

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

PEDRO GOMEZ and LINDA BURNETT,

Complainants,

vs.

DEPARTMENT OF LABOR AND EMPLOYMENT, WORKFORCE DEVELOPMENT PROGRAMS,

Respondent.

Administrative Law Judge Mary S. McClatchey held the hearing in this matter on September 13 and October 7, 2005, at the State Personnel Board, 633 17th Street, Suite 1320, Denver, Colorado. Joseph A. Salazar, Esq., represented Complainants. Jill M. M. Gallet, First Assistant Attorney General, represented Respondent.

MATTER APPEALED

Complainants appeal their disciplinary termination of employment by Respondent Department of Labor and Employment (“the Department” or “Respondent”). For the reasons set forth below, the Respondent’s termination of Complainant Gomez is **affirmed**; the termination of Complainant Burnett is **modified** to a thirty-day disciplinary suspension without pay.

ISSUES

1. Whether Complainants committed the acts upon which discipline was based;
2. Whether Respondent’s actions were arbitrary, capricious, or contrary to rule or law;
3. Whether Respondent’s actions were within the range of reasonable alternatives available to the appointing authority;
4. Whether Complainants are entitled to an award of attorney fees and costs.

FINDINGS OF FACT

1. Complainant Gomez was the Regional Director of the South Central Workforce Region in the Division of Employment and Training – Workforce Programs, at the
2005B136(C)

Department. The South Central Region encompasses eight counties covering over 14,000 square miles.

2. Mr. Gomez was responsible for the management and oversight of four Workforce Centers located in Alamosa, Monte Vista, Trinidad, and Walsenburg, and five additional satellite Workforce Centers in Antonito, Center, Conejos, Saguache, and San Luis. The Workforce Centers offer Workforce Investment Act programs operated by Rocky Mountain SER ("Service, Employment, Redevelopment"), a Workforce Center partner. Prior to his appointment as Regional Director, Gomez served as Senior Field Representative for Rocky Mountain SER; he was with SER for twenty-four years.
3. Gomez worked in the Alamosa office.
4. As Regional Director, Gomez' duties included: developing and preparing the Workforce Regions Five Year Plan and annual modifications, staffing and conducting local Workforce Board Meetings, and interpreting federal regulations, state policies, and Rural Consortium policies and directives.
5. Gomez served as head of the local Workforce Development Board, an advisory policymaking board mandated under federal and state workforce development legislation.
6. Gomez' role was a high profile one, in which he represented the State of Colorado working alongside elected officials such as County Commissioners and Board of Education members, university and college presidents, Chamber of Commerce leaders, and other business leaders.
7. Gomez supervised over ten full-time employees. He was responsible for planning and evaluating their performance, issuing corrective actions, resolving informal grievances, and initiating disciplinary actions.
8. Gomez received a Commendable performance evaluation for the 2004/2005 rating period. His score was 264 out of 300 points.
9. Linda Burnett was a Labor and Employment ("L & E") Specialist II in the Monte Vista workforce development office. She started in the office in October 1999 as an L & E Intern, then promoted to L & E II within one year. According to her position description, her primary duty was to provide "basic workforce employment and training services, Labor Market Information, and Information and/or referral to other service providing agencies."
10. Ms. Burnett provided comprehensive labor exchange and training services to employers and applicants. Her duties included job matching, training needs assessment, and provision of labor market information. According to her position

2005B136(C)

description, she collected and inputted information from job seekers and employers so that a quality job match could be made to meet both sets of customer needs. She followed up on applicants who failed to report for interviews.

11. Burnett had no supervisory authority over others.
12. Burnett proved to be such a valuable employee that she was given plumb assignments, such as marketing duties and development of the web page for the South Central Region.
13. Burnett received a Commendable performance evaluation for the 2004/2005 rating period. Her score was 290 out of 300 points.
14. The Department's Vision and Values policy contains the following requirements: employees are to create a positive work environment; and convey a positive and professional image.
15. Executive Order D 001 99, the Executive Department Code of Ethics for Colorado, requires that state employee: "Shall demonstrate the highest standards of personal integrity, truthfulness and honesty and shall through personal conduct inspire public confidence and trust in government;" "Shall not use state time, property, equipment or supplies for private gain;" "Shall not knowingly engage in any activity or business which creates a conflict of interest or has an adverse effect on the confidence of the public in the integrity of government."

