

STATE PERSONNEL BOARD, STATE OF COLORADO

Case No. 94B161

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

LONNIE LYNN

Complainant,

vs.

Department of Human Services, Office of Youth Services, f/k/a,
Department of Institutions, Division of Youth Services,

Respondent.

The hearing was held on February 20, 1996, in Denver before Margot W. Jones, Administrative Law Judge (ALJ). Complainant, Lonnie Lynn, was present at the hearing and represented by John C. Barajas, Attorney at Law. Respondent appeared at hearing through Toni Jo Gray, Assistant Attorney General.

Complainant testified in his own behalf and called the following employees of the Department of Human Services (department) to testify at hearing: Maurice Williams, Noreen Huston; and Joe Garza. Complainant also called Dr. Kenneth Weiner to testify at hearing.

Respondent called Maurice Williams and Madeline Sabell, employees of the department, as witnesses to testify at hearing.

Complainant's exhibits A through M, U, pages 11 and 12, and W were admitted into evidence without objection. Complainant's exhibits P and X were offered into evidence but were not admitted.

The parties stipulated to the admission of Respondent's exhibits 1 through 24.

MATTER APPEALED

Complainant appeals the termination of his employment under State Personnel Board Rule, R9-1-4.

ISSUES

1. Whether Complainant intended to abandon his position as a security services officer I at Lookout Mountain Youth Services Center, in May, 1994.

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2. Whether Respondent's determination that Complainant abandoned his job in May, 1994, was arbitrary, capricious, contrary to rule or law, or discriminatory on the basis of race, age or disability.

3. Whether the parties are entitled to an award of attorney fees.

PRELIMINARY MATTERS

1. Complainant had the burden of proof and the burden of going forward in this matter to establish that Respondent's non-disciplinary decision relative to his employment was improper. Renteria v. Department of Personnel, 811 P.2d 797 (Colo. 1991).

2. On February 20, 1996, at the conclusion of Complainant's case in chief, Respondent moved to dismiss the appeal on the grounds that Complainant failed to sustain his burden of proof on all claims. Respondent's motion was granted as it related to Complainant's claims of discrimination based on age, race and disability. Complainant failed to sustain his burden of proof with regard to these claims.

3. At hearing, Respondent reasserted its contention that Complainant's expert witness, Dr. Kenneth Weiner, should not be permitted to testify at hearing. Respondent maintained that the action which gives rise to this appeal does not require expert testimony. Respondent further contended that expert testimony should be excluded because Respondent was precluded, by its untimely endorsement, from calling an expert witness. Finally, Respondent based its motion to exclude expert witnesses on Colorado Rule of Evidence 702.

Respondent's motion was denied on the ground that Complainant's expert witness could offer relevant testimony.

4. Complainant's request to submit Exhibit X into evidence at hearing, which was the curriculum vitae of Dr. Kenneth Weiner, was denied on the grounds that the exhibit was not timely endorsed as an exhibit to be used at hearing.

5. Respondent moved to recuse the ALJ on the grounds that Complainant intended to call witnesses at hearing who are the complainants in a case entitled, Thomas May, et. al. v. Department of Human Services, et al., case number 95D001C. The Thomas May case is pending before the ALJ. In response to Respondent's motion to recuse, Complainant represented that it did not endorse these individuals as witnesses at hearing and that it did not intend to call them as witnesses. Therefore, Respondent's motion to recuse the ALJ was withdrawn.

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PROCEDURAL MATTERS

Complainant appealed Respondent's determination that he resigned his position under R9-1-4 on June 6, 1994. In the appeal, he alleged that the action was discriminatory, arbitrary, capricious and contrary to rule and law. On June 15, 1994, the appeal was referred to the Colorado Civil Rights Division for investigation.

On August 1, 1994, Complainant amended his appeal to allege an additional charge of discrimination based on disability.

An opinion of "no probable cause" was rendered on May 8, 1995, and filed with the Board on May 11, 1995. Complainant appealed the determination of "no probable cause" on May 22, 1995. The appeal was scheduled to be heard before the undersigned on July 3, 1995.

A prehearing order was entered on May 30, 1995. The parties were directed to file prehearing statements on June 13, 1995. Neither party filed a prehearing statement.

On July 3, 1995, the parties appeared for hearing. Complainant appeared pro se. Respondent appeared through counsel. Neither party was prepared to proceed. Complainant moved to continue the hearing on the grounds that he needed additional time to retain counsel. Respondent's counsel appeared at hearing without her client. She explained that she was unaware of Complainant's appeal until shortly before the hearing and Respondent was not prepared to proceed.

