

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

Appeal No. 127-04

ORDER DISMISSING APPEAL

IN THE MATTER OF THE APPEAL OF:

MARIE L. JUHASZ, Appellant,

Agency: Department of Safety, Denver Police Department, and the City and
County of Denver, a municipal corporation.

On August 26, 2004, the Hearing Officer issued an Order to Show Cause why this appeal should not be dismissed as untimely, pursuant to CSR § 19-22 a). The parties have filed timely responses which the Hearing Officer now considers.

The pertinent facts are:

1. The Appellant filed a second step grievance with her agency head on July 29, 2004.
2. Career Service Rule 18-12 (3) states the Appellant's response to the second step grievance was due on or before August 9, 2004.
3. Pursuant to Career Service Rule 18-12 (4) and 19-22 a) 2), Appellant's appeal was due on or before August 19, 2004.
4. Appellant filed her appeal on August 23, 2004, four days late.

The Agency cites two reasons to dismiss the appeal: the appellant was late in filing her appeal, thus depriving the Hearing Officer of jurisdiction; and the Appellant fails to state a claim for relief which may be granted under the jurisdiction of the Hearings Officer.

The Appellant responded she sent her appeal via inter-office mail on August 18, 2004, and cannot understand how it would take four days to be filed. She also enclosed a four-page "situation report" in support of her claim.

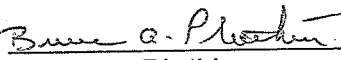
The Hearing Officer may not consider the merits of the Appellant's claim unless jurisdiction is first established, meaning that the parties and the claims are those properly before this tribunal. There are two problems with the Appellant's request which the Hearing Officer is not allowed to ignore: First, the rules are strict with respect to filing deadlines and may not be amended by the Hearings Officer. Only the Career Service Board is allowed to amend the Career Service Rules (CSR) which apply in appeals to

the Hearings Office. The filing deadline rules which apply here are CSR 18-12 (4) and 19-22 a. 2). CSR 18-12 (4) states if the Agency Head did not respond to the second-level grievance within ten days, the employee must appeal to the Hearings Office according to CSR 19. CSR 19-22 a. 2) requires the appeal to be FILED within ten days from the Agency action or inaction which, in this case was August 9, 2004.

Unfortunately for the Appellant, the rules do not make any allowance for mailing or inter-office mail delays. As to the Appellant's inference that her appeal was received but not filed by the Hearings Office for five days ("In my opinion, my appeal sat at someone's desk for 5 days"), the burden is on the Appellant to make a showing consistent with that inference, such as a record of a phone call to the Hearings Office after her alleged August 18 mailing to ensure it was filed. She did not do so. The Hearings Officer finds the Appellant did not file her appeal on time as required under CSR 18-12 (4) and 19-22 a. 2).

For these reasons, the Hearing Officer finds he is without jurisdiction to consider the merits of the appeal, and ORDERS the appeal dismissed with prejudice, meaning the same appeal may not be filed again.

Dated this 9th day of
August, 2004.



Bruce A. Plotkin
Hearing Officer
Career Service Board

CERTIFICATE OF MAILING

I hereby certify that I have forwarded a true and correct copy of the foregoing **ORDER DISMISSING APPEAL** by depositing same in the U.S. mail, postage prepaid, this 10th day of September, 2004 addressed to:

Marie L. Juhasz
12831 Josephine Ct.
Thornton, CO 80241

Tracy King
53 Perry St.
Denver, CO 82019

I further certify that I have forwarded a true and correct copy of the foregoing **ORDER DISMISSING APPEAL** by depositing same in the interoffice mail, this 10th day of September, 2004, addressed to:

Christopher M.A. Lujan, Esq.
City Attorney's Office
Litigation Section

