
INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

MOLLY O'BRIEN,

Complainant,

vs.

DEPARTMENT OF HIGHER EDUCATION, UNIVERSITY OF
COLORADO AT BOULDER,

Respondent.

The hearing in this matter convened on January 22, 1997 and concluded on December 11, 1997 in Denver before Margot W. Jones, Administrative Law Judge (ALJ). Complainant, Molly O'Brien, was present at the hearing and represented by Edith Stevens, Attorney at Law. Respondent, the University of Colorado at Boulder (CU-B or the University), Department of Higher Education (Department), appeared through L. Louise Romero, Senior University Counsel.

Complainant testified in her own behalf and called the following witnesses to testify at hearing: Maggie Varner; Lisa Vann; Kathryn True; Naomi Johnson; Linda Evans; Robin Basil; Adrienne Calvo; Beth Cushman; Gerald Clitz; and Tim Hunsdorfer.

Respondent called the following witnesses to testify at hearing: Torin Lee; Robin Basil; Mary Ann Sergeant; Grace Leyba; Sam Makris; James Palmer; Maria Amaro; Sylvia Gardner; Diane Robison; Michael Papacek; Patricia Hughes; William Herbstreit; Ralph Pearce; and Ed Hanum.

Complainant's exhibits A, C, D, F, G, H, Y, AA, AB, AD through AH, AQ through AS, AU, AV, AX, AY, and AZ were admitted into evidence. Respondent's exhibits 2, 3, 5, 6, 8, through 14, 19 through 21, 25, 26, 29 through 32, 34 through 37, 47, 48 and 51 were admitted into evidence.

MATTER APPEALED

Complainant appeals the termination of her employment during employment probation. Complainant alleges that her

termination from employment was not for unsatisfactory job performance. Complainant contends that she was sexually harassed and that the termination of her employment was in retaliation for filing a grievance alleging sexual harassment.

ISSUES

The following issues were raised by the parties at hearing:

1. whether Complainant established that the decision to terminate her employment during employment probation was an action taken in retaliation for her filing a grievance in which she alleges that she was sexually harassed; and

2. whether Complainant was subjected to sexual harassment, either quid pro quo or hostile work environment.

PROCEDURAL HISTORY

1. On June 1, 1994, Complainant filed a Step I grievance alleging sexual harassment. The case was docketed as Case Number 94G119. On June 16, 1994 an Order of Dismissal Without Prejudice was entered directing the parties to complete the grievance process. The parties were advised that if a satisfactory resolution was not reached through the grievance process, Complainant could petition the State Personnel Board (Board) for a hearing.

2. On July 11, 1994, Complainant petitioned for a hearing to consider her termination from employment during employment probation. The case was docketed as Case Number 95B009. In the Petition for Hearing, Complainant alleged that she was sexually harassed and that she was terminated in retaliation for the filing of a grievance alleging sexual harassment.

3. On September 14, 1994, Complainant timely filed a charge of discrimination with the Colorado Civil Rights Division (CCRD). On December 8, 1994, Cases Number 94G119 and 95B009 were consolidated for purposes of the hearing and the initial decision under Case Number 95B009(C).

4. On April 4, 1996, CCRD determined that it lost jurisdiction of the case when it lost the case file, failed to timely conduct an investigation, and failed to render a determination on the issue of probable cause.

5. On April 9, 1996, the case was set for a Preliminary Review. On October 17, 1996, ALJ Robert Thompson recommended to the Board that Complainant should be granted a hearing to consider the issues of sexual harassment and retaliation. On November 22, 1996, the Board accepted the recommendation of the ALJ.

6. Thereafter, the hearing dates were scheduled and continued at the parties' request. Evidentiary hearing were held on July 29, 1997, October 27 through 29, 1997, and December 9 through 11, 1997.

7. At hearing, the testimony of the CU-B Risk Manager was held *in camera* and placed under seal. The parties agreed that the subject matter of the testimony was sensitive and should not be made a part of the record except by order of a judge.

FINDINGS OF FACT

1. On August 3, 1993, Complainant Molly O'Brien (O'Brien) was employed at Wardenburg Health Clinic on the campus of the University. Sam Makris was the Director of Wardenburg and the appointing authority for O'Brien's position. Ed Hanum (Hanum) was O'Brien's immediate supervisor.