February 15, 2005 Trip to Trinidad

16. In February 2005, the Trinidad Office of Workforce Development was slated to re-open its renovated workforce center building. Gomez, and two of his subordinates from the Monte Vista office, Linda Burnett and Rudy Archuletta, planned a trip to Trinidad on February 15. The purpose of the trip was to meet with the Trinidad staff and to assist with some of the work in the building, in preparation for its opening.
17. On February 15, Burnett and Archuletta were in Alamosa to attend a meeting. They planned to leave for Trinidad with Regional Director Gomez directly after that meeting.
18. At approximately 5:00 p.m., the three departed from Alamosa for Trinidad in a state vehicle, a Bronco. The trip to Trinidad was anticipated to take one hour and forty-five minutes. The three planned to meet the Trinidad staff at the hotel at 7:00 p.m., and then to have dinner together.
19. Archuletta drove the Bronco. Gomez sat in the front passenger seat next to Archuletta. Burnett sat in the back seat.
20. After driving for approximately twenty-five minutes, as they traveled through Fort

2005B136(C)

Garland, Gomez directed Archuletta to pull over at a mini-market and liquor store.

21. Gomez went inside the El Dorado liquor store and bought a bottle of liquor, then brought it back to the Bronco in a brown paper bag.
22. As they drove on, Gomez opened the liquor bottle in the bag and asked Archuletta and Burnett if either of them wanted a shot. Burnett responded that Archuletta couldn't because he had recently given up liquor for Lent.
23. Archuletta declined Gomez' invitation to have a shot of liquor while driving the state vehicle.
24. Burnett agreed to have a shot with Regional Director Gomez, to whom she reported directly. Gomez and Burnett drank at least two shots of alcohol in the Bronco on the way to Trinidad, using small plastic cups.
25. Archuletta was uncomfortable with the situation, but said nothing about it because Gomez was his boss.
26. Upon arrival in Trinidad, the three joined the Trinidad staff. They had dinner, spent thirty minutes at the new workforce center, and then went to a bar to have drinks. Prior to entering the bar, many of the Alamosa and Trinidad staff drank additional shots of Gomez' liquor outside, before entering.

Archuletta's Reports to Co-workers

27. Archuletta was concerned about losing his job because of the drinking in the Bronco. Therefore, while in Trinidad, he informed a Trinidad co-worker, Charles Griego, about the drinking in the Bronco by Gomez and Burnett. Archuletta told Griego that he was afraid of losing his job over the incident.
28. After returning to Alamosa from the trip on February 16, Archuletta stated to Monte Vista co-worker Sandra Ontiveros, "You wouldn't believe what they did on the trip to Trinidad." He told her that Gomez had ordered him to stop to buy liquor, and that Gomez and Burnett had drunk the liquor in the Bronco on the way to Trinidad. Archuletta appeared worried about losing his job, to Ontiveros.
29. On February 16 or 17, , Barbara Pacheco, an L & E II in the Alamosa office, needed to use the Bronco for state business. She found plastic cups in it, and it smelled of alcohol. The smell of alcohol was so strong that she drove to LaJara with the windows down.
30. Pacheco knew that Archuletta had driven Gomez to Trinidad in the Bronco on February 15, 2005. She asked Archuletta what they had been doing in the Bronco. Archuletta informed her that Gomez and Burnett had been drinking in the Bronco on

2005B136(C)

the way to Trinidad.

31. Pacheco later told Ontiveros that when Pacheco went to use the same state vehicle the next day, she had to clean out plastic cups and drive to her destination with the windows down because of the smell of alcohol in the car.
32. Neither Archuletta, Ontiveros, nor Pacheco informed anyone else about the drinking in the Bronco. Because Gomez was the Regional Director, they feared retaliation if they did so.