The parties agreed to deem their appearance on July 3, 1995, to be a convening of the hearing. The hearing was scheduled to reconvene on November 7, 1995. A prehearing order was entered on August 15, 1995. It directed the parties to file prehearing statements on October 18, 1995. On that date, Respondent filed its prehearing statement. Complainant did not file a prehearing statement.

Prior to the hearing date of November 7, 1995, Complainant retained counsel, Sander Karp, Attorney at Law. On October 31, 1995, Complainant moved to continue the hearing date on the grounds that his attorney withdrew as his legal representative. Complainant's motion to continue was granted on October 31, 1995.

On November 7, 1995, the appeal was scheduled to reconvene on January 8, 1996. Complainant was directed to file a prehearing statement on November 22, 1995.

On November 16, 1995, Complainant's counsel John C. Barajas, Attorney at Law, entered his appearance. On November 20, 1995, Complainant moved for an extension of time to December 15, 1995, to file a prehearing statement. Complainant's motion was granted. Complainant filed a prehearing statement on December 19, 1995.

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On December 4, 1995, Complainant moved to continue the hearing date because a member of Complainant's family was stricken with cancer and Complainant was unavailable to prepare for hearing. Respondent did not object to a continuance of the hearing date. Complainant's request was granted and the hearing was rescheduled to February 20, 1996.

FINDINGS OF FACT

1. Complainant, Lonnie Lynn (Lynn), began his employment with the Department of Institutions as a security services officer I on July 4, 1979. He worked for the Department of Institutions, which has become known as the Department of Human Services, for 14 years and 10 months.

2. Beginning in the fall of 1993, Lynn was assigned to work at the Lookout Mountain School (the school) as a security services officer. Lynn's assignment to the school, while not a promotion, provided him with favorable working hours. Lynn enjoyed his work in the school providing security services. He also enjoyed responsibility for the "gang group". Lynn earned a good reputation for his work with gang members at the school.

3. Lynn's responsibility with the "gang group" required that he report to Maurice Williams, the Assistant Director of Lookout Mountain. Lynn's relationship with Williams was not good. He felt threatened by Williams. Lynn believed that Williams wanted to remove him from the job.

4. In March, 1994, Lynn no longer wanted to work under the supervision of Williams. Lynn manifested his anxiety about Williams in chest pains. Lynn was alarmed by the chest pains. On March 7, 1994, he did not report to work. Lynn remained off the job until May 23, 1994, when he was deemed to have resigned his position.

5. During the period from March 7 to May 23, 1994, Williams and Lynn communicated regularly. Shortly after Lynn's March 7, 1994, departure from work, Lynn provided Williams with a doctor's statement from Allen J. Schreiber, M.D. (Schreiber). The statement provided the following information:

Please excuse Lonnie Lynn for remainder of March.
[illegible] review [illegible] 4/1/94. He is having
medical problems which need formal evaluation.

6. In April, 1994, Lynn provided to Williams another statement from Schreiber. This statement provided the following information:

I have referred Lonnie Lynn for counseling. Please let off

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month of April.

7. On April 12, 1994, Lynn was referred by his physician to a psychiatrist, Dr. Kenneth Weiner (Weiner). Weiner examined Lynn for 45 minutes and concluded that Lynn had post traumatic stress disorder due to his relationship with Williams. Lynn was examined again by Weiner on April 23, 1994. Weiner's diagnosis of Lynn was the same following this examination.

8. On April 11, 1994, Williams spoke to Lynn about his absence from work. Lynn gave Williams permission to speak to Schreiber. Schreiber advised Williams that he referred Lynn to Weiner for counselling.

9. Williams contacted Weiner. He did so without Lynn's permission. Initially, Weiner advised Williams that he did not have Lynn's authorization to talk with him. Subsequently, after Weiner's April 23, examination of Lynn, the doctor spoke to Williams.

10. Weiner told Williams that Lynn was able to work, but he could not work under Williams' supervision. Weiner recommended that Lynn transfer to another position. Weiner emphasized that Lynn considered his employment to be very important, that Lynn was not disabled and that he could return to work with the restriction that he not work under the supervision of Williams. Weiner told Williams that there was no reason for Lynn to be on sick leave because he was not sick.

11. Williams did not ask Weiner about Lynn's medical condition in March, 1994. In fact, Weiner did not treat Lynn in March, 1994, therefore, he could not speak to his condition during this period.

12. During April, 1994, Lynn asked managers at Gilliam Youth Center about the opportunities for transfer to the Center. In April, Lynn was lead to believe by the managers at Gilliam that he would be permitted to transfer to the Center.

