

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

Appeal No. 163-04

ORDER DISMISSING APPEAL

IN THE MATTER OF THE APPEAL OF:

DANIEL RAEL, Appellant,

Agency: Department of Safety, Denver Sheriff's Department, and the City and
County of Denver, a municipal corporation.

By order dated December 6, 2004, the Appellant was ordered to show cause why this appeal should not be dismissed as untimely, pursuant to CSR §§ 18-12 4) and 19-22 a). Both the Appellant and the Agency have filed responses. Having considered the parties' responses and being otherwise informed in this matter, the Hearings Officer finds and Orders as follows.

The Appellant filed his second step grievance with the Agency head on October 20, 2004. Pursuant to CSR 18-12 3), the Agency's response to Appellant's second step grievance was due on October 30, 2004. Since none was forthcoming, Appellant's appeal was due on or before November 10, 2004, pursuant to CSR 18-12 4) and 19-22 a). Appellant filed his appeal on November 17, 2004, seven days after it was due.

In his response, the Appellant claims his appeal "according to my documents...was in fact filed on time..." however no supporting documentation was provided which changes the presumption created by the filing date-stamp, that the appeal was filed on November 17, 2004.

CSR § 18-12 4) provides as follows

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.

A copy of the grievance and the replies from the immediate supervisor and the agency head or designee shall be attached to the appeal to the Hearings Officer.

CSR § 19-22 Time Limitation and Form of Appeal

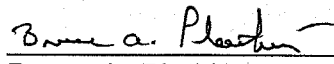
a) Time Limitation

- 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. [emphasis added]
 - (b) The period of time for filing the appeal starts on the day following the date of notice of the 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.

Compliance with these rules is mandatory to establish jurisdiction. Because there was no response to the Appellant's second-level grievance, the Appellant's appeal was due ten calendar days from October 30, 2004, or November 10, 2004. The appellant did not file his appeal until November 17, 2004, making it untimely and beyond the jurisdiction of the Hearings Officer. See Widener v. District Court, 200 Colo. 398, 615 P.2d 33 (Colo. 1980).

ORDER: The Appellant's appeal is DISMISSED WITH PREJUDICE.

Dated this 21ST day of
December, 2004.



Bruce A. Plotkin
Hearing Officer
Career Service Board

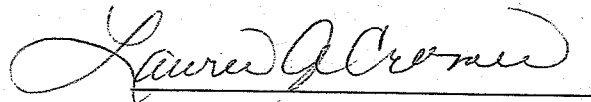
CERTIFICATE OF MAILING

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 21ST day of December, 2004, addressed to:

Mr. Daniel Rael
421 S. Bryant St.
Denver, CO 80219

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 21ST day of December, 2004, addressed to:

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



Laurel A. Cromie