

HEARING OFFICER, CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER,
STATE OF COLORADO

Appeal No. 202-02

DISMISSAL ORDER

IN THE MATTER OF THE APPEAL OF:

CHARLESTTA CRUTCHFIELD, Appellant,

v.

Agency: Department of Public Works, Parking Management, and the City and
County of Denver, a municipal corporation.

The Department of Public Works, Parking Management Division filed a Motion to Dismiss/Motion for Summary Judgment with the Hearing Officer on January 7, 2003. The basis of this Motion is that Appellant's appeal is untimely. The respond on January 22, 2003. Being fully advised of the issues, the Hearing Officer finds as follows:

Appellant filed her first level grievance with her supervisor, Lindsey Strudwick, on October 14, 2002. When there was no response from Ms. Strudwick, Appellant filed her second level grievance with Anderson Moore, Acting Director of Parking Management. According to Appellant, Mr. Anderson did not respond "appropriately," so, instead of filing her grievance appeal at the Career Service, she sought out the Manager of Public Works to handle the matter. She was referred to Bill Miles, Public Works Human Resources, and, on an unspecified date, requested further review by him. She then filed her appeal with the Career Service on December 2, 2002.

It is well established that the timely filing of a notice of appeal is a jurisdictional requirement. *Widener v. District Court*, 200 Colo. 398, 615 P.2d 33 (1980). If the notice of appeal is not filed within the time limits, the tribunal loses jurisdiction over the matter.

Grievance appeals are governed by Career Service Rules ("CSR") §§18-12 and 19-22. They provide:

§18-12 Grievance Procedure

If a work related dispute was not resolved through alternative dispute resolution or if alternative dispute resolution was not previously attempted and a career service employee has a grievance as defined in Section 18-10(a) of this rule, the employee may file a grievance according to the following procedures:

1. Form: The grievance shall be presented in writing and shall be dated. It shall include the name and address of the grievant, the action which is the subject of the grievance, the date of the action,

and a statement of the remedy sought. The grievance form shall have a certificate of mailing or certificate of hand delivery, which indicates the date the grievance was placed in the mail or was hand delivered to the immediate supervisor.

2. **Filing with Supervisor:** The employee shall present a grievance to the immediate supervisor within ten (10) calendar days after notification of the action which gives rise to the grievance. The supervisor shall consider the grievance and within ten (10) calendar days give the employee dated, written notice of a decision. The immediate supervisor's written decision shall contain a certificate of mailing or certificate of hand delivery which indicates the date the supervisor's decision was mailed or hand delivered to the employee. The period of time shall be computed in accordance with subparagraph 19-22 a) 2).
3. **Filing with Agency Head:** If the response of the immediate supervisor does not resolve the grievance and the employee wishes to pursue the grievance further, the employee shall present the grievance to the head of the agency, or designee, in writing within ten (10) calendar days after receiving the decision of the immediate supervisor. The grievance form filed with the head of the agency or designee must contain a certificate of mailing or certificate of hand delivery.

If the immediate supervisor has not responded to the grievance within ten (10) calendar days and the employee desires to pursue the grievance further, the employee must present the grievance in writing to the head of the agency or designee no later than ten (10) calendar days after the supervisor's response was due. The grievance form filed with the head of the agency or designee must contain a certificate of mailing or certificate of hand delivery.

The head of the agency, or designee, shall consider the grievance and shall give the employee dated, written notice of a decision within ten (10) calendar days from the date contained on the certificate of mailing or certificate of hand delivery. The written decision from the head of the agency or designee shall contain a certificate of mailing or certificate of hand delivery. The period of time shall be computed in accordance with subparagraph 19-22 a) 2).

4. **Filing with the Career Service Authority:** **If the employee still feels aggrieved after receipt of this decision**, or the agency head has not responded within ten (10) calendar days, and the grievance concerns an alleged violation of Charter provisions relating to the Career Service, ordinances relating to the Career Service, or the Career Service Rules, and the employee wants to pursue the grievance further, **the employee must appeal to the Hearings Officer of the Career Service Board in accordance with the provisions of Rule 19 APPEALS.** The period of time shall be computed in accordance with subparagraph 19-22 a) 2).

(emphasis added)

CSR §19-22 a) provides as follows:

§19-22 Time Limitation and Form of Appeal

a) Time Limitation

- 1) Every appeal shall be filed at the office of the Career Service Authority within ten (10) calendar days from the date of notice of the action which is the subject of the appeal.
- 2) The computation of the ten (10) calendar days shall be as follows:
 - (a) The date of notice of the action shall be the date on the certificate of hand-delivery, if hand-delivered to the appellant or the date on the certificate of mailing of notice if sent by U.S. Mail or interoffice mail.
 - (b) The period of time for filing the appeal starts on the day following the date of the notice of action OR DATE OF INACTION.
 - (c) Unless otherwise specified, all time periods are calendar days.
 - (d) If the final date of the appeal period falls on a day the Career Service Authority office is not open for business, the final date for appeal shall be construed to be the next working day.

