

**INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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**DANIEL ROMERO,**

Complainant,

vs.

**DEPARTMENT OF HUMAN SERVICES, DIVISION OF YOUTH CORRECTIONS,  
GILLIAM YOUTH SERVICES CENTER,**

Respondent.

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Administrative Law Judge Kristin F. Rozansky held the hearing in this matter on October 15, 2003 at the State Personnel Board, 1120 Lincoln, Suite 1420, Denver, Colorado. Assistant Attorney General Melissa Mequi represented Respondent. Respondent's advisory witness was Tanya Lyons, the appointing authority. Complainant appeared and represented himself.

**MATTER APPEALED**

Complainant, Daniel Romero ("Complainant" or "Romero") appeals the \$150 per month reduction in his pay for a period of four months by Respondent, Department of Human Services, Division of Youth Corrections, Gilliam Youth Services Center ("Respondent," "DHS," "DYC," or "Gilliam"). Complainant seeks back pay and removal of the disciplinary action from his personnel file.

For the reasons set forth below, Respondent's action is **affirmed.**

**ISSUES**

1. Whether Complainant committed the acts for which he was disciplined;
2. Whether Respondent's action was arbitrary, capricious or contrary to rule or law;
3. Whether the discipline imposed was within the reasonable range of alternatives available to the appointing authority;
4. Whether attorney fees are warranted.

## **FINDINGS OF FACT**

### **General Background**

1. Complainant has worked as a CSSOI at Gilliam since August 1999. He worked in the admissions area for most of 2003, usually on the graveyard shift.
2. Prior to this matter, Complainant has no prior disciplinary history and has never received a corrective action or a letter of concern.
3. A majority of Complainant's past performance ratings have been at the "peak performer" level.
4. Gilliam is a high security youth facility for pre-adjudicated juveniles ages twelve to seventeen. Many of the juveniles at Gilliam come from abusive and/or severely dysfunctional home environments.
5. The Gilliam staff is expected to promote a normative culture for the juveniles at Gilliam. This entails both staff and the juveniles treating everyone within the facility with dignity and respect.
6. Cornelius Foxworth is the Director of Gilliam; Tanya Lyons is the Assistant Director of Gilliam; and Erin Weeda is their Administrative Assistant.
7. In May 2001, Lyons was appointed as the Acting Director of Gilliam and delegated appointing authority. When Foxworth was later appointed as the Director of Gilliam, Lyons continued to retain the delegation of appointing authority.
8. Weeda does investigations for Foxworth and Lyons and rudimentary computer work on Gilliam's Local Access Network and handles some of the information technology for Gilliam.

### **Email and Internet Usage at Gilliam**

9. It is common knowledge among Gilliam employees that they should not use a computer under someone else's login name and password. However, Gilliam employees share computers and, on occasion, employees use a computer while it is logged in under another employee's name.
10. Complainant typically uses computers in areas at Gilliam that are enclosed but which have glass from waist-level to the ceiling. Because of the glass, the computers are easily visible by visitors (both adults and children) and Gilliam residents.
11. Complainant would use the computers to fulfill his job duties and to view any email.

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In addition, Complainant had access to the Internet via the computers. Complainant often used the computers to play games on the Internet so that he would stay awake during his graveyard shift.

12. One Gilliam employee who works on the graveyard shift often plays so many games on the computer that she will stay for an additional three to four hours after her shift to continue playing those games. She has never been reprimanded or disciplined for this behavior.
13. Prior to this matter, Complainant had received a copy of DYC's policies concerning email and Internet usage.