Investigation

33. In March of 2005, allegations of hostile work environment were made against Gomez. Joanne Miller, Equal Employment Opportunity Administrator for the Department, assigned the investigation to Butch Friend. Friend had served the State of Colorado for several years as an HR Director and Diversity Director at a different state agency.
34. In the course of conducting his investigation, Friend determined that the hostile work environment allegations were unfounded. However, his interviews unearthed the events that had taken place on February 15, 2005.
35. Sandra Ontiveros informed Investigator Friend about the alleged the misuse of state property (state vehicle) by Gomez. She informed him of her discussion with Rudy Archuletta, in which he had reported to her that on their way to Trinidad, Gomez had asked him to stop in Fort Garland at a liquor store to purchase a bottle of liquor, and that Gomez and Burnett had drunk shots of alcohol in the state vehicle on the way. Ontiveros also reported that Barbara Pacheco had later told Ontiveros that when Pacheco went to use the same state vehicle the next day, she had to clean out plastic cups and drive to her destination with the windows down because of the smell of alcohol in the vehicle.
36. Friend interviewed Barbara Pacheco, who informed him that when she got in the car to go to LaJara to register some students, the vehicle smelled of alcohol. She stated that she had found some plastic cups in the vehicle that smelled of liquor and had to drive to her destination with the windows down because of the smell of liquor. She also reported that she had thrown away the cups and had not reported it to anyone, but that Archuleta later told Pacheco that Complainants were drinking in the vehicle during the Trinidad trip.
37. Archuleta reported to Friend that he had driven the state vehicle used for the trip of February 15, that Gomez had directed him to stop at the Fort Garland liquor store, that Gomez had bought the liquor, and that Gomez and Burnett had drunk liquor in the state vehicle, as he drove. Archuleta expressed concern because he thought this was a violation of state/CDLE policy and it is illegal to drink alcohol in any vehicle. Archuleta also informed Friend that he had told Pacheco about the incident when she

2005B136(C)

asked about the smell of the vehicle on the following day.

38. Mr. Griego informed Friend that Archuleta had reported the drinking in the Bronco to him during the February 15 – 16 trip, because Archuleta was concerned about losing his job.
39. Friend interviewed Burnett and Gomez in the course of his investigation. He advised them of the allegations of drinking in the state vehicle on February 15, 2005. Both Burnett and Gomez emphatically denied the allegations.
40. Friend concluded in his report, “Sufficient evidence has been provided based on the veracity of interviews with knowledgeable staff that Mr. Pete Gomez and Ms. Linda Burnett did drink alcohol in a state vehicle during a trip to the new Trinidad Workforce Center office. This is clearly a misuse of state property and violation of state law.”

Pre-disciplinary Process

41. Friend included all witness statements concerning the February 15 incident in his final report. In April 2005 he forwarded his report to appointing authority Tom Looft, Director of Workforce Development Programs for the Department. Looft has previously served the Department as Director of the Rural Workforce Consortium, and as Regional Director, and as Director of workforce centers throughout Colorado.
42. Looft read the report and was extremely concerned about the allegations Gomez and Burnett had been drinking in the state vehicle while on state business. He spoke with Friend and Wayne Bulander, Gomez’ boss and Director of the Colorado Rural Workforce Consortium, and decided he needed to initiate the pre-disciplinary process.
43. On May 24, 2005, Mr. Looft, Mr. Bulander, Mr. Gomez, and his union representative attended the pre-disciplinary meeting. Looft reviewed the investigative report, and asked Gomez for any mitigating information he sought to provide. Gomez denied having drunk alcohol in the state vehicle on February 15, 2005. Mr. Looft gave him a week to provide any additional mitigating information.
44. On June 3, 2005, Looft held the pre-disciplinary meeting with Burnett, her union representative, and Bulander. He reviewed the investigative report with her. She also denied having drunk in the state vehicle on February 15, 2005.
45. After the meeting, Looft spoke with several additional staff, including Archuleta, Pacheco, Charles Griego, Eve Campos, and Judy Gallegos (both of whom had been present in Trinidad on February 15).
46. Looft found these individuals to be credible.
47. In mitigation, Gomez gave Looft a May 19, 2005, email from Charles Griego to

2005B136(C)

Gomez. Griego was an employee under Gomez' direct supervision. Griego wrote in his email, "Pete, I heard that there was an issue concerning the use of alcohol in the State vehicle during your visit to Trinidad when you, Rudy and myself were assembling cabinets. I at no time saw or smelled any alcohol in or around the State vehicle during this time."

