

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

Appeal No. 121-03

ORDER OF DISMISSAL

IN THE MATTER OF THE APPEAL OF:

BETTY WALKER-SIMMONS, Appellant,

Agency: MAYOR'S OFFICE OF EMPLOYEE ASSISTANCE,
and THE CITY AND COUNTY OF DENVER, a municipal corporation.

This Order concerns the Hearings Office's Order to Show Cause issued August 6, 2003. Appellant's appeal concerns a letter she received on June 30, 2003, in which Appellant was informed she was to be laid off from her position. Appellant filed an appeal of her layoff on July 22, 2003, twenty-two days later. Appellant was ordered to show cause why this case should not be dismissed because her appeal appeared to be filed late.

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 notice of the action** which is the subject of the appeal...

(Emphasis added.)

In this case, Appellant received written notice of her lay-off on June 30, 2003. Her appeal was therefore due ten days later, on July 10, 2003. Appellant did not file her appeal until July 22, twelve days after it was due under the above rule and case law.

In her Response to the Show-Cause Order, Appellant asserts that she did not file her appeal within ten days because she had a meeting with the mayor around July 9 or 10 to discuss the layoff, after which the mayor's assistant called Appellant and told her there would be no layoff. Appellant later learned that her supervisor was proceeding with the layoff despite what she was told by the mayor's office.

Hearings Office jurisdiction is created strictly by the CSR rules. An employee must show her appeal was timely filed 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).

The fact that Appellant had a conversation with management 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 the timely filing requirement, based on contrary verbal information by another supervisor, or any other such circumstances.

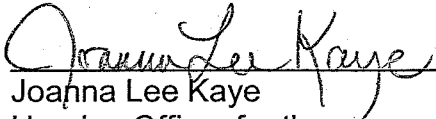
Even if Appellant's explanation of verbal advice contrary to the written notice were a justifiable excuse under the CSR rules and timely filing requirements, her explanation would not have succeeded. By her own account, she did not meet with the mayor about her case until the day her appeal was due, or the day before. She does not state when she received the call from the mayor's assistant, except that it was "after" she met with the mayor on the 9th or the 10th. Therefore, Appellant's own account fails to show that she received this verbal rescission before her timely filing deadline expired.

For these reasons, Appellant has failed to demonstrate that her appeal was timely filed as required under the CSR rules.

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 for the
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:

Betty Walker-Simmons
10150 E. Virginia Ave., Unit 6-105
Denver, CO 80247

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:

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

Chris Weimer
Mayor's Office of Employee Assistance

U. Granado