitutional rights as citizens.

Although Appellant has made numerous allegations that Respondent has violated the Fair Credit Reporting Act (and civil rights anti-discrimination laws),[10] she has not produced any evidence that there are genuine issues of material fact regarding this allegation as she is required to do. See Civil Rule 56(e). Appellant asserts in her Motion to Deny Summary Judgment that the City "gained access to my payroll records, obtained information from my computer, accessed my card key information and gathered data, accessed my personnel records, and distributed that information without proper notification to all three Commissioners and my Department Manager." Assuming that all these assertions are true and occurred during the relevant time period with respect to this appeal, all of the items identified above – payroll records, computer, card key, personnel records – while about Appellant, belong to and are the property of the City.

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[10] With respect to claims that Respondent violated her civil rights or engaged in discrimination, Appellant's recourse was to file a charge of discrimination with one of the human rights agencies having jurisdiction to investigate such claims, *e.g.*, the EEOC, WSHRC or the City's Office for Civil Rights, which she did. See fn.3, *supra*. As per SMC 4.04.260(D), the Commission is required to refer any complaint of discrimination to the City's human rights agency.

She has not produced any evidence that the City sought to obtain her own personal financial or credit information or otherwise failed to treat her with proper regard for her privacy and constitutional rights.

The evidence contained in the record is undisputed that prior to October 23, 2000, the Law Department had given written notification to Appellant that no personal financial or credit histories would be included in the investigation. Appellant was explicitly told in a letter from Assistant City Attorney Sherron dated August 22, 2000, that,

> Although the title of the FCRA suggest [sic] that an employees personal credit may be reviewed, neither the City or [sic] the investigators will inquire into your current or past credit or financial history. Instead, the investigation will focus on workplace issues and concerns which may include information about your character, your general reputation or personal characteristics.

In a memorandum to all PSCSC staff dated October 3, 2000, Ms. Sherron reiterated that the scope of the investigation by The Washington Firm was limited to workplace matters and would not include inquiries into personal financial or credit histories. Appellant has not produced any evidence to show that despite these assurances, Respondent made, or attempted to make, inquiries into the personal financial or credit history records of herself or other PSCSC employees. The undisputed record reflects that in August, 2000, PSCSC employees, Appellant, Gloria Marks, Valerie Harris, Rachel Schade, Rosario Alves and Ruby Dell Harris were asked to sign a FCRA disclosure notification form. All were informed that the investigation would be limited to workplace matters and that neither the Commissioners nor the investigators would inquire into an employee's personal financial or credit histories.[11] There is no evidence to

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[11] It is unfortunate that employees were not advised that they could restrict their authorization on the FCRA disclosure notification form to specifically exclude any authorization to The Washington Firm to obtain or release personal financial and credit information.

support Appellant's being singled out or treated differently from other PSCSC employees. Only two employees, Appellant and Ms. Marks, refused to sign the authorization, and both of them received a written reprimand.

It is understandable that Appellant was apprehensive about the Fair Credit Reporting Act's application to the workplace investigation at issue. On its face, the FCRA appears to be limited in scope to an individual's rights regarding consumer credit information and financial and credit agencies. As the record reflects, Appellant voiced her concerns about signing the FCRA consent form in a memorandum to PSCSC Commissioner Skagen on August 16, 2000. Nonetheless, if Appellant's concerns were not satisfactorily addressed by Assistant City Attorney Sherron's assurances and she believed that the directive to sign the FCRA consent form was improper and an impermissible form of pressure, intimidation or retaliation, her recourse was to make a written report to the SEEC Executive Director as per SMC 4.20.810 and SMC 4.20.850(A). Had she done so, it would have been for the SEEC to make a determination whether an improper governmental action had occurred. SMC 4.20.830. This Commission lacks jurisdictional authority over such matters. See SMC 4.20.810(C)(1)(a).

Assuming, however, the evidence supported that alleged violations of the Charter or the Personnel Ordinance occurred by the issuance and substance of the October 23, 2000, memorandum, Appellant still retains the burden to show that she has been adversely affected under Commission Rule 7.01(3). Applying the plain meaning of the term, "adversely affected", the evidence does not support any finding that Appellant was adversely affected when she received the October 23 directive to sign the FCRA consent form or face possible discipline. She has not produced any evidence and, thus, there is no genuine issue of material fact that her

receipt of the October 23 directive and warning of possible discipline – the action which forms the factual basis of this appeal – produced any hostile, unfavorable or injurious effect.

Retaliation

Finally, there is no evidence to support that at the time she filed the instant appeal on November 1, 2000, Appellant had engaged in any previously protected conduct under the Whistleblower Ordinance, SMC 4.20.800, *et seq.* Had Appellant believed she was being subjected to retaliatory action in response to having reported improper governmental action, she was required under SMC 4.20.860(A) to file a written complaint with the Mayor's Office within 30 days of the occurrence alleged to constitute retaliation. In her Motion to Deny Summary Judgment, Appellant alleges that she has been subjected to on-going racial discrimination and retaliation. As previously discussed, to the extent that Appellant's allegations of retaliation arise from her having made prior charges of discrimination, this Commission lacks jurisdiction to consider any EEO-based allegations as part of her civil service appeal. See SMC 4.04.260(D).

CONCLUSION

In summary, I have viewed the evidence contained in the record before me in the light most favorable to Appellant as the non-moving party. Nonetheless, Appellant has not provided any factual basis to support any finding that the actions complained of at the time she filed the instant Appeal No. 00-07-026, *i.e.*, unspecified retaliation and intimidation and receipt of verbal warnings and written warning of possible disciplinary action, all arising from Respondent's directive that she sign the FCRA disclosure notification form, are actionable under SMC 4.04.260(A) or Commission Rule 7.01. My finding that there are no genuine issues of material fact,

Respondent's Motion for Summary Judgment of Dismissal is GRANTED.

IT IS SO ORDERED.

FOR THE CIVIL SERVICE COMMISSION:

Date: 10 October 2001

Marilyn J. Endriss

MARILYN J. ENDRISS
Hearing Examiner pro tempore

/HILLM.order granting sjmo.101002.wpd

cc: Mamie D. Hill
12821 NE 80th Street
Kirkland WA 98033

Jennifer D. Bucher
Seth J. Berntsen
Garvey, Schubert & Barer
1191 Second Avenue # 1800
Seattle WA 98101-2939