

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

Appeal No. 104-03

ORDER OF DISMISSAL

IN THE MATTER OF THE APPEAL OF:

CHARLSETTA CRUTCHFIELD, Appellant

Agency: Department of Public Works, Parking Management Division and the City and County of Denver, a municipal corporation.

PROCEDURAL HISTORY

On July 21, 2003, the above-named Agency filed a Motion to Dismiss this appeal. By Order dated July 23, 2003, Appellant was ordered to respond to the Agency's motion. Appellant timely filed her Response on July 29, 2003. The Agency filed a Reply on July 31, 2003 and Appellant filed her "2nd Response to Motion to Dismiss" on August 7, 2003.

In its' Motion to Dismiss, the Agency argues that Appellant did not comply with the jurisdictional requirements of Career Service Rule 18-12 (3) (2nd paragraph) which states, in pertinent part: "If the immediate supervisor has not responded to the grievance within ten (10) calendar days and the employee desires to pursue the grievance further, the employee must present the grievance in writing to the head of the agency or designee no later than ten (10) calendar days after the supervisor's response was due." In her Responses, Appellant argues that she filed her second-level grievance with the head of the agency on the tenth calendar day after her supervisor's response to her first-level grievance.

FINDINGS OF FACT

Based on the pleadings filed in this matter, the Hearing Officer finds the following to be fact:

1. Appellant timely filed her grievance, of a written reprimand, with her immediate supervisor, Lindsey Strudwick (Strudwick) on May 23, 2003. Because May has 31 days, Strudwick's response was due to Appellant no later than June 2, 2003.

2. Strudwick did not respond to Appellant's grievance on or before June 2, 2003. Therefore, Appellant's second-level grievance was due to be filed with the head of the Agency no later than June 12, 2003.

3. Strudwick responded to Appellant's first-level grievance on June 3, 2003. The June 3, 2003 response from Strudwick was received by Appellant on June 11, 2003.

4. Appellant filed her second-level grievance with the head of the Agency, Anderson Moore (Moore), on June 13, 2003, 10 calendar days after the date of Strudwick's response to her first level grievance. She also calculated that Moore's response to her second-level grievance was due on June 23, 2003. Moore did not respond to Appellant's second-level grievance. Therefore, Appellant filed her appeal on July 3, 2003, 10 calendar days after June 23rd.

DISCUSSION

Career Service Rules mandate that, if the first-level response does not resolve the grievance, the second-level grievance shall be presented to the head of the Agency within 10 calendar days of the immediate supervisor's first-level response (CSR 18-12 (3), 1st paragraph) *and*, "If the immediate supervisor has not responded to the grievance within ten (10) calendar days and the employee desires to pursue the grievance further, the employee must present the grievance in writing to the head of the agency or designee no later than ten (10) calendar days after the supervisor's response was due." CSR 18-12. The purpose of specific time requirements within CSR 18-12 is to move the grievance/appeals process along without unnecessary delay. To that end the second paragraph of CSR 18-12 (3) must be read *in conjunction with* the first paragraph of CSR 18-12 (3), *not* as an alternative to the first paragraph.

To do otherwise would allow a first-level grievance to languish for weeks, months or years waiting for a response, only then to allow it to progress to the second-level and appeal. Rather, when the paragraphs are read together, it is clear that a second-level grievance must be presented to the head of the Agency *no later than* 10 calendar days from the date of hand-delivery or mailing of the first-level grievance. In this case, the first-level grievance was hand-delivered on May 23, 2003. If Appellant's immediate supervisor, Strudwick, had responded in less than 10 days from May 23rd, Appellant would have had to calculate her 10 calendar days, for presentation of the second-level grievance, from the date of the response.¹ Because Strudwick did not respond to the grievance within 10 calendar days, (on or before June 2, 2003) June 2nd is the day from which she must count

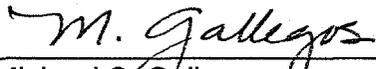
¹ For example, if Strudwick had responded on May 30, 2003, Appellant's presentation of her second-level grievance to the head of the Agency would have been due on or before June 9, 2003.

her 10 calendar days.² Therefore, Appellant's presentation of her second-level grievance to the head of the Agency was due on June 12, 2003. The Hearing Officer concludes that Appellant's second-level grievance in this matter was filed one day late on June 13, 2003.

ORDER

Accordingly, for the reasons stated above and in the Agency's July 21, 2003 Motion to Dismiss and July 31, 2003 Reply, this appeal is hereby **DISMISSED** with prejudice.

Dated this 15th day of August 2003.



Michael S. Gallegos
Hearing Officer for the
Career Service Board

² For example, if Strudwick had responded on June 15, 2003 (rather than June 3, 2003), Appellant would not have been allowed to present her second-level grievance to the head of the Agency on or before June 25th. Her deadline would be, as it is in this case, June 12th.