

CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER, STATE OF
COLORADO

Appeal No. 24-09

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

ROBERT F. AUGUSTINE,

Appellant/Petitioner,

vs.

DEPARTMENT OF PUBLIC WORKS, WASTEWATER MANAGEMENT DIVISION,
and the City and County of Denver,

Agency/Respondent.

This matter is before the Career Service Board on Appellant's Petition for Review. The Board has reviewed and considered the full record before it and **AFFIRMS** the Hearing Officer's Decision dated December 11, 2009, on the grounds outlined below.

FINDINGS

The sole issue before us is whether Appellant filed a timely appeal of his March 11, 2009, termination of employment. We agree with the Hearing Officer that the appeal was untimely.

Under the career service rules, all appeals (other than those claiming a violation of the City's whistleblower ordinance) must be filed "within fifteen (15) calendar days after the date of notice of the action being appealed." CSR 19-20 A.1.b. Here, the parties agree that the date of notice of the action is March 11, 2009, the date that appears in the certificate of mailing. Thus, Appellant was required to file his appeal on or before March 26, 2009. However, his appeal was not filed until March 27, 2009.¹

¹ Appellant's contention that the fifteen day time period ended on March 27th rather than March 26th is not only contrary to the clear language of CRS 19-20, but is also contrary to commonly understood and accepted counting principles.

As an alternative argument, Appellant contends that he was suffering from mental health issues that prevented him from filing a timely appeal. Although the record demonstrates that Appellant raised this argument before the Hearing Officer in response to the order to show cause (Record, p. 20), there is no evidence in the record that supports the argument.

On appeal to the Board, Appellant has now attached to his opening brief medical documentation dated July 20, 2009, showing a visit with his treating physician on that date. However, this documentation does not establish that Appellant was medically incapacitated on July 20th, or on March 26th, when his appeal had to be filed. Moreover, to the extent that Appellant attached this documentation in an attempt to invoke the Board's jurisdiction under CSR 19-61 A. (new and material evidence that was not available when the appeal was heard by the Hearing Officer), he has failed to do so. Medical documentation dated July 20, 2009, was clearly available to Appellant before the Hearing Officer issued his decision on December 11, 2009. If Appellant believed there were extraordinary circumstances that prevented him from filing a timely appeal, it was his obligation to prove those circumstances to the Hearing Officer.²

Finally, Appellant's claim that the Hearing Officer's decision sets an "undesirable precedent" does not fall within any of the grounds for Board review under CSR 19-61. While Appellant spends a great deal of time arguing the underlying merits of his appeal, the Hearing Officer's decision was limited to only one issue: the timeliness of the appeal. The Hearing Officer correctly determined that the appeal was filed one day late, that no extraordinary circumstances justified the late filing, and therefore the Hearing Officer lacked jurisdiction to hear the appeal. We find no policy considerations that may have effect beyond the appeal at hand.

ORDER

IT IS THEREFORE ORDERED that the Hearing Officer's Decision of December 11, 2009, dismissing this appeal with prejudice for lack of jurisdiction, is **AFFIRMED**.

SO ORDERED by the Board on April 1, 2010, and documented this

28th day of April, 2010.

² According to the record, Appellant's attorney signed the notice of appeal on March 24, 2009, two days before the filing deadline. (Record, p. 1). However, the attorney's office did not file the appeal on Appellant's behalf until March 27th. (Record, p. 7). Thus, the record establishes that Appellant was represented by counsel prior to the expiration of the time period for filing the appeal.

BY THE BOARD:



Tom Bonner, Co-Chair

Board Members Concurring:

Nita Henry
Patti Klinge

CERTIFICATE OF DELIVERY

I certify that I delivered a copy of the foregoing **FINDINGS AND ORDER** on
April 29, 2010, to the following:

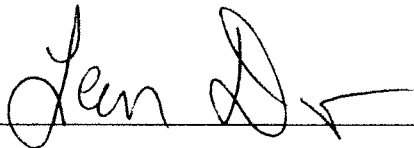
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