### **Investigation of Complainant's Email and Internet Usage**

14. In February 2003, while troubleshooting a computer problem in one of Gilliam's control centers, Weeda discovered that the computer had an installed spyware program called "Gator." Gator installs on a computer when a person visits a website and downloads the program while viewing the website.
15. Weeda sent an email message to all Gilliam employees explaining that Gator was an "extremely intrusive" software and reminding Gilliam employees of the DYC policies regarding the Internet and installations of unauthorized software. Weeda attached a copy of the policies to her email. Complainant received and opened the email.
16. On May 12, 2003, a Mr. Hardesty, another Gilliam employee sent an email of a photograph out to the entire DHS department of over 10,000 employees. The email was considered highly offensive to a number of the recipients and Lyons received calls from many DHS employees complaining about Hardesty's email.
17. Weeda was directed by Lyons to investigate Hardesty's email log. In reviewing those emails, Weeda was able to review the contents of the emails, and she made an initial determination as to what were inappropriate emails. From that investigation Weeda compiled a list of Gilliam employees who had sent to Hardesty, or received from Hardesty inappropriate emails. She prepared a chart that reflected each of the inappropriate emails, who had received those emails and who had sent them.
18. Lyons, after reviewing Weeda's chart, decided whom Weeda would investigate further. Complainant had sent and/or received some of the inappropriate emails found in Hardesty's email log. Approximately twelve Gilliam employees, including Complainant, were investigated.
19. Sometime in June 2003, Weeda requested from DHS' IT division a log of Complainant's Internet usage for the month of May 2003.
20. Troy Runck, an IT technician for DHS created a Webtrends report regarding

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Complainant's Internet usage for the month of May 2003 (the "Webtrends Report"). The Webtrends Report reflects all websites visited by Complainant during May 2003 and also reflects the amount of time that Complainant was logged into to each website.

21. Complainant's Internet usage, as reflected in the Webtrends Report, is much higher than other DHS employees. Some of the websites he visited are work-related and others are games websites. The report shows that the Gator spyware program website was visited more than five times and that Complainant was often logged onto the Internet for extensive periods of time during his shifts.
22. On June 13, 2003, Weeda sent Doug Schultz, an information technology systems supervisor for DHS, a request to shutdown Complainant's email. Complainant's email was shut down on June 25, 2003.
23. After Complainant's email was shut down Weeda reviewed his emails. Again, as with Hardesty's emails, Weeda was able to review the contents of emails and compiled a list of what she thought were inappropriate emails. In order to determine what were inappropriate emails she used the perspective of a co-worker who Weeda viewed as having a narrow perspective of what was appropriate email.
24. Lyons reviewed the contents of the list of Complainant's emails that Weeda had compiled and fourteen of those emails were determined by her to be inappropriate (the "Emails").
25. Of those fourteen Emails, Complainant sent or received and forwarded ten emails ("Sent Emails"). He received but did not forward the remaining four emails ("Received Emails").
26. Of the ten Sent Emails, four were printed jokes. The four jokes refer to sex, drinking, quotes by popular figures about France's stance on the current war in Iraq and the bodily functions of the elderly.
27. Of the ten Sent Emails, three were photos and one was a link to a website. One photo was a replica of a document that had periodic fuzzy words and urged the reader to have frequent sex if his or her eyesight was failing. A second photo was a picture of Complainant with the caption "you suck dog nuts." The third photo shows a pair of feet with three to four inch toenails, in high heel sandals with the caption "GhetToes." The link to a website shows a person flatulating.
28. Of the ten Sent Emails, two had attachments that were executable files (files which, when clicked on, play a video). Executable files often contain viruses. One of the executable files is entitled "beatdown" and shows a drunken man being beaten by a woman while children watch. The second executable file, entitled "please throw rocks," contained two videos showing men of Middle Eastern descent being knocked over by the kickback force of the guns they were firing.

29. Of the four Received Emails, two contained attachments with executable files and two had photos. Complainant received two of the Received Emails from DYC supervisors.
30. One of the two executable files in the Received Emails ejects the user's CD drive. The second is a video clip from the Comedy Central channel of two monkeys in a bar telling jokes.
31. One of the two photos in the Received Emails has a series of six photos that are parodies of Master Card's "Priceless" ads. Five of those photos contain some degree of female and, in one instance, male nudity. The second photo in the Received Emails shows an infant with its fingers to its mouth, as if smoking marijuana, and the caption "a sign your kid may have a problem."