13. Following the conversation with Weiner, Williams advised Lynn that he would not authorize the use of sick leave for the month of April, 1994, since Lynn was not sick. Lynn would be permitted to use annual and holiday leave for his absence from work in April.

14. By letter dated May 2, 1994, Williams advised Lynn that he was required to bring a doctor's statement explaining his absence from work in March, 1994, in order for Williams to approve Lynn's use of sick leave for that month. Williams explained to Lynn that he wanted the doctor's statement to include justification for his absence during March, 1994, prognosis, diagnosis and a statement indicating that Lynn was able to return to work without restrictions.

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15. In the May 2, 1994, letter, Williams advised Lynn that he was expected to return to work on May 4, 1994. Williams warned Lynn that under R9-1-4, Lynn may be deemed to have resigned his position on May 4, 1994, because of his absence from work without approved leave for five consecutive days.

16. On May 4, 1994, Lynn wrote to Williams to request leave without pay. Lynn explained that he wanted the leave in order to have more time to obtain medical information from Schreiber.

17. On May 5, 1994, Madeline Sabell (Sabell) wrote to Lynn in response to a telephone call from him. Sabell is the personnel administrator for the Office of Youth Services. Lynn contacted Sabell inquiring about transfer opportunities and about leave. Sabell advised Lynn that it is the agency's policy to discourage transfers if there are outstanding issues related to job performance or attendance. Sabell encouraged Lynn to contact Williams and resolve the issues related to his use of leave.

18. On May 6, 1994, Williams responded to Lynn's May 4 request for leave without pay. Williams authorized Lynn to take leave without pay through May 13, 1994. Williams reiterated his instructions to Lynn to obtain a doctor's statement justifying Lynn's absence from work in March, 1994. Williams again warned Lynn that he may be deemed to have resigned from his position under R9-1-4. Lynn was further advised that he would be placed on unauthorized leave without pay on May 16, 1994, if he did not return to work.

19. Lynn spoke to Williams by telephone on May 13, 1994. Williams wrote to Lynn on May 16, 1994, confirming their conversation. Lynn was again warned that he would be placed on leave without pay, that he needed a doctor's statement for his March, 1994, absence from work and that he may be deemed to have resigned under R9-1-4 if he did not return to work.

20. On May 18, 1994, Lynn wrote to Williams to request permission to transfer from the job at Lookout Mountain for the purpose of accommodating a stress related illness. Lynn also met with Sabell and Williams on May 18, 1994. During this meeting, the same topics were discussed related to Lynn's request for leave and Williams direction that Lynn had to provide a doctor's statement supporting his claim for sick leave for March, 1994.

21. During the May 18 meeting, Lynn was offered the option of transferring from the Lookout Mountain School to a cottage at Lookout Mountain Youth Services Center, under the supervision of assistant director Robert Finnerty.

22. At the May 18, 1994, meeting Lynn advised Sabell and Williams that he did not intend to return to his position at Lookout

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Mountain.

23. Lynn did not seriously consider the offer to work under the supervision of Robert Finnerty. He concluded that any position at Lookout Mountain would not place him at great enough distance from Williams to alleviate his stress disorder.

24. On May 19, 1994, Williams wrote to Lynn acknowledging receipt of his request to transfer to accommodate a stress related illness. Williams repeated all the earlier issued warnings and directions. He again told Lynn that he would be deemed to have resigned under R9-1-4 if he did not return to work by May 23, 1994.

25. Lynn did not return to work on May 23, 1994. He did not obtain a doctor's statement explaining his absence from work in March, 1994. Lynn believed that the letters and notes previously provided by Schreiber, and turned over to Williams, explained his absence from work in March, 1994.

26. Lynn felt that it was unreasonable for Williams to request a doctor's statement for March, 1994. Lynn believed that Williams was fully advised of his course of treatment by Schreiber and Weiner and it was unreasonable to request the additional information.

27. In a letter dated May 25, 1994, Lynn was advised by Williams that he was deemed to have resigned his position. Lynn filed a timely appeal of Williams' action. In the notice of appeal, Lynn requested relief in the form of an order that would permit him to depart from employment "honorably". It is Lynn's position that he will not return to his position at Lookout Mountain. He requested an order be entered directing Respondent to assign him to a position in another youth services facility.

DISCUSSION

The burden of proof in a non-disciplinary termination case is on the Complainant. Renteria v. Colorado Department of Personnel, supra. Thus, Complainant had the burden to establish that the termination of his employment was arbitrary, capricious or contrary to rule or law. The arbitrary and capricious exercise of discretion can arise in three ways: 1) by neglecting or refusing to procure evidence; 2) by failing to give candid consideration to the evidence; and 3) by exercising discretion based on the evidence in such a way that reasonable people must reach a contrary conclusion. Van de Vegt v. Board of Commissioners, 55 P.2nd 703, 705 (Colo. 1936).

