

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

Appeal No. 06-03

ORDER OF DIMISSAL

IN THE MATTER OF THE APPEAL OF:

JAMES VOGEL, Appellant,

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

PROCEDURAL HISTORY

Appellant's second level grievance was denied on January 8, 2003. Appellant filed an appeal of his grievance decision with the Career Service Board Hearing Officer on January 22, 2003.

On February 21, 2003, the undersigned Hearing Officer issued an Order To Show Cause why this matter should not be dismissed for lack jurisdiction due to Appellant's failure to timely file his appeal, pursuant to Career Service Rule (CSR) 18-12 4) and 19-22 a) or Appellant's failure to cite a violation of any Charter Amendment, Career Service Rule, or City Ordinance, as required by CSR 18-12 4) and 19-10 d). The February 21, 2003 Order to Show Cause advises, "Appellant has not provided sufficient information to allow the Hearing Officer to find jurisdiction."

On March 3, 2002, Appellant timely filed his response to the Order to Show Cause stating, in total: "I feel that I filed in a timely manner, pursuant to CSR 19-22 a)2) because the grievance was put into the inter-office mail on Saturday, January, 18, because career services was closed on this day and I wasn't sure if there was some sort of drop box the office. So I feel that the appeal was filed on the 18th. Further more, I was told that the career services would receive the inter-office envelope on Tuesday the 21st. The rule violation I am referring to is rule 100.2:In case of emergency, notification will be made as soon as possible, or practical."

DISCUSSION

Career Service Rules state, in pertinent part: "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." CSR 18-12 4).

Career Service Rule 19-22 a) 2) reads as follows:

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.
- (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.
- (e) The appeal period ends at 5:00 p.m. (close of business) on the final date for appeal.

In this case, the 10th calendar day fell on a Saturday, a day the Career Service Authority office is not open for business. The next working day was Tuesday, January 21, 2003. (Monday, January 20, 2003 was a holiday, Martin Luther King Day.) The Hearing Officer concludes that the appeal in this matter was due no later than 5:00 p.m. on Tuesday, January 21, 2003.

Appellant's appeal was received by the Career Service Hearings Office on Wednesday, January 22, 2003. Appellant argues that his appeal was timely filed because it was placed in inter-office mail on the 18th and he was told that it would get to "career services" on the 21st of January. The rules do not provide for a mailing date or certificate of mailing deadline. Therefore, the undersigned Hearing Officer concludes that she does not have jurisdiction to hear this appeal because it was not timely filed pursuant to CSR 18-12 4) and 19-22 a) 2).

Dated this 12th day of March 2003



Michael S. Gallegos
Hearing Officer
Career Service Board

CERTIFICATE OF MAILING

I hereby certify that I have forwarded a true and correct copy of the foregoing **ORDER OF DISMISSAL** depositing same in the U.S. mail, postage prepaid, this 12th day of March, 2003, addressed to:

James Vogel
2380 S. Quebec St. # 303
Denver, CO 80231

I further certify that I have forwarded a true and correct copy of the foregoing **ORDER OF DISMISSAL** depositing same in interoffice mail, this 12th day of March, 2003, addressed to:

Christopher M.A. Lujan
Assistant City Attorney

Tracy Howard
Manager of Safety

F.J. Oliva
Denver Sheriff's Department

Virginia Granado