

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

Appeal No. 65-08

NOTICE ORDER

IN THE MATTER OF THE APPEAL OF:

DARNELL MALLARD. Appellant,

vs.

GENERAL SERVICES, FACILITIES MANAGEMENT

and the City and County of Denver, a municipal corporation, Agency.

The Agency filed its Motion to Dismiss with Prejudice on August 28, 2008. The Agency claims the Appellant filed his appeal two days late and therefore the Hearing Office is without jurisdiction to consider the merits of the appeal. The Appellant filed his Response on September 8, 2008, claiming he filed his appeal timely. After considering the pleading, the file, and appropriate authority, I find and conclude as follows.

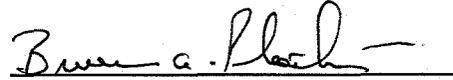
The pertinent facts with respect to the Appellant's filing of his appeal are not disputed. The Agency's notice of dismissal and mailing of the notice were both dated August 4, 2008. The effective date of dismissal was August 8, 2008. [Agency Motion to Dismiss, Exhibit A]. The Appellant filed his appeal on August 21, 2008, 17 days after the Agency's notice and 13 days after his termination.

There is no question that the filing deadline contained in CSR 19-20 A. 1. b. is jurisdictional. If the deadline is not met, then the Hearing Office is without jurisdiction to hear the appeal except in extraordinary circumstances. CSR 19-20 A. 1. b. requires non-whistleblowing appeals, such as this one, to be filed "within fifteen (15) calendar days after the date of notice of the action being appealed." The following rule, CSR 19-20 A. 2. a., makes it clear that, where delivery of the notice was made by mail, as it was in this case, the "notice of action" is "the date on the certificate of mailing." The following rule, CSR 19-20 A. 2. b. declares the 15-day count begins the day following the aforementioned notice. Thus, the countdown began in this case on August 4 and ended August 19.

The Appellant argues the filing countdown began on the day of dismissal, August 8, instead of August 4, but he provides no argument that changes the clear requirement to begin counting from the day after mailing. More precisely, the Appellant failed to show the date of "notice of action" is the same as the date of the action itself.

The Agency's Motion to Dismiss with Prejudice is GRANTED.

DONE September 9, 2008.


Bruce A. Plotkin
Career Service Hearing Officer