Complainant also raises claims of discrimination based on age, race and disability. To establish a prima facie case of disability discrimination, Complainant is required to establish that he is a disabled person within the meaning of the Americans

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with Disabilities Act, 42 U.S.C. section 12101, et. seq., that he is qualified, with or without reasonable accommodation, to perform the essential functions of his position and that he was terminated from employment because of his disability. Milton v. Scrivner, Inc., 53 F.3d 1118 (10th Cir. 1995); Colorado Civil Rights Commission v. North Washington Fire Protection District, 772 P.2d 70 (Colo. 1989).

To sustain his burden of proof with regard to his claims of age and race discrimination, Complainant was required to meet the standard announced in St. Mary's Honor Center v. Hicks, 509 U.S. ___, 113 S.Ct. ___, 125 L.Ed.2d 407 (1993) supra, and McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

Complainant's employment was terminated under State Personnel Board Rule R9-1-4. This rule provides,

A full time employee who is absent without approved leave for a period of five or more consecutive days may, at the discretion of the appointing authority, be deemed to have resigned with prejudice.

Complainant argues that Respondent's decision to deem him resigned from his position was discriminatory, arbitrary, capricious and contrary to rule and law. Complainant maintained that his strongest argument rests on his claim that Respondent's actions were arbitrary and capricious. Complainant asserted that the evidence presented at hearing supported his contention that he did not express an intention to resign from his position. It is Complainant's position that his repeated communications, both verbal and written, with Sabell and Williams between March 7, and May 23, 1994, was evidence that he did not intend to resign his position.

Complainant asserts that he had a disability brought about by his stressful response to contact with Williams. Complainant contended that he should have been accommodated by being permitted to transfer to another youth services position.

Respondent contends that Williams action was neither arbitrary, capricious or contrary to rule or law. Respondent argues that the evidence presented at hearing established that Complainant was coaxed and cajoled to returned to work. He was repeatedly granted extensions of the deadline for returning to work. Respondent contends that it was not unreasonable to request that Complainant return to work and that he provide verification of his illness in March, 1994, before he was permitted to utilize sick leave for his absence during that month.

Respondent emphasizes the meeting on May 18, 1994, during which Lynn stated that he would not return to his position with Lookout

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Mountain. Respondent contends that this communication from Complainant, combined with his failure to return to work, constitutes adequate evidence that he intended to resign his position with the department.

Complainant presented no evidence of race or age discrimination at hearing. Thus, it was concluded that he failed to sustain his burden of proof on the issues of race and age discrimination and Respondent's motion to dismiss these claims was granted at the conclusion of Complainant's case in chief.

Complainant failed to establish that he is a qualified individual with a disability within the meaning of 42 USC section 12101, et. seq. Complainant presented no evidence that he had a medical history supporting his claim of a stress related disability or that the impairment substantially limits one or more major life activities. Colorado Civil Rights Commission v. North Washington Fire Protection District, supra. Complainant's testimony was that he was seen by a psychiatrist on two dates in April, 1994, when he was examined for approximately 45 minutes. The psychiatrist advised Williams during the April, 1994, conversation, and he testified at hearing, that Complainant is not disabled and did not belong on sick leave.

The evidence further established that Complainant started his own company following his separation from employment and that he could return to the security services officer position, just not at Lookout Mountain. There was no evidence of a course of treatment over a period of time for a stress related illness nor was there evidence that due to the stress related illness Complainant was precluded from performing in a wide range of job classifications.

It is the role of the administrative law judge to weigh the evidence and from the evidence reach a conclusion. The "weight of the evidence" is the relative value assigned to the credible evidence offered by a party to support a particular position. The weight is not quantifiable in the absolute sense and is not a question of mathematics, but rather depends on its effect in inducing a belief. The standard that applies in this administrative setting is "by a preponderance". This standard of proof has been explained as follows:

The preponderance standard requires that the prevailing factual conclusions must be based on the weight of the evidence. If the test could be quantified, the test would say that a factual conclusion must be supported by 51% of the evidence. A softer definition, however, seems more accurate; the preponderance test means that the fact finder, both the presiding officer and any administrative appeal authority, must be convinced that the factual conclusion it chooses is more likely than

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not.

Koch, Administrative Law and Practice, Vol. I at 491 (1985) (emphasis supplied).

