

**FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE
UNDER DELEGATION FROM THE CIVIL SERVICE COMMISSION**

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CITY OF SEATTLE
MAR 29 2007**

CIVIL SERVICE COMMISSION

In the Matter of the Appeal of

MELISSA MARANGON,

Appellant,

CSC No. 06-01-010

v.

SEATTLE DEPARTMENT OF TRANSPORTATION

Respondent.

Background

Melissa Marangon appealed the decision by the Director of the Seattle Department of Transportation (SDOT) to suspend her for one day. The Civil Service Commission, pursuant to SMC 4.04.250, delegated the appeal to the Office of Hearing Examiner.

The matter was heard by the undersigned Deputy Hearing Examiner on March 13, 2007. The appellant was represented by Kevin A. Peck, attorney at law; respondent Seattle Department of Transportation was represented by David N. Bruce, attorney at law.

After due consideration of the evidence elicited during the appeal hearing, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner in this appeal.

Findings of Fact

1. The appellant, Melissa Marangon, is an employee of the Seattle Department of Transportation (SDOT), and has been employed with SDOT since 1995. She has been a Heavy Equipment Operator at SDOT since 2000. Throughout 2006, she was assigned to the Haller Lake Asphalt Paving Crew.

2. The appellant has represented SDOT at the annual "Women in Trades Fair" (WTF) for the past five years. WTF is a recruiting event that is intended to encourage women to work in the trades. At the WTF, the appellant has staffed an SDOT booth, and gives information to fair attendees about jobs in the trades, as well as encouraging them to take the strength and endurance test that is offered outside.

3. On April 28, 2006, the appellant represented SDOT at the WTF. While the appellant was at her booth, a woman who was from the Conservation Corps asked if having a felony conviction would prevent her from consideration for a City job. The

Conservation Corps is an organization that assists people with criminal convictions to integrate into a work environment. The appellant referred the women to Bill Warmouth, SDOT Paving Manager at the time. The appellant did not hear Warmouth's conversation with the women, or whether the women had felony convictions.

4. While on a break, the appellant, who is white, was outside and saw three women, all of whom were African-American, from the Conservation Corps. The women were approximately 10 feet away from her, and included the person who had asked her about felony convictions. According to the appellant, the women were talking to each other, and one of them said "I'll get up and go slap that bitch." The appellant said the woman's use of profanity was a surprise, because the women were reserved when they had spoken to the appellant inside the building. No other witnesses heard the woman's use of profanity, nor were any problems with the Corps women reported.

5. While at the fair, she encountered Gerard Green, who at that time was a Crew Chief at Haller Lake in a different division from the appellant's. Green introduced the appellant to his mother and sister, who were there to watch Green's nephew take the strength and endurance test.

6. After the fair, the appellant called her supervisor, Street Paving Crew Chief Lori Munger, who was at home on vacation. The appellant told Munger that there had been a "white girl" from the "ANEW" program, who had scored the best on the strength and endurance test. She also told Munger about some black women candidates who she thought would be good hires. The appellant also told Munger that she was concerned that SDOT would hire Conservation Corps participants instead of Temporary Service Employees.

7. On Saturday, May 6, 2006, the appellant and Green encountered each other at the Haller Lake complex. Green asked her how the WTF had gone, and the two conversed. There is a dispute between the parties about the exact words that the appellant used during the conversation. It is not disputed that the appellant told Green that there was a "white girl" who had done the best on the test, and that she expressed concern that the Conservation Corps women would be hired.

8. According to Green, the appellant also described the Conservation Corps candidates as "gangsta-like," used the word "ghetto" in reference to the candidates, and said that "all hell would break loose" if the "black girls" were put on the Haller Lake paving crew. Green also reported that she had made comments with a negative connotation about an African American co-worker's family members who were taking the strength test at WTF. She also told him she would warn Munger not to hire the Conservation Corps women.

9. The appellant denied using the words "ghetto" or "gangsta," but recalls telling Green that the women were "gangster-like," because of their use of profanity and the comment about slapping someone, and because of the question about felony convictions. She also stated that she had some fears of these women. The appellant also denied saying that "all hell would break loose" if the Conservation Corps women were employed at the

Haller Lake station; she recalls telling him that she did not think they would be a good fit at North Asphalt. The appellant also recalled saying that there were a lot of Slades (the African American co-worker's family name) taking the test, but denies that she made any negative comments about them.

10. During the conversation, Green did not tell the appellant that he found her comments objectionable or otherwise inappropriate. Instead, he discussed with her the department's standards and told her that all applicants needed to meet the standards. According to Green, he did not wish to appear angry. However, after thinking about her comments over the weekend, he decided he needed to report her comments, because he believed the appellant had influence over the hiring process for temporary labor, and could therefore prevent African American candidates from being considered.

11. On May 8, 2006, Green complained about the appellant's comments to Bill Warmouth.

12. Green prepared notes on his May 6 conversation with the appellant (Department Ex. 5). The notes are dated May 10, 2006.

