

ORDER DENYING APPELLANT'S MOTION TO REINSTATE APPEAL

ALBERT O'HARA, Appellant,

v.

OFFICE OF ECONOMIC DEVELOPMENT,
and the City and County of Denver, a municipal corporation, Agency.

Appellant was laid off on May 17, 2016, and filed a timely appeal 14 days later on May 31, 2016. Appellant asked to withdraw his appeal on June 3, 2016, and the request was granted the same day. On June 10, 2016, Appellant asked to reinstate his appeal, stating he changed his mind because he had been "under a lot of stress" trying to find a new job and was intimidated by deadlines and the amount of work required. The Agency objected, stating the appeal was dismissed with prejudice, and the Hearing Office lacks jurisdiction because the appeal is now time barred.

The first issue to address is whether the appeal was dismissed with or without prejudice. A dismissal with prejudice means the dismissal is final, and an appellant may not refile an appeal regarding the same issues. A dismissal without prejudice means an appellant may re-file an appeal with the same issues under some circumstances.

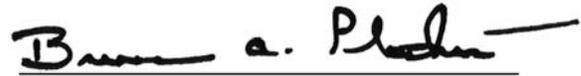
Unless an order expressly states a dismissal is "with prejudice," the dismissal is considered "without prejudice." See [Colorado Rules of Civil Procedure 41](#); see also [FSDW, LLC v. First National Bank](#), 94 P.3d 1260 (Colo. Ct. App. 2004). The dismissal order did not identify whether it was with or without prejudice. Accordingly, Appellant's original appeal was dismissed without prejudice.

The second issue is whether the circumstances in this case permit Appellant to refile his appeal. The first consideration is whether the original deadline has expired. The deadline to file most appeals is 15 days from when an appellant became, or should have become, aware of the disputed agency action. CSR 19-20. The original deadline to file in this case was 15 days after the May 17th notice of lay-off, or June 1st. Since Appellant asked to reinstate his appeal on June 10th, the time to file under the Career Service Rules has expired. The next issue is whether circumstances exist which might permit reinstatement of the appeal despite the expiration of the deadline.

The voluntary withdrawal of an appeal does not automatically permit an appellant to reinstate his appeal. Extraordinary circumstances are required, such as an Agency misleading an appellant into abandoning an appeal, or in the case of a medical emergency. [In re Webster](#), CSA 78-10 (Order 12/7/10). In this case, Appellant did not claim wrongful conduct by the Agency, a medical emergency or any other circumstances which may be considered to be extraordinary.

If appeals were reinstated under circumstances that are less than extraordinary, appellants could withdraw their appeals, then ask to reinstate them weeks, or months later, making the restrictions in the Career Service Rules meaningless. In addition, such extensions would be unfair to the opposing agency. Finally, extending the time to refile an appeal for non-extraordinary circumstances would defeat the purpose of Career Service appeals hearings, to resolve legitimate issues in a manner that is both fair and efficient. For these reasons, Appellant's motion to reinstate his appeal is **denied**. This order is final.

DONE June 14, 2016.



Bruce A. Plotkin
Career Service Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board for review of this final order, in accordance with the requirements of CSR § 19-60 *et seq.*, within fifteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the decision's certificate of delivery. The Career Service Rules are available as a link at www.denvergov.org/csa.

All petitions for review must be filed with the:

Career Service Board
c/o OHR Executive Director's Office
201 W. Colfax Avenue, Dept. 412, 4th Floor
Denver, CO 80202
FAX: 720-913-5720
EMAIL: CareerServiceBoardAppeals@denvergov.org

AND

Career Service Hearing Office
201 W. Colfax, 1st Floor
Denver, CO 80202
FAX: 720-913-5995
EMAIL: CSAHearings@denvergov.org.

AND

Opposing parties or their representatives, if any.