### **R-6-10 Meeting and Disciplinary Action**

32. On June 16, 2003, Lyons, via letter, notified Complainant that an R-6-10 meeting would be held on June 24, 2003 on allegations that he had violated the following eight rules or policies:
  - DYC Policy 22.1 Use of Electronic Email (lack of privacy regarding email, prohibition against forwarding inappropriate email, and use of inappropriate language in emails);
  - DYC policy 22.4 Internet/Intranet Access (personal use of internet is prohibited as is accessing, storing, displaying, etc. offensive material and sending inappropriate emails)
  - CDHS policy VI 2.14 Electronic Communications (electronic media may not be used to transmit communications which are discriminatory, derogatory of a group, obscene, defamatory or contrary to DHS policy);
  - Board Rule R-1-12, 4 CCR 801(state employees are not to use state equipment for private use or any other purpose not in the interests of the state of Colorado);
  - DYC Policy 3.22 Sexual Harassment;
  - CDHS Policy VI 1.1 Employee Civil Rights;
  - Board Rule R-12-26, 4 CCR 801 (state employees must not use state property for their own personal use); and
  - DYC Policy 3.7 Code of Ethics (DYC employee conduct must protect juveniles from "any form of physical, emotional, or verbal abuse, sexual contact, harassment, or corporal punishment." In addition, employees are to report behavior that would adversely affect a juvenile)
33. At Complainant's request, the R-6-10 meeting was moved to June 27, 2003.

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Complainant and Lyons were present at the R-6-10 meeting. Weeda came in during the meeting to provide some technical assistance with the computer. The R-6-10 meeting was tape recorded and transcribed.

34. Prior to the R-6-10 meeting, Lyons reviewed the Webtrends Report, Romero's personnel file, each of the emails and the policies cited in the letter noticing the R-6-10 meeting.
35. During the R-6-10 meeting, Lyons, through the use of a computer and with hard copy printouts, reviewed with Complainant the Emails and their attachments. She also reviewed with him the Webtrends Report and asked him for an explanation as to how the various websites were related to his job assignment in admissions.
36. During the R-6-10 meeting Complainant stated that he kept some of the Emails because he wanted to show Lyons that they were sent by a supervisor. He also stated that many of the Emails were sent to "get a chuckle" and not to hurt anyone's feelings.
37. At the conclusion of the R-6-10 meeting, Complainant requested that the record be kept open so that he could present Lyons with additional materials. She refused to do so stating that his notice of the R-6-10 meeting was notice that it was his chance to present evidence. In addition, she told him that if he wanted "to add on" or if he had "concerns" with her findings that he would be able to file an appeal.
38. After the R-6-10 meeting, Lyons listened to the tape recording of the R-6-10 meeting, reviewed the Emails and the log Weeda compiled during her investigation.
39. None of the recipients of Complainant's emails complained about their receipt of Complainant's emails. No Gilliam resident or family member has complained about Complainant's emails.
40. During the investigation into the Hardesty email, one DHS employee informed Lyons that she had received similar emails and felt uncomfortable telling the senders of those emails not to send those types of emails. She mentioned the "beatdown" email as a specific example of the type of email message that made her feel uncomfortable.
41. Lyons considered Complainant's behavior as willful because of his knowledge of DYC's email and Internet usage policies, the length of his service at Gilliam and the fact that the past Gilliam director, as well as the current Gilliam director, enforced the normative culture. Therefore Complainant was aware of DYC's expectation of a higher standard of behavior by Gilliam employees.
42. Lyons considered imposing a corrective action but did not because of various aggravating factors including Complainant's knowledge of Gilliam's policies, the type of emails and how he treated those emails, Complainant's attitude in the R-6-10 meeting that many of the emails were simply jokes, the age of Gilliam's residents, the standards

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at Gilliam and the environment at Gilliam.