13. SDOT conducted an investigation into Green's complaint. The investigator, Denise Williams, interviewed the appellant, Green, Munger and others, and prepared an investigative report (Department Ex. 3). The appellant was interviewed on May 15, 2006 and Green was interviewed on May 17, 2006. In her report, the investigator noted that during the interview, the appellant "repeatedly referred to the Conservation Corps participants and others by their race." The investigator also noted that "she [Marangon] does not seem to be at all aware that her comments could be considered insulting to African Americans."

14. There is a dispute as to the exact words used by the appellant in her conversation with Green, e.g., her use of the words "gangsta," and "ghetto" and the statement that "all hell would break loose." Green's testimony must be regarded as more credible; when he heard the words she used, he was offended and naturally took note of the offending words and phrases. He also recorded the words in writing a few days later. No reason was shown for him make up his account of the exchange. Also, the appellant seems to lack awareness of her references to people's race. She made her comments to Green in a non-hostile and even friendly tone. During her interview with the investigator, she seemed not to be aware that her racial comments could be insulting to African Americans. This lack of awareness would render her less likely to pay attention to, and therefore be able to recall, her use of specific words, as compared with Green, the person who was on the receiving end of her comments.

15. On June 22, 2006, Jim Dare, Street Maintenance Director for SDOT, issued a recommendation that the appellant be suspended without pay for two days. (Department Exhibit 2).

16. A Loudermill hearing was held on August 1, 2006, before Grace Crunican, Director of SDOT. Following the hearing, the Director reduced the suspension period to

one day because the documented verbal warning letter had been removed from the Supervisor File. The Director concluded that the appellant had violated SDOT's Workplace Expectations by making comments about African American women at WTF which referenced their race.

17. Prior to the Loudermill hearing, the appellant had indicated that she believed she was being retaliated against, and the August 28, 2006 Director's letter states that the Director had asked SDOT's HR Manager to follow up with the appellant about this issue. It is not known what, if any, actions HR took in response to this request.

18. The appellant and her Crew Chief, Lori Munger, were at the time of the incident two of few women working in the Street Paving Crew. Working in a predominately male work environment, the appellant believes that she must work "twice as hard" as a male employee, and that she is treated differently at times from male employees. Munger has noted that foul language and "trash talking" are commonplace in the field, including on the appellant's crew.

19. Munger has known the appellant since 1985, and was her supervisor between 2004 and 2006. Munger values the appellant's work and trusts her judgment for making recommendations about potential hires.

20. On December 16, 2004, Bill Warmouth issued a "documented verbal warning" (Exhibit 6) to the appellant which identified four complaints about her by her co-workers within the previous three months. The complaints alleged that the appellant had made "critical" or "negative" comments about the co-workers' performance to others, or directly to the co-workers. Warmouth later allowed the appellant to have the copy of the letter that was in the Supervisor File. The letter was removed from that file, although a copy remained in the appellant's Personnel File.

21. In 2004, while in the presence of an African American co-worker, the appellant referred to another African American employee, who was driving a car with a white supervisor, as "Driving Miss Daisy." The employee in whose presence the remark was made, Anthony McZeal, subsequently brought an action against the City in US District Court, and the appellant was named as one of several party defendants. In its order (Exhibit 12) denying defendants' motion for summary judgment on plaintiff's retaliation claim, the Court stated that "...Plaintiff only must show that he had a reasonable belief that it was unlawful under Title VII for Ms. Marangon to make racially offensive remarks in the workplace... Viewing the evidence in the light most favorable to Plaintiff, the Court finds that Plaintiff could have reasonably believed that Ms. Marganon's 'Driving Miss Daisy' remarks were prohibited under Title VI."

22. The appellant has received copies of the SDOT Work Place Expectations and City of Seattle's Personnel Rule 1.1 (Work Place Harassment), and received a copy of them on July 26, 2004.

23. SDOT Workplace Expectations include the following:

You are expected to respect the rights of others by:

- (1) Respecting co-workers and recognizing that the workforce is made up of individuals from varying cultural, racial, social backgrounds, and sexual orientations;
- (2) Refraining from making racial or sexual comments, jokes, or slurs. (Other examples of unacceptable behavior include: inappropriate touching, unwelcome sexual behavior, displaying derogatory materials);
- (3) Reporting alleged discrimination or harassment to Supervisors for immediate investigation and resolution.

You are expected to promote open communication with your co-workers, Supervisor and the public by:

- (1) Not using insulting, threatening, or otherwise offensive language in communicating with Supervisors, subordinates, co-workers, or the public.

24. Personnel Rule 1.3.3 sets forth the “order of severity of disciplinary action” that may be taken against an employee for misconduct or poor work performance. Paragraph B states that “in the absence of mitigating circumstances, a verbal warning or other written reprimand shall not be given for a major disciplinary offense.”