The credibility of the witnesses and the weight to be given their testimony are within the province of the administrative law judge. Charnes v. Lobato, 743 P.2d 27 (Colo. 1987). The weight of the credible evidence leads to a finding that Complainant intended to abandon his position. The evidence presented is sufficient to sustain the conclusions reached by the appointing authority.

Despite Complainant's denial that at the May 18, 1994, meeting he told Williams and Sabell that he would not return to his position, Complainant testified that he "did not want his job back" because he "no longer has trust in the authority figures" at Lookout Mountain. Based on Complainant's testimony at hearing and his actions during the period from March 7, to May 23, 1994, it is concluded that he intended to abandon his position. It is also concluded that it is likelier than not that Complainant told Sabell and Williams on May 18 that he would not return to his position.

Complainant's communications with Respondent during the relevant period might be interpreted as evidence of an intent to retain his position. In a recently decided case, Hotchkiss v. Department of Corrections, Case No. 95B062, ALJ Thompson adopted the analysis of a 1975 Board decision, with respect to the proper application of R9-1-4. He quotes from the 1975 case, as follows:

Rule 9-1-5 [now R9-1-4] was intended to be available to appointing authorities when all the facts and circumstances of a case indicate an abandonment of the job by the employee. This rule does not apply to those cases where the appointing authority has actual or constructive knowledge of the whereabouts of an absent employee, and the predisposing valid reason, medical or otherwise, that the employee has not appeared for duty. The cited rule is not a substitute for disciplinary action for abuse of leave, in appropriate cases. Drury v. Colorado Division of Employment, Case No. 75-308 (Molnar, Initial Decision, Sept. 1975).

ALJ Thompson further cites as support for this interpretation of R9-1-4, the Colorado Court of Appeals decision in Ornelas v. Department of Institutions, 804 P.2d 235 (Colo. App. 1990). The court is quoted in Ornelas, supra, as finding that the R9-1-4 is applicable "only to situations involving the abandonment of a job by an employee in which the appointing authority is aware of no apparent reason for the employee's absence."

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In another case, Costa v. Department of Regulatory Agencies, Case No. 94B036, ALJ Thompson again upheld an agency's determination that an employee resigned her position under R9-1-4. In Costa, Zagar v. Colorado Department of Revenue, 718 P.2d 546 (Colo. App. 1986), was relied upon to concluded that the termination of Costa's employment was proper where the employee not only failed to respond to a written communication to report to work on a date certain but also indicated to the personnel administrator that she did not intend to return to work.

The facts found in this case, though different from those described above, appear to also justify application of R9-1-4. The appointing authority here did not use R9-1-4 as a substitute for discipline. There would have been no basis for Complainant to be cited for abuse of leave. Complainant was not granted any leave other than that to which he was entitled, because it was accrued leave or because he provided supporting documentation for the requested leave. By May 23, Complainant's absence was for no apparent reason.

The evidence appeared to establish that Complainant's contacts with Williams during the relevant period were merely an attempted to impose Complainant's will on Respondent. It was Complainant's desire not to return to Lookout Mountain. He intended to make this a reality, first, by simply leaving the workplace and not returning, then by transferring to another facility prior to resolution of the leave issues and finally by attempting to establish evidence of a disability.

The assignment of duties and job sites is within the discretion of the appointing authority. R1-4-3(A) and (B). There was no abuse of that discretion shown here by Williams' demand that Complainant return to his position at Lookout Mountain to perform the duties of his position and provide a doctor's statement explaining his protracted absence from work. When Complainant failed to return to work, it was reasonable to concluded that he abandoned his job and thus could be deemed to have resigned the position.

There was no evidence presented that either party is entitled to an award of attorney fees.

CONCLUSIONS OF LAW

1. Complainant evidenced an intent to abandon his position in May, 1994.
2. Respondent's actions, in deeming Complainant to have resigned his position under R9-1-4, was neither discriminatory, arbitrary, capricious or contrary to rule or law.
3. The parties are not entitled to an award of attorney fees.

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ORDER

Respondent's action is affirmed. The appeal is dismissed with prejudice.

Dated this _____ day
of April, 1996, at
Denver, Colorado.

Margot W. Jones
Administrative Law Judge

CERTIFICATE OF MAILING

This is to certify that on the _____ day of April 1996, I placed true copies of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** in the United States mail, postage prepaid, addressed as follows:

John Barajas, Esq.
1830 Platte Street
Denver, CO 80202

and through interagency mail, addressed as follows:

Toni Jo Gray
Assistant Attorney General
1525 Sherman Street, 5th Floor
Denver, CO 80203

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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 estimated cost to prepare the record on appeal in this case without a transcript is **\$50.00**. 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

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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.