43. Lyons did not impose a higher reduction in pay because of mitigating factors, including Complainant's past evaluations, his lack of a past disciplinary history and the information he provided her in the R-6-10 meeting.
44. Lyons determined that Complainant's failure to report receipt of inappropriate emails and his sending of inappropriate emails, some of which she viewed as racist, sexist and/or violent, ignored the norms and expectations of Gilliam and created an unsafe environment for juveniles.
45. By letter dated July 21, 2003, Lyons notified Complainant that she was imposing disciplinary action because she had determined Complainant had violated the following five rules or policies:
  - DYC Policy 22.1 Use of Electronic Email (lack of privacy regarding email, prohibition against forwarding inappropriate email, and use of inappropriate language in emails);
  - DYC policy 22.4; Internet/Intranet Access (personal use of internet is prohibited as is accessing, storing, displaying, etc. offensive material and sending inappropriate emails);
  - CDHS policy VI 2.14 Electronic Communications (electronic media may not be used to transmit communications which are discriminatory, derogatory of a group, obscene, defamatory or contrary to DHS policy);
  - Board Rule R-1-12, 4 CCR 801 (state employees are not to use state equipment for private use or any other purpose not in the interests of the state of Colorado);
  - DYC Policy 3.7 Code of Ethics (DYC employee conduct must protect juveniles from "any form of physical, emotional, or verbal abuse, sexual contact, harassment, or corporal punishment." In addition, employees are to report behavior that would adversely affect a juvenile)
46. As disciplinary action, Lyons imposed a \$150 reduction in Complainant's salary for four months.
47. Complainant timely filed an appeal of the disciplinary action.
48. After the twelve investigations of the various Gilliam employees and their email and Internet usage were completed, two employees received letters of concern, two employees received corrective actions and eight employees received disciplinary actions, including one termination. The remaining seven disciplined employees received four-month reductions in pay ranging from \$100 to \$250 per month.

49. The two employees who received letters of concern had received inappropriate emails, immediately deleted them and informed someone that they were not happy. The two employees who received corrective actions had sent one or two inappropriate emails and their Internet usage wasn't high. The eight employees who were disciplined had sent racial, sexual or violent emails and their Internet usage was high.

## **DISCUSSION**

### **I. GENERAL**

Certified state employees have a property interest in their positions and may only be disciplined for just cause. Colo. Const. Art. 12, §§ 13-15; §§ 24-50-101, et seq., C.R.S.; *Department of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994). Such cause is outlined in State Personnel Board Rules R-6-9, 4 CCR 801 and generally includes:

- (1) failure to comply with standards of efficient service or competence;
- (2) willful misconduct including either a violation of the State Personnel Board's rules or of the rules of the agency of employment;
- (3) willful failure or inability to perform duties assigned; and
- (4) final conviction of a felony or any other offense involving moral turpitude.

### **A. Burden of Proof**

In this *de novo* disciplinary proceeding, the Respondent has the burden to prove by preponderant evidence that Complainant engaged in the behavior on which the discipline was based and that just cause warranted the discipline imposed. *Department of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994). The Board may reverse Respondent's decision if the action is found arbitrary, capricious or contrary to rule or law. Section 24-50-103(6), C.R.S. In determining whether an agency's decision is arbitrary or capricious, a court must determine whether the agency has 1) neglected or refused to use reasonable diligence and care to procure such evidence as it is by law authorized to consider in exercising the discretion vested in it; 2) failed to give candid and honest consideration of the evidence before it on which it is authorized to act in exercising its discretion; 3) exercised its discretion in such manner after a consideration of evidence before it as clearly to indicate that its action is based on conclusions from the evidence such that reasonable men fairly and honestly considering the evidence must reach contrary conclusions. *Lawley v. Department of Higher Education*, 36 P.3d 1239, 1252 (Colo. 2001).