25. Rule 1.3.4.A includes a “nonexclusive list of major disciplinary offenses” where a verbal warning or written reprimand is not appropriate in the absence of mitigating circumstances. Included in the list is item 15, “A knowing or intentional violation of...the employing unit’s adopted policies, procedures and workplace expectations,” and item 16, “Acts of harassment or acts of discrimination that are prohibited by federal, state or local laws...”

26. Rule 1.3.5 provides that the appointing authority or designated management representative may suspend a regular employee for “justifiable cause” and that an employee may be suspended without pay for up to 30 calendar days for a single occurrence.

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to delegation from the Civil Service Commission under SMC 4.04.250.

2. The only issue in this appeal is whether the Department had justifiable cause to suspend the appellant for one day. The evidence shows that the appellant violated SDOT’s Work Place Expectations. The comments she made to Mr. Green on May 6, 2006, violated the Work Place Expectations that employees are to respect their co-workers and to refrain from making racial comments. Although she apparently intended no offense, the appellant was familiar with the Expectations, and should have been aware that her comments on people’s race would violate the Expectations.

3. The record also supports SDOT's contention that the appellant's biases could influence the hiring process. The appellant was held in high regard by her Crew Chief Lori Munger, and it is not disputed that the appellant earned that regard through her performance on the job. But because the appellant's opinions about potential hires carried weight with her superior, and because her opinions could reasonably appear to have been based in part on the candidates' race, her behavior violated the Work Place Expectations and were not consistent with SMC 14.04.040.

4. Personnel Rule 1.3.4 lists some of the factors that the Department may consider in determining the appropriate discipline. Because her actions constituted "major disciplinary offenses" under Rule 1.3.4, a verbal or written warning would not have been adequate. The one-day suspension is justified by the circumstances here, given the impacts to co-workers, the potential effect on the Department's hiring processes, and the appellant's own history of making offensive comments related to race. In addition, given the 2004 lawsuit, with its focus on the appellant's "Driving Miss Daisy" comment, the appellant had already received clear warning that she needed to exercise greater restraint and avoid making offensive racial comments.


5. Although the appellant suggested that retaliation was a factor in her discipline, there is no evidence in the record to support this contention. While it is not exactly clear what she meant by retaliation, the appellant presented no evidence to show that the discipline was retaliatory.

6. In appealing the suspension, the appellant noted that: she has received positive reviews from her supervisor; she is one of the few females working in SDOT's street maintenance division, a predominately male workforce; and that she recruits women into SDOT's paving crews. But the appellant's positive contributions do not allow her employer to excuse behavior that violates Workplace Expectations and City Codes. The Department had justifiable cause to impose a one-day suspension without pay and the suspension should be affirmed.

Decision

The decision of the Director to suspend the appellant, Melissa Marangon, for one day without pay, is affirmed.

Entered this 28th day of March, 2007.



Anne Watanabe
Deputy Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner is subject to review by the Civil Service Commission. To be timely, the petition for review must be filed with the Civil Service Commission no later than ten (10) days following the date of issuance of this decision, as provided in Civil Service Commission Rules 6.02 and 6.03.

BEFORE THE CITY OF SEATTLE CIVIL SERVICE COMMISSION

Melissa Marangon
Appellant,

V.

Seattle Department of Transportation
City of Seattle, Respondent

DISMISSAL ORDER

CSC No. 06-01-010

At its April 18, 2007 meeting, the Civil Service Commission considered the March 28, 2007, Findings and Decision of Ann Watanabe, Deputy Hearing Examiner on the above appeal and voted to affirm the decision.

The Executive Director of the Civil Service Commission hereby enters the following

ORDER

THE APPEAL IS HEREBY DISMISSED WITH PREJUDICE.

Dated this 18th day of April, 2007

FOR THE CITY OF SEATTLE CIVIL SERVICE COMMISSION



Glenda J. Graham-Walton, Executive Director

Concerning Further Review: A decision of the Commission on the issue of an appeal shall be final and conclusive unless a timely motion for reconsideration by a party of record is made by application to the Superior Court of the State of Washington for King County for a Writ of Review.

**CITY OF SEATTLE
CIVIL SERVICE COMMISSION**

**Affidavit of Service
By Mailing**

STATE OF WASHINGTON }
COUNTY OF KING }

TERESA R. JACOBS, deposes and states as follows:

That on the 19th day of April, 2007, I deposited in the U.S. mail, postage prepaid, a
copy of **DISMISSAL ORDER** to:

**M. Marangon
c/o Kevin A. Peck, Attorney
The Peck Law Firm, PLLC
1423 Western Avenue
Seattle, WA 98101-2021**

And copies of same via interdepartmental and U.S. mail addressed to:


Mark McDermott, Director, Personnel Department
David N. Bruce, Attorney
Anne Watanabe, Deputy Hearing Examiner, OHE

In the appeal of:

Melissa Marangon v. Seattle Department of Transportation

CSC Appeal No. 06-01-010

DATED this 19th day of April, 2007



TERESA R. JACOBS