

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

Appeal No. 12-05

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**DISMISSAL ORDER**

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IN THE MATTER OF THE APPEAL OF:

**KAREN TOGUCHI**, Appellant,

Agency: Denver Health and Hospital Authority.

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This matter comes on for determination of the February 18, 2005 Order to Show Cause why this appeal should not be dismissed for failure to file a timely appeal. Neither Appellant nor the Agency has responded to the Hearing Officer's order.

Career Service Rule (CSR) 19-22 a) provides that an appeal must be filed with the Career Service Authority Hearing Office ten days from the date of notice of action. Compliance with that filing requirement is jurisdictional absent the application of equitable tolling. Widener v. District Court, 615 P.2d 33 (Colo. 1980); Montoya v. Chao, 296 F.3d 952 (2002). The personnel rules define the date of notice of the action as either the date of hand delivery, or the date on the certificate of mailing. CSR 19-22 a) 2) (a).

The action giving rise to the appeal in this case was the Agency's letter of suspension dated January 14, 2005. The letter advised Appellant of her right to appeal the action in accordance with Rule 19. The Certificate of Service indicates the letter was hand delivered to Appellant on January 14, 2005. Therefore, Appellant's appeal was due on or before January 24, 2005. The Appellant filed her appeal on February 4, 2005, twelve days after the expiration of the filing deadline.

Although Appellant did not respond to the Order to Show Cause, she did address the timeliness of her appeal through a letter submitted with her appeal by her attorney. Appellant asserts in that letter that she was unsure of where to file the forms, and handed the forms to her supervisor. Appellant asserts that the acceptance of the forms by the supervisor left Appellant with the impression that the supervisor had the authority to accept them, and that her appeal had been properly filed. It should be noted that upon review of the records maintained in the Hearings Office, Appellant previously timely filed an appeal, Appeal No. 142-03, with the Hearings Officer on September 5, 2003. This appeal related to a previous disciplinary action taken against her by the Agency, which included the same notification of the right to appeal as this disciplinary action does.

Therefore, the Hearing Officer finds that the alleged action taken by the Agency of accepting the appeal in this matter does not constitute an assertion that Appellant was actively misled or lulled into inaction by the Agency, which is required in order to support a finding that the Hearing Officer should equitably toll the jurisdictional requirement in order to prevent a party from profiting from such deception. Montoya v. Chao, supra, at 957.

As the Appellant's appeal was not timely, the Hearing Officer lacks jurisdiction over the appeal. The appeal is therefore DISMISSED with prejudice.

Dated this 9th day of  
March, 2005.

  
Valerie McNaughton  
Hearing Officer  
Career Service Board

**CERTIFICATE OF DELIVERY**

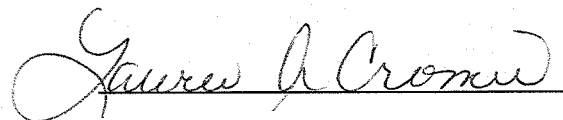
I hereby certify that I have forwarded a true and correct copy of the foregoing **DISMISSAL ORDER** by depositing same in the U.S. mail, postage prepaid, this 10<sup>th</sup> day of March, 2005, addressed to:

Donald J. Mares  
Attorney at Law  
1600 Broadway Suite 2600  
Denver, CO 80202

Karen Toguchi  
4630 W. 24<sup>th</sup> Ave.  
Denver, CO 80212

I further certify that I have forwarded a true and correct copy of the foregoing **DISMISSAL ORDER** by depositing same in the interoffice mail, this 10<sup>th</sup> day of March, 2005, addressed to:

Office of General Counsel  
Denver Health and Hospital Authority  
660 Bannock St. 5<sup>th</sup> Floor MC 1919  
Denver, CO 80204

A handwritten signature in cursive script, reading "Steven A. Cromie", is written over a horizontal line.