## **II. HEARING ISSUES**

### **A. Complainant committed the acts for which he was disciplined.**

There was no credible evidence presented that Complainant did not receive and/or send the Emails in question. Rather the overwhelming credible evidence, including logs showing the date and time when Complainant sent, received, deleted and/or emptied the various Emails, was presented.

Complainant argued, both at hearing and during his R-6-10 meeting, that he did not intend for his jokes to upset or insult anyone. He further pointed out that none of the recipients of his emails had complained about their content. Respondent, however, showed that, given Complainant's work environment, many of the emails, especially "beatdown" and "GhetToes," were, at best, inappropriate. Complainant's daily interaction with juveniles, many of whom came from abusive or dysfunctional homes, and the direct visual access those juveniles had to the screens displaying Complainant's emails, creates a workplace environment in which such emails, are again, at best, inappropriate. In addition, at least one DHS employee complained about some emails she had received from co-workers, including the "beatdown" email. Complainant's Internet usage was higher than many other employees. In addition, while some of the websites he visited were work related, many were not.

Complainant's emails were inappropriate and some were discriminatory, derogatory and/or contrary to DHS policy. His personal use of the Internet violated Board rules and agency policies. Complainant committed the acts for which he was disciplined.

### **B. The Appointing Authority's action was not arbitrary, capricious, or contrary to rule or law.**

Arbitrary or capricious exercise of discretion can arise in only three ways, namely: (1) by neglecting or refusing to use reasonable diligence and care to procure such evidence as it is by law authorized to consider in exercising the discretion vested in it; (2) by failing to give candid and honest consideration of the evidence before it on which it is authorized to act in exercising its discretion; (3) by exercising its discretion in such manner after a consideration of evidence before it as clearly to indicate that its action is based on conclusions from the evidence such that reasonable men fairly and honestly considering the evidence must reach contrary conclusions. *Lawley v. Dep't of Higher Educ.*, 36 P.3d 1239 (Colo. 2001).

Weeda's investigation, which was the basis for Lyons' discipline, was diligently conducted and documented. Weeda, at Lyons's direction, gathered extensive evidence regarding the email and Internet usage of Gilliam employees. The log of her investigation reflects a number of personal emails being sent amongst Gilliam employees. Complainant was one such employee. Weeda's record shows from whom Complainant received email; to whom he forwarded email; and to whom he sent email. Weeda reviewed each of those emails and those that she deemed inappropriate were subjected to further review by Lyons.

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The Webtrends report for the month of May 2003 was thorough and reflects the amount of time and the websites visited by Complainant. In addition during her investigation she was able to review the contents of Complainant's emails.

Complainant argues that Lyons did not give him adequate notice of the substance of the allegations against him. Certified state employees are entitled to due process (notice and an opportunity to be heard) prior to the imposition of discipline against them. *Dep't of Institutions vs. Kinchen*, 886 P.2d 700 (Colo. 1994). Respondent argued, correctly, that the Board rules do not state that an employee must be told, in the notice of an R-6-10 meeting, the factual basis for alleged violations. The timing and structure of the R-6-10 meeting is such that an employee must be provided, at the time of the meeting, with the factual basis of the allegations against him or her and is given an opportunity to respond to those allegations, at the meeting. Board Rule R-6-10, 4 CCR 801. Complainant received notice that an R-6-10 meeting would be held and it was based upon allegations of violations of various Board rules and agency policies. Complainant by reviewing the Board rules and agency policies cited in the R-6-10 notice, would have had some idea of the issues that would be discussed at the R-6-10 meeting. Complainant was then fully informed, at his R-6-10 meeting, of the factual basis for the allegations against him and, therefore, was provided with the notice required under due process.