2. O'Brien was hired as a Storekeeper I. Her position was a temporary position in which she could serve for no more than a six month period. O'Brien was responsible for ensuring that medical, office, and other supplies and items bought by Wardenburg were supplied in an accurate and timely manner to the students, faculty, and staff. O'Brien was responsible for providing cost efficient pricing of goods for Wardenburg by researching vendors for the best products and price. O'Brien was also responsible for stocking inventory, updating pricing, and filling orders for the departments within Wardenburg. O'Brien's duties took her all over Wardenburg and brought her in contact with many staff members.

3. O'Brien worked with Hanum, Maria Amaro (Amaro), and Torin Lee in the storeroom. Hanum and O'Brien spent a lot of time together performing their job duties. Amaro, who also worked under Hanum's supervision, worked in an area on the same floor but a short distance from Hanum and O'Brien. She sterilized medical utensils. Amaro and Torin Lee had daily contact with O'Brien and Hanum. They frequently observed O'Brien and Hanum's interactions.

4. During O'Brien's temporary employment, she was a model employee. She got along well with Hanum. Hanum believed that she performed her job duties competently. Hanum was extremely pleased to have O'Brien working for him. O'Brien liked her job. O'Brien was eager to gain permanent employment.

5. During O'Brien's temporary employment, she and the staff of the store room went out to lunch on several occasions. Infrequently, Hanum and O'Brien went to lunch with out the rest of the storeroom staff. During these lunches, Hanum conducted himself in a gentlemanly fashion. He opened doors for O'Brien, he pulled out her chair, and he occasionally paid for her lunch. Hanum's gracious gestures toward O'Brien were not intended to have sexual significance. Hanum's practice with female co-workers at Wardenburg was to treated them in a gracious and gentlemanly fashion.

6. Hanum and O'Brien attend the Wardenburg winter holiday party in December 1993. O'Brien was accompanied by her husband. Hanum, O'Brien, and her spouse sat together for much of the party. When the party concluded, they joined other staff at a bar where they continued to enjoy each others' company. Hanum, O'Brien, and O'Brien's spouse arrive together at the after party. Hanum and O'Brien were drinking heavily throughout the evening. Their drinking continued at the after party. O'Brien's spouse drove her home after the party. O'Brien and Hanum relations during the evening of socializing was a continuation of the good relations they had during her temporary employment. No inappropriate behavior occurred during this evening.

7. Hanum wanted to employ O'Brien on a permanent basis in the storeroom. At the conclusion of her temporary appointment to the Storekeeper position, O'Brien applied for the permanent position. Hanum selected her for the permanent position.

8. O'Brien began her employment in the permanent position on February 3, 1994. Following O'Brien's permanent appointment, her job performance deteriorated drastically. O'Brien was absent from work and tardy for work. She was belligerent and insubordinate to Hanum. O'Brien's negative attitude occurred in response to Hanum's direction concerning the need for her to arrive at work in a timely fashion on a regular basis. Her negative attitude was also present when Hanum made routine work assignments to her.

9. O'Brien perceived that Hanum was losing patience with her conduct and job performance during her first month on the job. Beginning in at least March 1994, O'Brien began to fabricate her case of sexual harassment and retaliation.

10. O'Brien appeared upset in the presence of co-workers and other observers. She explained to them that Hanum was being unreasonable and hard to get along with. She told co-workers and other observers that Hanum was creating problems for her. O'Brien was careful never to clearly accuse Hanum of sexual harassment. She left the impression with some of her co-workers that there might be more than work related problems occurring between them.

11. The conduct O'Brien was telling others was occurring was a figment of her imagination and the product of her self interest. O'Brien constructed an elaborate tale of sexual harassment in order to create the case currently pending.

12. Hanum was irritated and frustrated by O'Brien's conduct. He met with her repeatedly to encourage and demand that she perform the job for which she was hired. On March 4, 1994, O'Brien went to Sam Makris' office upset about her treatment by Hanum. Makris gave O'Brien permission to leave work for the day.

13. On March 7, 1994. Hanum and O'Brien met with Hanum's supervisor, Ralph Pearce. Pearce and Hanum initiated the meeting for the purpose of discussing O'Brien's work performance and work relationships. O'Brien claimed that she initiated this meeting in order to advise Ralph Pearce that Hanum was treating her unfairly.

