

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 78-10

ORDER DISMISSING APPEAL WITH PREJUDICE

IN THE MATTER OF THE APPEAL OF:

JOSEPH WEBSTER, Appellant,

vs.

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

On November 19, 2010, Appellant was ordered to show cause why this appeal should not be dismissed for lack of jurisdiction for his failure to meet the filing deadline required by the Career Service Rules. CSR 19-20 A. 1. Appellant and the Agency both filed responses. Having considered the responses, pertinent authority and the case file, I find and order as follows.

Career Service Rule § 19-20 A. 1. requires that appeals to the Hearings Office, other than for whistleblowing claims, must be filed within fifteen days after the date of notice of the action being appealed. While counsel for Appellant discussed two possible notice dates, he does not dispute that, no matter which date is used, the appeal was filed late. Appellant's only defense to his late filing was an obviously heartfelt apology by his attorney in which Appellant's attorney took full responsibility for the filing delay, and even invited sanctions upon himself in an effort to spare his client. Appellant's Response (captioned "Reply") to Order to Show Cause. The Agency replied there is no "good cause" exception to the filing deadline required by CSR 19-20 A. 1., and cites a recent decision to that effect. Agency Reply, *citing In re Sundrup*, CSA 112-09 (1/13/2010).

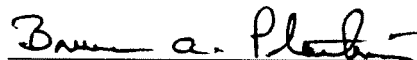
While Appellant broadly referred to the Colorado Rules of Civil Procedure (C.R.C.P.), Rule 60 (b), concerning excusable neglect, as a basis to set aside a default judgment, he did not cite any authority which links the excusable neglect standard of a post-judgment remedy, such as under C.R.C.P. Rule 60 (b), to jurisdictional filing deadlines. While an attorney's neglect figures prominently in such post-judgment remedies, [see, e.g. *Coerber v. Rath*, 435 P.2d 228, 232 (Colo.

1967); Buckmiller v. Safeway Stores, 727 P.2d 1112 (Colo. 1986), exceptions to jurisdictional filing deadlines are limited to exceptional circumstances, such as an Agency's misleading an appellant concerning his filing deadline. See In re Mallard, CSA 65-08 (9-9-08). Such limited circumstances were not present here. Regrettably, in the absence a showing of extraordinary circumstances, the failure of Appellant's attorney to file this appeal timely requires dismissal of the appeal. Sanctions against Appellant's attorney are not a matter for this venue.

ORDER

Appellant's appeal is DISMISSED WITH PREJUDICE.

DONE December 7, 2010.



Bruce A. Plotkin
Career Service Hearing Officer

I certify that, on December 7, 2010, I delivered a correct copy of this Order DISMISSING APPEAL to the following in the manner indicated:

Mr. Joseph Webster, c/o Robert E. Goodwin, Esq.,
Robert E. Goodwin, Esq., 1343 Delaware St., Denver, CO 80204 (via U.S. mail);
City Attorney's Office at Dlefilng.litigation@denvergov.org (via email);
Ms. Lili Tran, HR., Lili.Tran@denvergov.org (via email).

