

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 24-09

ORDER DISMISSING APPEAL FOR LACK OF JURISDICTION

IN THE MATTER OF THE APPEAL OF:

ROBERT F. AUGUSTINE, Appellant,

vs.

DEPARTMENT OF PUBLIC WORKS, WASTEWATER MANAGEMENT
and the City and County of Denver, a municipal corporation, Agency.

On March 31, 2009, an Order to Show Cause issued, which commanded the Appellant to present a reason his appeal should not be dismissed for lack of jurisdiction. The parties both filed timely responsive pleadings.


Appellant's appeal #05-09 was decided on May 13, 2009. Within that decision, it was determined this appeal became moot. The Career Service Board reversed #05-09 and declared this appeal was, in consequence of their Findings and Order, no longer moot. After considering the pending responsive pleadings, the case file, and pertinent authority, the following findings and order enter.

This is an appeal of Appellant's dismissal from employment on March 11, 2009, which is the date of notice of the action appealed pursuant to Career Service Rule 19-10 A. The time within which an employee must file an appeal under the Career Service Rules is jurisdictional. That means absent a timely filing within the time required by Career Service Rule 19-20 A., the hearing officer is left, as stated by the Agency, without jurisdiction to hear the appeal, and the appeal must be dismissed, Widener v. District Court, 200 Colo. 398, 615 P.2d 33 (1980), absent extraordinary circumstances. In re Mallard, CSA 65-08 (9-9-08).

Appellant filed his appeal on March 27, 2009, 16 days after the date of notice of the his dismissal. CSR 19-20 A. 1. b. requires dismissal appeals to be filed within 15 days after the notice of dismissal. Consequently, the Appellant's March 27 filing was outside the jurisdictional requirement imposed by CSR 19-20 A. 1. b. Since the Appellant does not dispute the pertinent facts from which it must be concluded his appeal was untimely, then his response is considered for extraordinary circumstances.

The Appellant states "severe medical issues," prevented the timely filing of his appeal. Unfortunately, the Appellant did not specify his condition, and did not attach any corroborating medical documentation. Without information from which the hearing officer could determine whether extraordinary circumstances exist, the Appellant's bare assertion is insufficient to overcome the presumption against jurisdiction by the tardy filing of his appeal. In the absence of timely filing, and with no extraordinary circumstance found, the Hearing Officer lacks jurisdiction to hear this appeal. Consequently, the Appellant's appeal must be DISMISSED WITH PREJUDICE.

DONE December 11, 2009.


Bruce A. Plotkin
Career Service Hearing Officer