

ORDER ON AGENCY'S REQUEST FOR DETERMINATION OF COMPLIANCE WITH RULES

IN THE MATTER OF THE APPEAL OF:

GILA BERLIN, Appellant,

vs.

DENVER HEALTH AND HOSPITAL AUTHORITY,
and the City and County of Denver, a municipal corporation, Agency.

On Jan. 12, 2011, the Agency filed a motion requesting a determination that it has complied with CSR §§ 16-70, 16-72, and 16-73 in its issuance of discipline against Appellant. Appellant did not respond to the motion.

On Nov. 22, 2010, Appellant filed this appeal of her five-day suspension served on Nov. 15th after a pre-disciplinary meeting on Oct. 21, 2010. Under § 16-73 B, discipline must be served on an employee 15 days after the pre-disciplinary meeting. The rule provides for an extension of ten days for extenuating circumstances, upon request of the Personnel Director. The Agency concedes that it did not serve the Appellant within 15 days, and that it did not request an extension under the rule.

The Rule further states that if disciplinary action is not taken within fifteen days and a request for the ten day extension is not timely submitted, the agency must repeat the steps contained in section 16-40 before disciplinary action may be taken. CSR § 16-73 B. However, § 16-72 D. explicitly provides that the "failure of a supervisor or appointing authority to comply strictly with the provisions of this section 16-70 shall not constitute a basis for reversing a disciplinary action on appeal unless the employee shows that his or her rights were substantially violated by the lack of compliance."

Under CSR § 16-73 B. the Agency should have served the letter on Appellant by Nov. 5th, since it failed to request an extension. The Agency asserts it did not timely serve the disciplinary letter on the Appellant because she was out on FMLA from Oct. 22nd, the day following the pre-disciplinary meeting, through Nov. 14th. The Agency served Appellant with the disciplinary letter upon her return the following day, Nov. 15th.


Although it is clear that the Agency did not comply with CSR § 16-73 B., since it did not request an extension, Appellant failed to assert that the Agency's lack of compliance substantially violated her rights. There is no evidence that the Agency's failure to timely serve Appellant the disciplinary letter prejudiced Appellant, nor is there a compelling

reason to hold another disciplinary meeting and repeat the steps already taken, as contemplated in CSR § 16-73 B., where the Appellant has made no showing that her rights were substantially violated by the absence of strict compliance with the rule.

ORDER

Accordingly, it is determined that the Agency's failure to comply with § 16-73 B. does not require it to repeat the disciplinary process as to this suspension. Therefore, the hearing shall proceed as scheduled for January 31, 2011.

DONE Jan. 19, 2011.


Valerie McNaughton
Career Service Hearing Officer

I certify that on Jan. 19, 2011, I delivered a correct copy of this Order to the following in the manner indicated:

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(via email)

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