48. Looft spoke with Griego by telephone several times. Griego informed Looft that Gomez had been talking to staff in the Alamosa office in an attempt to have them submit emails on his behalf. Griego made it clear to Looft he felt Gomez's conduct was inappropriate.
49. Gomez also gave Looft a similar email from Barbara Dominguez, Rocky Mountain SER Client Services Technician, who was present in Trinidad on February 15 after their arrival. Looft read it and considered it.
50. Gomez also gave Looft a May 24, 2005 letter from Presley Garcia, the El Dorado Liquor store employee who works on Tuesdays. February 15, 2005 was a Tuesday. The statement said, "This is to state that I Presley Garcia work Tuesdays at this Red Rock General Store, El Dorado Liquor Store in Fort Garland. I work during the day, and can state that Mr. Pete Gomez, whom I know, has not been here since the Christmas Season."
51. At hearing, Mr. Garcia testified he was "fairly certain" he had not seen Gomez at the liquor store since December. His testimony on this point was not persuasive.
52. Looft also received a telephone call from Leon Ortega, a Rocky Mountain SER staff person who had been present in Trinidad on February 15. Ortega stated that he had given Gomez a bottle of Seagrams 7 on the night of February 15 as a gift, as he left the bar.
53. Looft considered all of the information given to him by Gomez. The witnesses in the investigative report, with whom he personally spoke, were trustworthy and corroborated each other. None of the witnesses had a reason to lie about what they had said.
54. In view of the veracity of the other witnesses, Looft determined that the information Gomez had provided in mitigation was contrived.
55. Looft concluded that Gomez and Burnett had drunk the liquor in a state vehicle during state business on February 15, 2005.

Decision to Terminate

56. Looft was extremely concerned about the leadership role held by Gomez. Gomez's position as a representative of the State of Colorado was one of prominence and high

2005B136(C)

visibility in the community. In addition, Gomez was the direct supervisor of a high number of Workforce Center employees over a 14,000 mile area.

57. Looft felt that Gomez's actions ran afoul of the trust the State of Colorado placed in him as Regional Director of the workforce programs. He determined that he could no longer permit Gomez to serve in his leadership role, because Gomez had breached the trust necessary to hold the position.
58. Looft also considered the relatively small community in which Gomez and Burnett worked. He believed that in a small community it is especially important that leaders such as Gomez not conduct themselves so as to tarnish the reputation of the State of Colorado or its workforce program. He also felt that Burnett had tarnished the reputation of her office through her conduct.
59. On June 7, 2005, Mr. Looft sent termination letters to Gomez and Burnett. The letter to Gomez stated in part,

“a disciplinary meeting was held to discuss alleged problems with your job related behavior and associated performance. . . . One of the allegations we discussed involved the consumption of alcohol in a state vehicle, on state time. It has been alleged that you purchased liquor from a store in Fort Garland during a trip to the Trinidad office. It has also been alleged that you and one of your staff members consumed that alcohol on your way to Trinidad. During our meeting you denied these allegations. However, I believe that there is a preponderance of evidence to suggest that you did purchase the alcohol and that you did consume it in the state vehicle. Unlawful activity of this type will not be tolerated.”

60. The termination letter sent to Burnett differed only in its exclusion of the section regarding the purchase of liquor.
61. Mr. Looft believed at the time he wrote the letters that consumption of alcohol in a state vehicle on state time was a violation of state rules prohibiting misuse of state property and of the state's "open container" law.
62. Respondent's witnesses were credible. Rudy Archuletta had no motive to lie about Gomez' and Burnett's conduct.

DISCUSSION

I. BURDEN OF PROOF

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

2005B136(C)

State Personnel Board Rule R-6-9, 4 CCR 801¹ 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.

In this *de novo* disciplinary proceeding, the agency has the burden to prove by preponderant evidence that the acts or omissions on which the discipline was based occurred 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.

II. HEARING ISSUES

A. Complainants committed the acts for which they were disciplined.

Respondent has proven by preponderant evidence that Gomez and Burnett committed the acts upon which discipline was based. However, their actions are different in several respects.

