

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

Appeal No. 270-00

ORDER OF DISMISSAL

IN THE MATTER OF THE APPEAL OF:

Appellant: JOHN G. SISNEROS,

And

Agency: DEPARTMENT OF SAFETY, DENVER SHERIFF DEPARTMENT, and the
City and County of Denver, a municipal corporation.

Appellant appeals a disciplinary action by the Agency, whereby the Appellant was suspended from employment for three days without pay. The Appellant filed his appeal on December 28, 2000. The appeal was set for hearing on the merits for March 13 & 14, 2001.

The Agency has filed a Motion to Dismiss, alleging that they have rescinded the disciplinary action, and that therefore the appeal is moot. The Appellant has responded, and does not generally oppose the dismissal. The issue lies in the fact that the Agency acknowledges that it intends to re-initiate the disciplinary process due to a procedural error by the Agency. The Appellant is opposed to the reinitiating process, and requests that this matter be dismissed "with prejudice" in order to prevent the Agency from reinitiating the disciplinary process.

While both sides agree the appeal should be dismissed, the ability of the Agency to reinitiate the disciplinary process remains the point of contention. In this regard the specific procedural infirmity must be reviewed. Career Service Rule §16-40 requires that disciplinary action be taken within 15 days of a predisciplinary meeting unless an extension of time has been requested and granted.¹

¹ CSR §16-40 provides in relevant part:

Disciplinary Action Following Pre-disciplinary Meeting

- A. When Taken: Disciplinary action based on the pre-disciplinary meeting and other pertinent information obtained by the appointing authority or designee shall be taken within fifteen (15) calendar days after the meeting. However, if an appointing authority presents to the Personnel Director documented extenuating circumstances requiring additional time, the Personnel Director may extend the date for taking disciplinary action for an additional ten (10) calendar days. A request for an extension of time must be sent to the Personnel Director prior to the expiration of the fifteen (15) day time period. If disciplinary action is not taken within the fifteen (15) day time period and a request for

In this instance, the predisciplinary meeting was held on November 20, 2000. The Appellant was notified on December 20, 2000 of the Agency's intended disciplinary action. No extension of time to take disciplinary action was sought or granted. The agency failed to comply with the requirements of CSR §16-40 by taking the disciplinary action more than 15 days after the predisciplinary meeting.

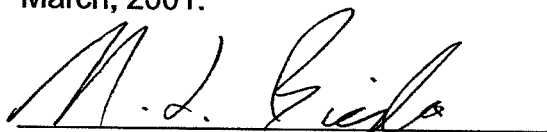
The Career Service rule in question goes on to specifically address this situation. It provides: "If disciplinary action is not taken within the fifteen (15) day time period and a request for extension of time is not timely submitted to the Personnel Director, the agency must repeat the steps contained in section 16-30 before disciplinary action may be taken."

The rule appears to permit a re-start of the disciplinary process under these circumstances. Moreover, the rule read in its entirety would appear to contemplate that the time limitation imposed be directory rather than mandatory. Thus, the cases cited by Appellant are inapposite.

The Hearing Officer has reviewed the Career Service case cited by the Agency, *In the Matter of the Appeal of Robert Maes and Denver Health and Hospital Authority*, CSA appeal 142-99. It is not persuasive to the Agency's position. *Maes* was dismissed due to abandonment of the appeal by the Appellant. The Hearing Officer never reached the issue of the recession and restarting of the disciplinary process.

Here, the Hearing Officer notes that parties agree on dismissal. The issue of restarting the appeal is therefore premature at this point. That issue will be properly before the Hearing Officer only if this appeal is dismissed, the disciplinary action is restarted and the Appellant timely files an appeal. In the meantime, the Hearing Officer has not passed upon the merits of the discipline or the appeal. Therefore this case is **DISMISSED WITHOUT PREJUDICE**.

Dated this 7th day of
March, 2001.



Michael L. Bieda
Hearing Officer for the
Career Service Board

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extension of time is not timely submitted to the Personnel Director, the agency must repeat the steps contained in section 16-30 before disciplinary action may be taken.

CERTIFICATE OF MAILING

I hereby certify that I have forwarded a true and correct copy of the foregoing **ORDER OF DISMISSAL** by depositing same in the U.S. mail, postage prepaid, this 8th day of March, 2001, addressed to:

David J. Bruno
Attorney at Law
1560 Broadway, Suite 1099
Denver, CO 80202-5143

John G. Sisneros
3925 W. Kenyon Ave.
Denver, CO 80236

I further certify that I have forwarded a true and correct copy of the foregoing **ORDER OF DISMISSAL** depositing same in interoffice mail, this 8th day of March, 2001, addressed to:

Richard A. Stubbs
Assistant City Attorney

Ari Zavas
Department of Safety
Manager of Safety

F.J. Oliva
Denver Sheriff's Department

V. Granada