

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

Appeal No. 178-02

DISMISSAL ORDER

IN THE MATTER OF THE APPEAL OF:

ERIQUE A DIGGINS, Appellant,

v.

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

Appellant filed his Notice of Appeal with the Hearing Officer on October 1, 2002. He is appealing his termination from employment on October 22, 2001, almost a year earlier. It appeared that Notice of Appeal violated the time limitations under CSR §19-22 a), which provides:

§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.

Based upon these provisions, the parties were ordered to show cause why this appeal should not be dismissed as untimely by December 20, 2002. Appellant responded by submitting "Prisoner Information Records." The Agency eventually submitted a Motion to Dismiss on February 27, 2003.

Timeliness is a preliminary jurisdictional issue. Appellant has the burden of establishing that his appeal is timely.

According to the Notice of Appeal, Appellant was falsely incarcerated and could not call into his job. He submitted a decision from the Colorado Department of Labor and Employment showing that he was awarded unemployment benefits on August 15, 2002. According to this decision, Appellant was incarcerated from September 13, 2001 through April 15, 2002. The Prisoner Information Record submitted by Appellant confirms that the court released Appellant on April 15, 2002.

While Appellant might have had legal justification for the tolling of the statute of limitations under CSR §19-22 while he was incarcerated, he lost that justification, if any, when he did not act promptly upon his release from jail in April 2002. Instead, he waited almost another six months after his release before taking any action to challenge his termination and to regain his job. Appellant does not submit any explanation for this.

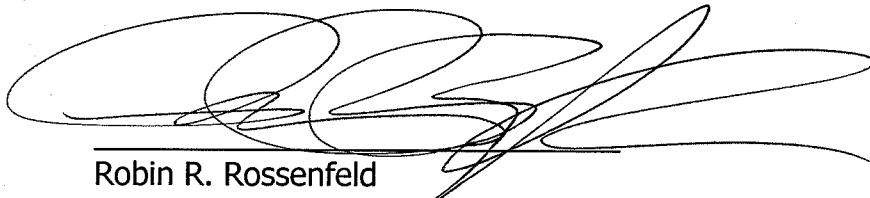
The Hearing Officer must conclude that Appellant had the ability to

file an appeal of his termination after his release. He, in fact, appealed his disqualification from unemployment benefits sometime between his release and August 15, 2002. And it was still several weeks after that before he filed the instant appeal with the CSA. Without further explanation from Appellant for this failure, the Hearing Officer cannot toll the statute of limitations indefinitely.

The Hearing Officer is sympathetic that Appellant lost his job due to an unjust incarceration and could not call into his office at that time. However, his failure to act immediately after his release from jail requires the dismissal of this appeal as untimely.

Therefore, for the foregoing reasons, this appeal is **DISMISSED** with prejudice.

Dated this 1st day of May 2003.

A handwritten signature in black ink, appearing to read 'Robin R. Rossenfeld', written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

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 5 day of May 2003, addressed to:

Eriq A. Diggins
941 Navajo St.
Denver, CO 80207

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 5 day of May 2003, addressed to:

Robert D. Nespor, Esq.
Employment Law Section
Office of the City Attorney

Bill Miles
Department of Public Works

Gary Price
Solid Waste Management Division

U. Granado