

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

Appeal No. 42-07

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ORDER GRANTING STAY 10-18-07

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IN THE MATTER OF THE APPEAL OF:

**JOHN LUNA,**  
Appellant,

vs.

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

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The Appellant filed his "Motion to Continue Hearing" on October 12, 2007. The Agency objected four days later. I have considered the motion, objection, and being otherwise informed in this matter, I find and order as follows.

As cause, the Appellant states he has filed a motion to withdraw his guilty plea to a 2003 child abuse conviction that was the basis for the Agency's disqualification. As cause for that motion, the Appellant claims he was falsely induced into his guilty plea by a promise from his supervisor that he could retain his job despite the plea. It appears from the documents in the file that the Appellant continued to carry a weapon at work, as required by Sheriff's Dept. regulations, for four years until the Agency notified the Appellant in June 2007 that a disqualification was being contemplated based on the 2003 conviction. The Appellant argues if his district court motion is granted, the basis for the disqualification will be moot.

The Agency objects on three grounds: prejudice, judicial economy, and the Appellant's prior continuance. The prejudice claimed by the Agency is that its witness, CBI Agent-in-charge Susan Kitchen would likely be retired, and ostensibly, unavailable, by the time the case could be reset, and that she would testify as to why the CBI found the Appellant's 2003 conviction meets one of the qualifying domestic relationships for which gun possession is proscribed under the Lautenberg Amendment, 18 U.S.C. §922(g) (9) (2007). However, first, it is unclear Kitchen would be unavailable, and, second, as the Career Service Board explained, whether the relationship between an appellant and victim is one of the domestic relationships defined by Lautenberg is a matter for *de novo* review by the Hearing Officer, independent of the CBI's determination. In re Ray, CSB 57-06, 4 (8/14/07). Thus Kitchen's view, while perhaps providing helpful background, is not critical to a

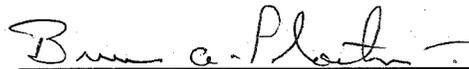
determination for the hearing officer.

Regarding judicial economy, the Agency states the Appellant's post-conviction motion falls outside the statute of limitations for filing a collateral attack on his guilty plea. While this is an accurate statement as it goes, the Agency omits the district court's consideration of any possible exception to a time-bar, for example, excusable neglect. C.R.S. 16-5-402(2)(d)(2005). Whether to grant such an exception is a matter for that court's determination, and is not for this tribunal to pre-suppose.

Finally, the fact that a prior continuance was granted does not, *per se*, diminish whether that party may justify a similar request by good cause shown in a subsequent motion.

I find the Appellant states good cause to stay proceedings in this case and do not find the Agency's objections sufficiently meritorious to overcome the Appellant's claims. I therefore GRANT the Appellant's motion. All proceedings in this matter are STAYED, pending the district court's determination of the Appellant's post-trial motion for relief. The Appellant is ORDERED to notify the Hearing Office forthwith upon notification of the district's order relevant to the Appellant's post-trial motion for relief.

DONE October 18, 2007.

  
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Bruce A. Plotkin  
Career Service Board Hearing Officer

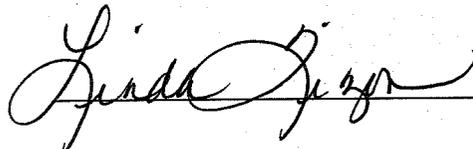
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I certify that I forwarded a correct copy of the foregoing Order on October 19<sup>th</sup>, 2007, in the manner indicated below, to the following:

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