Complainant also argues that Lyons, by refusing to leave the record open at the end of the R-6-10 meeting, failed to provide him with an opportunity to provide mitigating information, an opportunity to be heard. As Respondent correctly argues, under the Board rules there is no requirement that an appointing authority must keep a record open after such a meeting to allow an employee time to provide additional evidence, that the R-6-10 meeting is the employee's opportunity to be heard. On the other hand, Board rules do require that information provided by an employee must be considered prior to making a decision regarding discipline. Board Rule R-6-6, 4 CCR 801. The *de novo* hearing before the Board provides a check and balance on the investigation and decision-making process conducted by the appointing authority, insuring that there is compliance with due process rights, case law and Board rules.

In a vast majority of personnel cases, it would be the better management practice, more efficient and more in line with Board rules and case law, for an appointing authority to insure that an employee is provided with every opportunity to provide the appointing authority with additional information. However, in this case the Complainant did not provide any evidence at the *de novo* Board hearing as to what, if any, additional information he would have provided to Lyons. Complainant was provided with an opportunity to be heard at the R-6-10 meeting. The *de novo* Board hearing provided him with an additional opportunity to be heard. In neither instance did he provide any additional information that should be considered.

Complainant argues that as a friend of Hardesty and/or a recipient of his emails, Complainant was the subject of a witch-hunt resulting from Hardesty's May 12, 2003 email. While Complainant was initially included in the list of Gilliam employees because of his

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email connection to Hardesty, it was the content of other emails by Complainant, many of which had no connection to Hardesty, which resulted in Complainant's discipline. In addition, Complainant's Internet usage, as compared to other employees was high. There was no credible evidence that Complainant's connection to Hardesty was the sole motivating factor behind his investigation. Rather the credible evidence shows that it was merely the impetus for the investigation. The contents of Complainant's emails and his high Internet usage, as compared to other employees who had an email connection to Hardesty, brought the focus of a more thorough investigation to bear upon Complainant.

As set forth above, there were complaints by co-workers about emails similar or identical to those sent out by Complainant. Lyons' decision to discipline Complainant was, in light of the environment and culture at Gilliam and other DHS employees' perceptions of such emails, a reasonable decision and within her discretion.

There was no credible evidence presented that the investigation of Complainant, his pre-disciplinary process or the decision to discipline him was arbitrary, capricious or contrary to rule or law.

### **C. The discipline imposed was within the range of reasonable alternatives**

The credible evidence demonstrates that Lyons pursued her decision thoughtfully and with due regard for the circumstances of the situation as well as Complainant's individual circumstances as required by Board Rule R-6-6, 4 CCR 801. In addition, there was no credible evidence presented of like instances in which an employee was treated differently from Complainant.

Respondent investigated a total of twelve Gilliam employees during the late spring and early summer of 2003. Letters of concern, corrective actions and disciplinary actions of pay reductions and, in one instance, termination, were imposed depending on various factors. The first factor was whether or not the employee was sending, as well as receiving, inappropriate emails and whether the employee reported the emails. The second factor was the number of inappropriate emails the employee was sending. The third factor was the level of Internet usage. Letters of concern and corrective actions were reserved for employees who had sent few, if any, inappropriate emails and had low Internet usage. Disciplinary actions were taken against any employee who sent a racial, sexual or violent email and had high personal Internet usage. Complainant fell into both categories. At a minimum, his "GhetToes," "please throw rocks" and "beatdown" emails were racial and/or violent. Complainant's pay reduction, on the scale of \$100/month to \$250/month imposed for these incidences, was at the lower end of the scale.

The discipline imposed against Complainant was within the range of reasonable alternatives.

**D. Attorney fees are not warranted in this action.**

Attorney fees are warranted if an action was instituted frivolously, in bad faith, maliciously, or as a means of harassment or was otherwise groundless. § 24-50-125.5, C.R.S. and Board Rule R-8-38, 4 CCR 801. The party seeking an award of attorney fees and costs shall bear the burden of proof as to whether the personnel action is frivolous, in bad faith, malicious, harassing, or otherwise groundless. Board Rule R-8-38(B), 4 CCR 801.