Gomez. On February 15, 2005, Gomez drove to Trinidad, in a state vehicle on state business, with two subordinate staff. Gomez, as Regional Director, set the tone for this experience. Instead of exercising his leadership role in an appropriate manner, he directed Mr. Archuletta to pull over in Fort Garland, so that he could buy a bottle of liquor. Gomez then returned to the Bronco, opened the bottle in a brown paper bag, and invited the driver of the state vehicle, and Linda Burnett, to have a shot. In making this offer to Archuletta, he evinced an attitude of defiance towards the state laws prohibiting drunk driving. Gomez's actions placed Mr. Archuletta in an uncomfortable position; fortunately for everyone involved, he wisely refused his boss's offer. By inviting Ms. Burnett to drink with him, Mr. Gomez demonstrated to her that his professional standards for himself, as well as for those he directly supervised, were low. Mr. Gomez's decision to purchase liquor and drink it with his subordinate employee, in a state vehicle and on state business, demonstrated a conscious disregard for his role as a community leader and as a high level public servant.

Burnett. Ms. Burnett's role in the February 15 incident was different from that of Mr. Gomez. Ms. Burnett did not initiate the drinking. She did not direct the driver to pull over in order to stop to purchase the liquor. She did not ask Regional Director Gomez to open the bottle. Once her boss opened the bottle and offered her a drink, she accepted. While this

¹ As of July 1, 2005, substantial amendments have been made to the Board Rules. However, given the time period covered by this action, the Board Rules in effect prior to July 1, 2005, have been applied and all references within this Initial Decision to the Board Rules are to the rules in effect prior to July 1, 2005.

decision on her part was the wrong one, and while she engaged in serious misconduct, she did so at the behest and direction of her direct supervisor. She was a willing participant in the misconduct, not an instigator.

Complainants argue that because they have not violated any law, Respondent has not proven the actions upon which discipline was based. They rely on the language of the termination letters, stating, "Unlawful activity of this type will not be tolerated." The letters do not rely solely on this conclusion, however. They cite the fact that Gomez bought the liquor, and that both of them consumed "alcohol in a state vehicle, on state time."

Section 24-50-116, C.R.S., states, "Each [classified] employee shall perform his duties and conduct himself in accordance with generally accepted standards and with specific standards prescribed by law, rule of the [state personnel] board, or any appointing authority." State Personnel Board Rule R-1-12 states, "No employee shall use state time, property, equipment, or supplies for private use or any other purpose not in the interests of the State of Colorado." The Vision and Values policy and Executive Order governing ethics, contained in Findings of Fact # 14 and #15, also constitute such standards.

To drink alcohol in a state vehicle while on state business is a violation of generally accepted standards for any state employee. For a supervisor to instigate the conduct in the manner of Mr. Gomez herein is especially egregious. Complainants' conduct also violated the specific standards enumerated in Findings of Fact #14 and #15.

B. The appointing authority's action taken against Gomez was not arbitrary, capricious, or contrary to rule or law; termination was within the range of reasonable alternatives available to Respondent.

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).

The appointing authority in this case acted with the utmost diligence and care to consider all relevant information available to him. Mr. Looft reviewed the investigative report closely, then spoke to the investigator individually to discuss his investigation and his report. After the pre-disciplinary meeting with Mr. Gomez, Mr. Looft spoke to Rudy Archuletta, the co-workers Archuletta confided in, Griego, and several others. This process led him to conclude that the witnesses corroborated each other completely and none of them harbored any bad will towards either Gomez or Burnett.

2005B136(C)

Gomez asserts that Looft's decision not to talk to two of his witnesses on the telephone renders his decision to terminate him arbitrary and capricious. Ms. Looft spoke with Mr. Griego several times. Griego informed Looft that Gomez had been actively lobbying others in the Alamosa office to write letters of support on his behalf. This information, provided by Gomez's own witness, rendered the other statements provided by Gomez's supporters ineffectual. Looft appropriately determined that to talk to the other witnesses was a waste of his time.

