

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 61-08

ORDER OF DISMISSAL

IN THE MATTER OF THE APPEAL OF:

HELEN R. KEMP, Appellant,

vs.

DENVER INTERNATIONAL AIRPORT, DEPARTMENT OF AVIATION,
And the City and Count of Denver, Agency.

The Agency has moved to dismiss this appeal on the basis that it was not filed within the time limit mandated by C.S.R. § 19-20 A.1.b. Appellant has not responded to the motion.

Factual Background

By letter dated July 25, 2008, Appellant was notified that she was suspended without pay for three days, from Friday July 25 to Tuesday July 29, 2008. The notice was delivered to Appellant's home via express mail at 10:53 a.m. on July 26th, and was also sent by regular mail on July 25th to that same address. [Agency's Motion to Dismiss, Exhs. A-4, D-2.] On July 3rd at 3:55 p.m., Appellant received by hand delivery the notice of contemplation of discipline letter at her home address, which is the address listed on Appellant's driver's license. [Exhs. B-5, C.]

While Appellant did not respond to the motion to dismiss, the appeal specifically addresses the timeliness issue. Appellant contends that she did not receive the notice of suspension, which she stated was not delivered to her address of record with the Career Service, P.O. Box 7582, Denver Co 80207. [Appeal to Hearing Officer, pp. 1-2, stamped as received August 13, 2008.] Appellant did not respond to the Agency's argument that she either received the notice on July 26th, or failed to provide an accurate residential address in violation of C.S.R. § 16-75 D. Her personal receipt of the July 2nd notice of contemplation of discipline tends to undermine her argument that the address on file with Career Service is a post office box rather than the Dexter Street address to which the notice was sent. On Aug. 15, 2008, Appellant filed the appeal on the form prescribed by the Hearing Office, which repeated the challenge to the suspension contained in the Aug. 13th document.

Analysis

Each Career Service employee must assure that City personnel records reflect his or her "current mailing address, current residential address and telephone number at all times." C.S.R. § 16-75. Disciplinary notices under Rule 16 must be served "in person with a certificate of hand delivery, or by first class U.S. mail, with a certificate of mailing to the employee's last known address." C.S.R. § 16-10. 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.

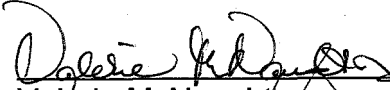
Here, the certificate of mailing is dated July 25, 2008, which means the appeal was due on Monday, Aug. 11, 2008. Appellant was advised in the suspension notice that the right to appeal arose under Career Service Rule 19. [Exh. A-4.] The appeal was filed on Aug. 13, 2008, in language sufficient to apprise the Agency of the grounds for the appeal, although not in the form prescribed by the Hearing Office.

Appellant argues that she was not aware of the suspension until two days after it was imposed. Appellant does not contest that she was aware of the suspension, and thus the grounds upon which an appeal could be taken, at least thirteen days before the deadline to file an appeal would expire. Therefore, Appellant was not deprived of the opportunity to file a timely appeal by any action of the Agency.

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 this 17th day of Sept., 2008.



Valerie McNaughton
Career Service Hearing Officer

I hereby certify that I have sent a true and correct copy of the foregoing Order of Dismissal on this 17th day of September, 2008 to the following:

Helen R. Kemp, P.O. Box 7582, Denver CO 80207 (via U.S. mail)
Helen R. Kemp, Helen.Kemp@diadenver.net (via email)
City Attorney's Office, dlefilling.litigation@denvergov.org (via email)
Jim Thomas, jim.thomas@diadenver.net (via email)