

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

Appeal No. 182-04

DISMISSAL ORDER

IN THE MATTER OF THE APPEAL OF:

EMMETT A. DELGADO, JR, Appellant,

Agency: Department of General Services, Theatres and Arenas Division, and the City and County of Denver, a municipal corporation.

This matter comes on for determination of the January 6, 2005 Order to Show Cause Order why this appeal should not be dismissed for failure to file a timely appeal. Both parties filed responses to the Order. Having considered the arguments in the parties' responses and the pleadings herein, the Hearing Officer finds and orders as follows:

Career Service Rule (CSR) 19-22 a) provides that an appeal must be filed with the Career Service Authority Hearing Office ten days from the date of notice of action. Compliance with that filing requirement is jurisdictional absent the application of equitable tolling. Widener v. District Court, 615 P.2d 33 (Colo. 1980); Montoya v. Chao, 296 F.3d 952 (2002). The personnel rules define the date of notice of the action as either the date of hand delivery, or the date on the certificate of mailing. CSR 19-22 a) 2) (a).

The action giving rise to the appeal in this case was the Agency's letter of disqualification dated November 18, 2004. The letter advised Appellant of his right to appeal the action in accordance with Rule 19. The Certificate of Mailing indicates the letter was sent to Appellant on November 18, 2004. Therefore, Appellant's appeal was due on or before November 29, 2004. The Appellant filed his appeal on December 27, 2004, almost a month after the expiration of the filing deadline.

Appellant's response admits the above facts. His stated grounds for the delay were that he was unaware of the deadline contained in Rule 19, and his many calls to various city departments did not provide him with that information. This does not constitute an assertion that he was actively misled or lulled into inaction by the Agency, which is required in order to support a finding that the Hearing Officer should equitably toll the jurisdictional requirement in order to prevent a party from profiting from such deception. Montoya v. Chao, supra, at 957.

As the Appellant's appeal was not timely, the Hearing Officer lacks jurisdiction over the appeal. The appeal is therefore DISMISSED with prejudice.

Dated this 9th day of
March, 2005.


Valerie McNaughton
Hearing Officer
Career Service Board

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CERTIFICATE OF DELIVERY

I hereby certify that I have forwarded a true and correct copy of the foregoing **DISMISSAL ORDER** by depositing same in the U.S. mail, postage prepaid, this 9th day of March, 2005, addressed to:

Emmett A. Delgado, Jr.
1771 S. Quebec Way P-202
Denver, CO 80231

I further certify that I have forwarded a true and correct copy of the foregoing **DISMISSAL ORDER** by depositing same in the interoffice mail, this 9th day of March, 2005, addressed to:

Jack M. Wesoky
Assistant City Attorney
Litigation Section