The appeal period ends at 5:00 p.m. (close of business) on the final date for appeal.

Because timeliness is a preliminary jurisdictional issue, Appellant has the burden of establishing that her appeal is timely.

The action Appellant is appealing took place on October 11, 2002. She had ten days to file her first level grievance with her supervisor. She did that. Since her supervisor did not respond within ten days, Appellant had another ten days to request a second level review. Appellant did this in a timely manner by filing her second level grievance on November 4. Mr. Anderson responded within ten days, on November 13, 2002. Under CSR §§18-12 4. and 19-22 a), Appellant had ten days to file her appeal at the CSA Hearing Office. Because November 23, fell on a Saturday, Appellant actually had until November 25 to file the appeal. [CSR §19-22 a) 2) (d)]. Instead of following the procedure outlined in the CSR, Appellant chose to take the matter to the Manager of Public Works for his review first. She claims that she met with Mr. Miles, but she does not specify when that occurred. Appellant did not file her appeal with the Hearing Officer until December 2.

The Hearing Officer reviewed the scenario laid out by Appellant. She finds that, while Appellant felt she should go to the Manager of Public Works before appealing to the Career Service Hearing Officer, the CSR does not provide for a "level three" review prior to filing an appeal. While the Hearing Officer understands Appellant's desire to try to resolve the matter at the Agency level, the Hearing Officer does not have the power to extend jurisdiction to cover the instant situation. Appellant's appeal is clearly untimely having been filed one week after the appeal was due at the Hearing Office. Under the applicable Rules, it must be dismissed.

Even if this appeal had been timely, it would still have to be dismissed for lack of subject matter jurisdiction. It is axiomatic that a tribunal cannot consider purely hypothetical matters. In this case, Appellant's grievance is hypothetical because it is now moot and/or not ripe for review.

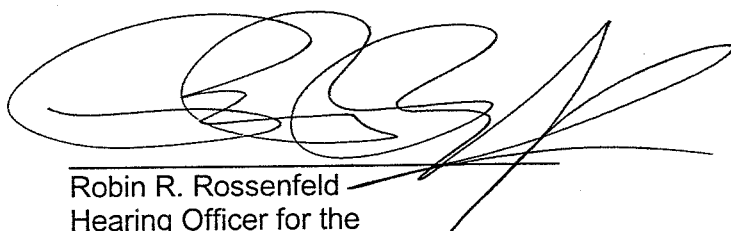
To put it simply, a matter becomes moot once it has been resolved. In this case, Mr. Anderson resolved Appellant's grievance by acquiescing to her request that her name be removed from the Sunday work schedule back on November 13.

In her grievance appeal, Appellant states that this is unsatisfactory because this action was qualified by Mr. Anderson to be "until January 31, 2003 or until a long term solution is finalized." While Appellant might not like this limitation, she suffers no harm until and unless the "long term plan" does not accommodate her request not to be placed on the Sunday work schedule. There is no indication that she is now required to work on Sundays. Until this happens, the "injury" allegedly caused by Mr. Anderson's solution is hypothetical. The Hearing Officer has no power to review it because there has been no legally cognizable harm to Appellant. The case must be dismissed as not being ripe for review.

Should the Agency decide to require Appellant work on Sundays in the future and should a new grievance of this issue not be satisfied by the Agency, Appellant would have the right to appeal a denial of such a grievance. But until then, the Hearing Officer lacks jurisdiction to consider the matter.

Based upon the foregoing reasons, the matter is DISMISSED with prejudice.

Dated this 11th day of March 2003.



Robin R. Rossenfeld
Hearing Officer for the
Career Service Board

CERTIFICATE OF MAILING

I hereby certify that I have forwarded a true and correct copy of the foregoing DISMISSAL ORDER by depositing the same in the U.S. mail, this 14 day of March 2003, addressed to:

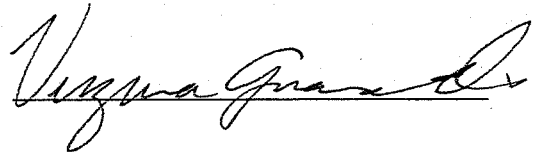
Charlesetta Crutchfield
3189 Racine St.
Aurora, CO 80011

I further certify that I have forwarded a true and correct copy of the foregoing DISMISSAL ORDER by depositing the same in interoffice mail, this 14 day of March 2003, addressed to:

Richard A. Stubbs, Esq.
Employment Law Section

Anderson Moore
Acting Director of Parking Management

Jan Meese
Public Works, Human Resources

A handwritten signature in cursive script, appearing to read "Virginia Grand", written over a horizontal line.