

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 70-07

ORDER ON MOTIONS TO DISMISS AND STAY DISCIPLINE

IN THE MATTER OF THE APPEAL OF:

RUSSELL STONE, Appellant,

vs.

DEPARTMENT OF LAW, PROSECUTION AND CODE
and the City and County of Denver, a municipal corporation, Agency.

Appellant, by his representative Robert E. Goodwin, Esq., has filed two motions which seek to dismiss and stay the three-day suspension imposed by the Agency on Oct. 5, 2007. The Agency has not filed a response to either motion.

Appellant argues that Appellant's suspension was improper because it was not effected by the appointing authority after a pre-disciplinary meeting in conformance with CSR § 16-40. On that basis, Appellant moves for dismissal of the suspension, now set to commence Oct. 22nd and end Oct. 24th, and claims a right under CSR § 19-43 to challenge jurisdiction by the filing of an interlocutory appeal to the Career Service Board. Finally, Appellant asserts that the appeal shall be stayed pending resolution of the interlocutory petition under the authority of § CSR § 19-43 B.

This is an appeal of a suspension. Appellant seeks a stay of that suspension pending a hearing on the grounds that it was not authorized by an appointing authority. The rules provide for no such stay. Hearing officers possess only the powers granted them by the rules, which are to affirm, modify or reverse an agency action based on findings derived from a hearing *de novo* on the merits of the appeal. CSR § 19-55. The rules do not provide for the authority to stay disciplinary action pending the outcome of a Career Service appeal.

The jurisdiction of the hearing office is not in question by either party. A suspension of a career service employee may be appealed by the timely filing of an appeal with the hearing office under CSR § 19-10 A.1., as Appellant has done. Moreover, since Appellant invoked the jurisdiction of the hearing office in order to challenge the suspension, it is clear that this motion is not a motion to dismiss the appeal itself, but rather an attempt to contest the agency's suspension action. CSR § 19-43 does not provide authority to take such a challenge directly to the Career Service Board by means of an interlocutory petition.

The motion to dismiss the suspension is not an interlocutory appeal of a jurisdictional ruling by the hearing office. Even if such an appeal was filed, the hearing officer lacks the power to stay the imposition of discipline absent a hearing and a ruling on the merits.

Order

The motions to dismiss or stay the discipline are denied.

Dated this 23rd day of October, 2007.


Valerie McNaughton
Career Service Hearing Office

I hereby certify that a copy of this order was sent on October 23, 2007 to the following:

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