An award of attorney fees is not warranted in this matter. Complainant presented rational arguments and competent evidence to support his claims. In addition, there was no evidence that would lead to the conclusion that Complainant pursued his constitutional right to a hearing in order to annoy, harass, abuse, and be stubbornly litigious or disrespectful of the truth.

**CONCLUSIONS OF LAW**

1. Complainant committed the acts for which he was disciplined.
2. Respondent's actions were not arbitrary, capricious, or contrary to rule or law.
3. The discipline imposed was within the range of reasonable alternatives.
4. Attorney's fees are not warranted.

**ORDER**

Respondent's action is **affirmed**. Complainant's appeal is dismissed with prejudice. Attorney fees and costs are not awarded.

Dated this 26<sup>th</sup> day of November, 2003.

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Kristin F. Rozansky  
Administrative Law Judge  
1120 Lincoln Street, Suite 1420  
Denver, CO 80203  
303-764-1472

## **NOTICE OF APPEAL RIGHTS**

### **EACH PARTY HAS THE FOLLOWING RIGHTS**

1. To abide by the decision of the Administrative Law Judge ("ALJ").
2. To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is mailed to the parties. Section 24-4-105(15), C.R.S. Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is mailed to the parties. Both the designation of record and the notice of appeal must be received by the Board no later than the applicable twenty (20) or thirty (30) calendar day deadline. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990); Sections 24-4-105(14) and (15), C.R.S.; Rule R-8-58, 4 Code of Colo. Reg. 801. If the Board does not receive a written notice of appeal within thirty calendar days of the mailing date of the decision of the ALJ, then the decision of the ALJ automatically becomes final. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990).

### **PETITION FOR RECONSIDERATION**

A petition for reconsideration of the decision of the ALJ may be filed within 5 calendar days after receipt of the decision of the ALJ. The petition for reconsideration must allege an oversight or misapprehension by the ALJ. The filing of a petition for reconsideration does not extend the thirty-calendar day deadline, described above, for filing a notice of appeal of the decision of the ALJ.

### **RECORD ON APPEAL**

The party appealing the decision of the ALJ must pay the cost to prepare the record on appeal. The fee to prepare the record on appeal is **\$50.00** (exclusive of any transcription cost). Payment of the preparation fee may be made either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. To be certified as part of the record, an original transcript must be prepared by a disinterested, recognized transcriber and filed with the Board within 45 days of the date of the designation of record. For additional information contact the State Personnel Board office at (303) 894-2136.

### **BRIEFS ON APPEAL**

The opening brief of the appellant must be filed with the Board and mailed to the appellee within twenty calendar days after the date the Certificate of Record of Hearing Proceedings is mailed to the parties by the Board. The answer brief of the appellee must be filed with the Board and mailed to the appellant within 10 calendar days after the appellee receives the appellant's opening brief. An original and 7 copies of each brief must be filed with the Board. A brief cannot exceed 10 pages in length unless the Board orders otherwise. Briefs must be double-spaced and on 8 1/4 inch by 11-inch paper only. Rule R-8-64, 4 CCR 801.

### **ORAL ARGUMENT ON APPEAL**

A request for oral argument must be filed with the Board on or before the date a party's brief is due. Rule R-8-66, 4 CCR 801. Requests for oral argument are seldom granted.

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**CERTIFICATE OF SERVICE**

This is to certify that on the 26<sup>th</sup> day of November, 2003, I placed true copies of the foregoing **INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE and NOTICE OF APPEAL RIGHTS** in the United States mail, postage prepaid, addressed as follows:

Daniel Romero  
2166 S. Zephyr Street  
Lakewood, Colorado 80227

and in the interagency mail, to:

Melissa Mequi  
Assistant Attorney General  
Employment Law Section  
1525 Sherman Street, 5<sup>th</sup> Floor  
Denver, Colorado 80203

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Andrea C. Woods