

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 60-06

ORDER DISMISSING APPEAL

IN THE MATTER OF THE APPEAL OF:

NATHANIEL BRADLEY
Appellant,

vs.

DEPARTMENT OF SAFETY, DENVER SHERIFF'S DEPARTMENT,
and the City and County of Denver, a municipal corporation,
Agency.

This Order concerns two pending matters in the Appellant's appeal, the Appellant's Motion to Continue, filed November 27, 2006, and the Agency's Motion to Dismiss, contained within its "Agency's Response to Appellant's Motion to Continue," filed November 28, 2006.

I issued an order on November 27, 2006 directing the parties to appear for hearing regarding both matters at 8:30 a.m. on November 29, 2006. The Appellant called the Hearings Office at 8:25 a.m. on the morning of hearing, stating a family member had emergency surgery, and therefore the Appellant would not attend. Hearing was continued and the Appellant was given direct notice by telephone of the continued hearing to be conducted on December 7, 2006 at 8:30 a.m.

On December 7, 2006, the Appellant did not appear. The Agency is represented in this case by Robert A. Wolf, Assistant City Attorney. Mr. Wolf appeared at hearing. At 8:46 a.m. the Hearings Office called the only telephone number provided by the Appellant, his home number, and a message was left on voice mail at that number. At 9:00 a.m. the Appellant had still not appeared. At the time of writing this Order, 10:00 a.m., the Appellant has not contacted the Hearings Office.

1. Appellant's Motion to continue.

The Appellant's written motion was considered. The motion requests additional time to hire new counsel following his attorney's November 10 request to withdraw and November 13 order granting the withdrawal. As the Appellant did not appear, no showing was made of what efforts the Appellant has made to obtain new counsel and I find the Appellant has failed to show good cause for his request. The Appellant's Motion to Continue is DENIED.

2. Agency Motion to Dismiss.

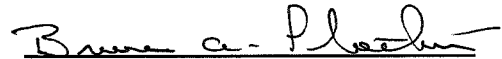
The Agency renewed its Motion to Dismiss as sanction for failure to comply with previously issued discovery orders. The remedy of dismissal of a hearing without considering the case on its merits is an extraordinary remedy. The Career Service Rules are silent on dismissal for failure to comply with discovery. Colorado Rules of Civil Procedure, rule 37 permits the entering of a default judgment upon the non-appearance of a party at trial as a sanction for the willful failure to comply with discovery orders. Rombough v. Mitchell, 03CA2457 (Colo. App. published March 9, 2006).

The Appellant was ordered to produce discovery on September 27, 2006. On October 3, I granted the Appellant an enlargement of the time, to November 3, to comply with the discovery Order. On November 14, the Agency filed its first Motion to Dismiss as a sanction for the Appellant's failure to provide discovery. Hearing was set for November 29, 2006 to consider the Agency's motion. The Appellant failed to appear and the hearing was reset to December 7 at which time the Appellant again failed to appear.

The Appellant has been ordered to produce discovery since September 27, 2006. The requested discovery is not unduly burdensome and relates directly to the Appellant's claims in his appeal. The Appellant is not excused for failing to comply with discovery orders by the withdrawal of his attorney, particularly since his attorney had not withdrawn prior to the issuance of the discovery order. In addition, since his attorney's motion to withdraw, the Appellant has made no showing of even partial compliance to comply with discovery orders in the intervening two months and seven days. The Appellant's claim that he requires an attorney to complete discovery is without merit, as only the Appellant has access to the information requested in the Agency's Motion for Discovery.

Under the circumstances described above, I find the Appellant's failure to comply with discovery orders is willful. Therefore, I order this case **DISMISSED WITHOUT PREJUDICE** as sanction for the Appellant's willful failure to comply with discovery orders.

DONE this 7th day of December, 2006.


Bruce A. Plotkin
Hearing Officer
Career Service Board