

ORDER DISMISSING APPEAL

IN THE MATTER OF THE APPEAL OF:

EDWARD KELLER, Appellant,

vs.

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

Appellant was ordered to show cause why this appeal should not be dismissed as untimely by October 4, 2012. Appellant submitted his response on October 4, 2012. The Agency's reply was filed on October 5, 2012.

Appellant was suspended from his employment on September 11, 2012. The letter of dismissal notified him that he had a right to appeal the dismissal under Rule 19 of the Career Service Rules, and that deadline is set forth in CSR § 19-22. An appeal of a suspension must be filed within fifteen calendar days after the date of notice of the suspension, which in this case is the date on the certificate of mailing of the notice by U.S. mail. Here, the certificate of mailing is dated September 11, 2012, which means the appeal was due on September 26, 2012.

Appellant argues that that the delay should be deemed excusable as the date for appeal should be date received, and therefore the appeal was timely filed, despite the fact the attorney dated the appeal form September 14, 2012 and failed to submit the appeal within the deadline.

Compliance with the deadline for filing an appeal is a jurisdictional requirement unless excused by equitable tolling. In re Delgado, CSA 182-04 (3/9/05); Widener v. District Court, 615 P.2d 33 (Colo. 1980). Cause sufficient to permit equitable tolling of the deadline for filing an appeal requires proof that appellant "was actively misled or lulled into inaction by the [agency]". In re Delgado, *supra*; Montoya v. Chao, 296 F.3d 952 (10th Cir. 2002). Appellant does not assert in this case that Agency action caused the delay. The Agency response was served by certified mail, clearly labeled and identified as postmarked by U.S. mail, exhibit 1 of the agency's response.

Order

Based on the foregoing findings, this appeal is DISMISSED with prejudice for failure to file a timely appeal under C.S.R. § 19-20.

Done October 5, 2012.



Bruce A. Plotkin
Career Service Hearing Officer