Mr. Gomez's standing as a community leader with high visibility is such that Mr. Looft appropriately held him to a higher standard than those who serve under him. His professional peers in the Regional Director position were elected officials, university and college presidents, school board members, and presidents of the chamber of commerce and other business organizations. Mr. Gomez's actions on February 15, 2005 were egregiously unprofessional, both as a Regional Director and as a supervisor. Under the circumstances herein, termination was within the range of reasonable alternatives. Respondent appropriately determined that Gomez could no longer longer serve in the Regional Director position.

C. The appointing authority's action taken against Burnett was arbitrary, capricious, or contrary to rule or law.

Board Rule R-8-6-9(B) states, "If the Board or administrative law judge finds valid justification for the imposition of disciplinary action but finds that the discipline administered was arbitrary, capricious, or contrary to rule or law, the discipline may be modified." Section 24-50-103(6), C.R.S. Such is the case herein.

Ms. Burnett was not the instigator of the drinking episode on February 15; her boss was. Burnett sat in the Bronco while Mr. Gomez bought the liquor, brought it back to the vehicle, opened the bottle, and then invited her to have a drink with him. Gomez's conduct placed Burnett in a difficult position: she could go along with his wishes, or she could reject his invitation. She did what she apparently deemed the politic thing. While there is no question Burnett should have turned down Gomez's offer to have a drink in the Bronco, to terminate her for that decision is unduly harsh.

Burnett's position is not a high profile one. She matches prospective employers to prospective employees in the Monte Vista office. Her position is not one wherein she represents the agency at a high level of civic leadership, like the Regional Director.

Ms. Burnett scored a 290 out of 300 on her 2004/2005 evaluation. She is a stellar employee who made one very bad decision at the behest of her boss.

These factors serve as strong mitigation in the case of Burnett. Under State Personnel Board Rule R-6-2, Respondent is to consider mitigation in determining the appropriate level of discipline. Respondent neglected to do so in relation to Burnett, in violation of the *Lawley* standard.

2005B136(C)

Drinking alcohol in a state vehicle, on state time, is an extremely serious offense. However, under the limited circumstances presented herein, namely, Burnett was a stellar employee, in a relatively low profile position, who followed the lead of her Regional Director in a one-time incident, termination was not within the range of reasonable alternatives available to the appointing authority. The termination is to be modified to a thirty-day disciplinary suspension without pay.

D. Attorney fees are not warranted in this action.

Attorney fees and costs shall be awarded if an action was instituted frivolously, in bad faith, maliciously, as a means of harassment or was otherwise groundless. Section 24-50-125.5, C.R.S. and State Personnel Board Rule R-8-38, 4 CCR 801. Respondent proceeded in good faith in this case. There is no basis in the record for an award of attorney fees and costs.

CONCLUSIONS OF LAW

1. Complainants committed the acts for which they were disciplined;
2. Respondent's action against Gomez was not arbitrary, capricious, or contrary to rule or law, and termination was within the range of reasonable alternatives;
3. Respondent's action against Burnett was arbitrary, capricious, or contrary to rule or law, and termination was not within the range of reasonable alternatives;
4. An award of attorney fees and costs is not warranted.

ORDER

Respondent's termination of Gomez is **affirmed**. Respondent's termination of Burnett is **modified** to a thirty-day suspension without pay. Respondent shall reinstate Burnett to her position with back pay and benefits as of the date the suspension ends.

Dated this _____ day of November, 2005.

Mary S. McClatchey
Administrative Law Judge
633 – 17th Street, Suite 1320
Denver, Colorado 80202-3604
303-866-3300

2005B136(C)

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) 866-3300.

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 8 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 1/2 inch by 11-inch paper only. Board Rule 8-73B, 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. Board Rule 8-75B, 4 CCR 801. Requests for oral argument are seldom granted.

CERTIFICATE OF SERVICE

This is to certify that on the _____ day of November, 2005, 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:

Joseph A. Salazar, Esquire
The Salazar Consulting Group, LLC
10500 Irma Drive, #13-105
Northglenn, Colorado 80233

and in the interagency mail, to:

Jill M. M. Gallet
First Assistant Attorney General
Civil Litigation and Employment Section
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Andrea C. Woods