

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

Appeal No. 123-03

ORDER OF DISMISSAL

IN THE MATTER OF THE APPEAL OF:

ROBERT D. PEREZ, Appellant,

Agency: DEPARTMENT OF GENERAL SERVICES, PUBLIC OFFICE BUILDINGS,
and THE CITY AND COUNTY OF DENVER, a municipal corporation.

This appeal concerns a grievance Appellant filed on June 27, 2003. Appellant grieved his supervisor's decision to send him home from work on June 5, 2003, twenty-two days earlier. The Hearings Office issued an Order to Show Cause on August 6, 2003. Appellant was ordered to show cause why this matter should not be dismissed because it appeared he filed his grievance late.

The CSR rules provide as follows in relevant part with respect to the timely filing of grievances:

Section 18-12 Grievance Procedure

- ...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 the decision...The time period shall be computed in accordance with subparagraph 19-22 a)2).

(Emphasis added.) CSR 19-10 d) further states:

Section 19-10 Actions Subject to Appeal

An applicant or employee who holds career service status may appeal the following administrative actions relating to personnel.

- ...d) Grievances resulting in rules violations: Any grievance which results in an alleged violation of the Career Service Charter Amendment, or Ordinances relating to the Career Service, or the Career Service Personnel Rules. **The grievance must be in conformance with and**

processed pursuant to the requirements of Section 18-12 Grievance Procedure...

(Emphasis added.) Finally, CSR 19-22, Time Limitation and Form of Appeal, states as follows in relevant part:

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 the notice of the action** which is the subject of the appeal...
- 2) The computation of the ten (10) calendar days shall be as follows:

...(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.

(Emphasis added.)

Under these regulations, Appellant's first-level grievance had to be filed within ten days of the date of the incident that occurred on June 5, 2003, or no later than June 16, 2003 (June 15 being a Sunday).

In his Response to the Show-Cause Order, Appellant asserts that he received an absence form which stated "self-sick." Appellant asserts that he refused to sign this form because he had a valid excuse. He returned the form to management but it was sent back to him "a week later" without changes. Appellant asserts that the delayed processing of this form caused him to file his grievance late. However, he did not attach a copy of the absence form in question to his Response, and he did not disclose any of the dates of these incidents he described in relation to this absence form.

Hearings Office jurisdiction is created strictly by the CSR rules. An employee must show timely filing in accordance with those rules before the Hearings Office can take jurisdiction over the merits of the case. It is well established that the failure to timely file is a fatal procedural flaw because it destroys Hearings Office jurisdiction. See, Widener v. District Court, 200 Colo. 398, 615 P.2d 33 (1980).

In his own documentation, Appellant asserts that the action he appeals is his supervisor's sending him home on June 5, 2003. Appellant's claim that he later refused to sign an absence form, and communicated with supervision about this form does not alter the timely filing requirement. The rules governing the timely filing of appeals and grievances afford the Hearing Officer no latitude to waive this requirement.

Even if the delayed processing of this absence form could provide some basis for a different finding as to timeliness, it could only have done so if Appellant had provided

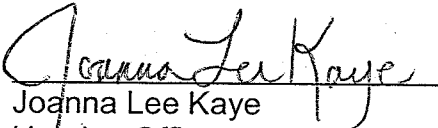
the form itself, and specifically shown the dates of the relevant occurrences surrounding this form. Appellant had done neither in this case.

Under these circumstances, Appellant has not demonstrated his grievance was timely filed.

ORDER

For the reasons set forth above and in the Order to Show Cause, this appeal is **DISMISSED WITH PREJUDICE** for lack of jurisdiction.

Dated this 25th day of September, 2003.


Joanna Lee Kaye
Hearing Officer
Career Service Board

CERTIFICATE OF MAILING

I hereby certify that I have forwarded a true and correct copy of the foregoing **ORDER** by depositing same in the U.S. mail, postage prepaid, this 25 day of September, 2003, addressed to:

Robert D. Perez
1671 South Garfield St.
Denver, CO 80210

I further certify that I have forwarded a true and correct copy of the foregoing **ORDER** by depositing same in the interoffice mail, this 25 day of September, 2003, addressed to:

Robert D. Nespor
Office of the City Attorney
Employment Law Section
201 West Colfax, Dept 1108
Denver, CO 80202

Luis A. Colón
Department of General Services

Dan Barbee
Public Office Buildings Division

