

**STATE PERSONNEL BOARD, STATE OF COLORADO**  
Case No. 97B124

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**INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**  
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FERMIN R. HINOJOS, JR.,

Complainant,

vs.

DEPARTMENT OF HUMAN SERVICES,  
COLORADO MENTAL HEALTH INSTITUTE AT FORT LOGAN,

Respondent.  
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A hearing in this matter convened on April 28, 1997, in Denver before Administrative Law Judge Margot W. Jones. Respondent appeared at hearing through Toni Jo Gray, assistant attorney general. Complainant failed to appear at hearing either personally or through counsel.

The record reflects that complainant filed a notice of appeal, through counsel, Joe Pickard, on March 14, 1997, appealing the termination of his employment. On March 19, 1997, the parties were provided notice that a hearing would be held before the undersigned on April 28, 1997. The parties were also directed to file prehearing statements on or before April 8, 1997. On April 8, 1997, respondent moved for summary judgment on the grounds that there was no disputed issue of fact between the parties and that as a matter of law judgment should be entered for respondent.

On April 7, 1997, complainant moved to continue the hearing date on the grounds that complainant's counsel was otherwise occupied on April 28, 1997. On April 8, 1997, good cause for a continuance of the hearing date was not found and an order was entered denying the motion to continue.

At hearing, on April 28, 1997, respondent moved to deem the appeal abandoned because of complainant's failure to appear personally or through counsel.

IT IS FOUND AND ORDERED THAT

1. Complainant failed to appear at hearing, failed to file a prehearing statement, and failed to respond to the motion for summary judgment.

2. Therefore, respondent's April 14, 1997, motion for summary judgment is deemed confessed.

2. Respondent's April 28, 1997, motion to deem the appeal abandoned is granted due to complainant's failure to appear at the hearing either in person or through counsel.

3. Complainant's March 14, 1997, appeal is dismissed with prejudice.

DATED this \_\_\_\_\_ day of  
April, 1997, at  
Denver, Colorado.

Margot W. Jones  
Administrative Law Judge

## 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), 10A C.R.S. (1993 Cum. Supp.). 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), 10A C.R.S. (1988 Repl. Vol.); Rule R10-10-1 et seq., 4 Code of Colo. Reg. 801-1. If a written notice of appeal is not received by the Board 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).

### 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 should contact the State Personnel Board office at 866-3244 for information and assistance. To be certified as part of the record on appeal, an original transcript must be prepared by a disinterested recognized transcriber and filed with the Board within 45 days of the date of the notice of appeal.

### 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 1/2 inch by 11 inch paper only. Rule R10-10-5, 4 CCR 801-1.

#### **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 R10-10-6, 4 CCR 801-1. Requests for oral argument are seldom granted.

#### **PETITION FOR RECONSIDERATION**

A petition for reconsideration of the decision of the ALJ must 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, and it must be in accordance with Rule R10-9-3, 4 CCR 801-1. 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.

**CERTIFICATE OF MAILING**

This is to certify that on the \_\_\_\_\_ day of April, 1997, I placed true copies of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** in the United States mail, postage prepaid, addressed as follows:

Joe Pickard  
Pickard & Waters, P.C.  
5353 W. Dartmouth Ave., Suite 310  
Denver, CO 80227

and to the respondent's representative in the interagency mail, addressed as follows:

Stacy Worthington  
Office of the Attorney General  
State Services Section  
1525 Sherman St., 5th Floor  
Denver, CO 80203

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