

ORDER DISMISSING APPEAL WITH PREJUDICE

IN THE MATTER OF THE APPEAL OF:

Josephine Cervantes, Appellant,

vs.

Denver Human Services,
and the City and County of Denver, a municipal corporation, Agency.

On June 2, 2008, I issued an Order for the Appellant to show cause why this appeal should not be dismissed for lack of jurisdiction for failing to meet the filing deadline imposed by Career Service Rule (CSR) 19-20 A. Both parties have filed timely responses and I now consider them along with the file and pertinent authority.

The Appellant was dismissed on May 14, 2008. Attached to the Agency's letter of dismissal was a certificate of service also dated May 14, 2008. The Appellant acknowledged she received the dismissal letter the following day, May 15, 2008. She filed her appeal on June 2, 2008, 19 days later.

Career Service Rule 19-20 provides that an appeal must be filed with the Career Service Hearing Office fifteen days from the date of notice of action, which would be fifteen days from May 14, 2008. Therefore, the appeal was due on or before May 29, 2008.

Appellant states first that her appeal was filed timely because the notice of dismissal was sent by regular U.S. mail instead of by certified mail. There is no such requirement in the Rules. Therefore, there is no basis for Appellant's claim that the method of mailing automatically extends the jurisdictional filing date.

The Appellant's acknowledgement, that she received the notice the day after it was mailed, obviates her argument that forces beyond her control caused her late filing, such as not receiving the notice in time to file an appeal, or being misinformed by someone in a position of authority about her filing deadline. In re Apodaca, CSA 40-06 (Order 7/28/06).

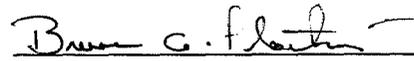
In addition, the Appellant's reliance on In re Wehmhoefer, CSA 02-08, 5 (2/14/08) is misplaced. That case states that sending a termination letter by regular mail

may be a factor whether good cause exists for late filing, but such delivery is not, *per se*, defective service under the rule as the Appellant implies.

In addition to her claim that her appeal was filed timely, the Appellant alternatively claims good cause to extend the filing deadline. Good cause is determined on a case-by-case basis after considering all relevant circumstances. Appellant's attorney states she had equipment problems that cause her to file the appeal six minutes late. She claims an unavoidable six minute delay is good cause. The basis for this claim is built on a series of assumptions that I examine one at a time. First, the Appellant assumes that her appeal was due to be filed on May 30. For reasons stated above this contention is without merit. Second, under the Career Service Rules, the Appellant's filing at 5:06 on May 30 is deemed to be filed the next business day, June 2, not May 30th as alleged by the Appellant.¹ CSR 19-20 A.2.d. Third, the Appellant claims her filing delay was unavoidable. Appellant's counsel offers scant information about the equipment failure allegedly causing the delay, so that it is not possible to determine if the delay was unavoidable.

Having considered the Appellant's response, I find she has failed to state cause why this appeal should not be dismissed for lack of jurisdiction. This appeal is, therefore, **DISMISSED WITH PREJUDICE**.

DONE June 11, 2008.



Bruce A. Plotkin
Career Service Hearing Officer

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¹ May 30 was a Friday. Since the appeal was received after 5:00 p.m. it was deemed filed the next business day, June 2, pursuant to CSR 19-20 A. 2. c. and d. The Appellant claims the Agency's sending of the notice of dismissal by regular mail automatically enlarged the appeal date one day, from May 29 to May 30. She therefore considers her email of her appeal at 5:06 p.m. on May 30 to be filed that day rather than the next business day, June 2. This contention is not supported by the Career Service Rules.