

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 22-09

ORDER OF DISMISSAL

IN THE MATTER OF THE APPEAL OF:

TRACY CLARK, Appellant,

vs.

DENVER HEALTH AND HOSPITAL AUTHORITY,
and the City and County of Denver, a municipal corporation, Agency.

A pre-hearing conference concerning this appeal was conducted by Bruce A. Plotkin, Hearing Officer, on April 17, 2009. Appellant appeared pro se. The Agency was represented by Susan Stamm, Esq. At issue was the jurisdiction of the Hearing Officer to consider the merits of the case, specifically, whether the Appellant's filing of her appeal was timely under Career Service Rule (CSR) § 19-20 A.

This is a direct appeal of a dismissal. The Agency's notice of action letter was dated March 9, 2009 and included a "Certificate of Service" also dated March 9, 2009. Pursuant to CSR 19-20 A.1.b, any appeal of the action was due to be filed with the Career Service Hearing Office within 15 calendar days after the date of notice of the action being appealed. CSR 19-20 A.2.a defines the "date of notice of the action" as "... date on certificate of mailing of the notice if sent by U.S. mail or interoffice mail." Appellant filed her appeal on March 25, 2009, contending that the "date of notice of the action" was March 10, 2009, the date the notice letter's envelope was postmarked. The Agency asserted its Certificate of Service attached to the notice letter was in compliance with CSR § 19-20 A.2.a.

There is a rebuttable presumption of regularity accorded the Certificate of Mailing affixed to the Agency's notice of dismissal letter. See Dews v District Court for the City and County of Denver, 648 P2d 662 (Colo. 1982). In rebuttal of that initial presumption, Appellant made the following arguments:

- 1) The Hearing Office had informed her several years ago that a third party is required to confirm the notice's date of service and that, when a notice is mailed, the USPS Certificate of Mailing stamp, or in this instance the postmark, is considered the third party confirmation and becomes the date of notice from which she calculates the due date of an appeal.

2) Appellant received the Notice on March 12, 2009 with the postmark on the envelope (Exhibit A) evidencing its processing on March 10, 2009. Though the Agency's certificate of mailing indicates mailing on March 9th, because the letter was not processed by the post office until March 10, she was placed at a disadvantage in appealing the action.

3) Appellant has always believed the Post Office Certificate of Mailing is the certificate of mailing described in CSR § 19-20.

4) Appellant disagreed with the testimony of the Agency's witness as to the time of the last pickup at the Post Office at Colfax and Marion. She believed the last pickup from the mailboxes is 5:30 p.m. whereas the Agency stated the last pickup was at 6:00 p.m.

5) Appellant appealed the Agency action in what she believed in good faith to be a timely manner.

Analysis

CSR § 19-20 A.1.b. requires that appeals be filed with the Hearing Office within 15 calendar days after the date of notice of the action being appealed. This filing deadline is jurisdictional: if the deadline is not met, the hearing office does not have jurisdiction to hear the appeal except in extraordinary circumstances. In re Mallard, CSA 65-08 (9/9/08). CSR § 19-20 A. 2.a. defines the date of notice of the action as "the date on the certificate of mailing of the notice if sent by U.S. mail or interoffice mail." The "date on the certificate of mailing" has long been interpreted as meaning the date the Agency certifies it mailed the letter. [See Apodaca v Parks and Recreation, CSA 40-06 (7/28/06); Cervantes v Denver Human Services, CSA 45-08 (6/11/08); Mallard v General Services, CSA 65-08 (9/9/08)]

The Agency called Appellant's direct supervisor, James F. Azuero, who testified that he signed the Certificate of Mailing and personally brought the letter to the Post Office at Colfax and Marion and mailed it at about 2:00 p.m. on March 9, 2009. Azuero's credibility was not disputed.

Appellant presented no witness or other evidence in support of her understanding that the Hearing Office required third party confirmation of mailing. The rule does not mention confirmation of mailing by a third party.

The calculation of the period of time for filing an appeal is based upon the date the notice is mailed, without reference to the date it is received. CSR § 19-20. Appellant's acknowledged receipt of the notice on March 12, 2009 means she was aware of the dismissal, and thus the grounds upon which an appeal could be taken, at the very least twelve days before the deadline to file an appeal would expire. Therefore, Appellant was not deprived of the opportunity to file a timely appeal by any action of the Agency.

Whether or not the post office indicated its last pickup time on March 9, 2009 was 5:30 or 6:00 p.m. is immaterial under the facts presented here, that the Appellant's supervisor personally deposited the notice letter at the Colfax and Marion post office at about 2:00 p.m. on March 9, before either last pickup time.

Though Appellant in good faith believed she timely filed her appeal, the rule limiting the time allowed for filing governs the Hearing Office's jurisdiction to hear the merits of her appeal. The Hearing Office must strictly comply with the rule. If the appeal was not filed timely under the rule, the Hearing Office is deprived of jurisdiction.

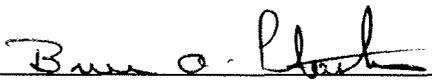
The only factual issue is whether the notice letter was mailed, as the Agency certified it was, on March 9, 2009. Appellant did not challenge the Agency witness' credibility regarding his testimony 1) that he personally delivered the notice to the post office, and 2) that he did so at approximately 2:00 p.m. on March 9, 2009.

As noted above, in order for the Hearing Office to have jurisdiction to hear the merits of Appellant's appeal, that appeal must have been filed within 15 calendar days of the date on the certificate of mailing of the notice of action letter, or by March 24, 2009. CSR § 19-20 A.1.b. It was filed one day later on March 25, 2009. Thus the Appellant's appeal was untimely, depriving the Hearing Office of jurisdiction.

V. Order

Based on the foregoing findings, this appeal is DISMISSED with prejudice for lack of jurisdiction under C.S.R. § 19-20.

DONE April 21, 2009.


Bruce Plotkin
Career Service Hearing Officer