14. Following the March 7 meeting, a memo was prepared entitled "Clarification of Agreement" which summarized the agreement reached during the March 7 meeting. It was agreed that Molly would arrive at work on time and would not leave work without authorization. The agreement provided that violation of the terms of the agreement would result in disciplinary action.

15. Ralph Pearce and Hanum signed the agreement. O'Brien refused to sign. However, she returned the memo to Pearce with "clarifications". In her "clarifications", she explained that she called the meeting of March 7 for the purpose of clearing up misunderstandings between herself and Hanum. She also states in the clarification that she was only late for work two times between February 3 and March 7, 1994.

She maintained that she only left work one time and that was with Sam Makris' permission.

16. The tension caused by O'Brien's unsatisfactory job performance continued to mount in March, April, and May 1994. She was sometimes observed by co-workers engaged in heated conversations with Hanum about her job performance. She was observed by co-workers looking glum and despondent. When asked what caused her to look sad, she would vaguely reference Hanum's unreasonableness as the source of her problems. She frequently consulted with co-workers about her fear that Hanum might terminate her employment. She never mentioned to any co-worker concern that she was being sexually harassed.

17. In or around mid May 1994, Hanum reached the end of his rope with O'Brien's behavior and job performance. During the brief three months of her permanent employment in the storeroom, she was 10 to 15 minutes late for work three to four times per week. In February 1994, before O'Brien accrued leave, she took 15 hours of leave. In March 1994, O'Brien took eight hours of sick leave. In April 1994, O'Brien took 5.5 hours of annual leave and 28 hours of sick leave. She was belligerent and insubordinate. Hanum advised Ralph Pearce and Sam Makris that O'Brien was unsuccessful in the performance of her duties and that he did not want to certify her to her position.

18. On May 17, 1994, Sam Makris drafted a letter advising O'Brien that she would be terminated from employment for unsatisfactory job performance. A staff member at Wardenburg, who was privy to this information, warned O'Brien that the decision was made to terminate her.

19. On May 17, 1994, O'Brien went to the affirmative action office on the Boulder campus. She was interviewed by Mary Ann Sergeant. At no time during this interview did O'Brien advise Mary Ann Sergeant that she thought she was being sexually harassed. O'Brien told Sergeant that she suspected that Hanum intended to terminate her employment. She told Sergeant that Hanum was placing pressure on her because of her attendance and punctuality. She claimed during the meeting with Sergeant that she was being harassed. Sergeant encouraged O'Brien to talk with Hanum about her suspicions. She further advised O'Brien about the grievance process at the University.

20. On May 20, 1994, O'Brien met with Sam Makris and Tom Sebok. O'Brien advised Sam Makris that Hanum was

mistreating her. O'Brien placed her complaints in writing in a letter dated May 20, 1994. In the letter, she advised Makris that she suspected that Hanum was going to terminate her employment because he had other than professional interest in her and because she rebuffed his advances. The wording of her letter did not make clear to Makris that O'Brien was alleging sexual harassment.

21. Following the meeting with Tom Sebok and Sam Makris, O'Brien was placed on administrative leave.

22. On May 20, 1994, Makris directed Grace Leyba and Rebecca Carlson to investigate O'Brien's complaint of mistreatment. Carlson is the Manager of Wardenburg Community Health and Leyba is the Manager of the Wardenburg Insurance Department. O'Brien was directed to provide Leyba and Carlson any information she had supporting her claim of sexual harassment by May 26, 1994.

23. Makris went out of town May 23, 1994. Makris delegated appointing authority to Ralph Pearce. The delegation covered the period of Makris' absence from Wardenburg from May 23, to June 17, 1994. Pearce was delegated authority for all personnel functions and actions within Wardenburg.

24. On May 23, 1994, by memorandum directed to Wardenburg staff, Makris requested that the staff submit a written statement to him if they observed any inappropriate behavior toward O'Brien during her employment there. Numerous staff members submitted statements. Some did so in response to this request. Others did so at the behest of O'Brien. No witness observed any mistreatment of O'Brien. Many reported the information which had been fed to them by O'Brien during her employment at Wardenburg when she selectively supplied information to her co-workers which hinted of discord and sexual harassment.

25. On May 26, 1994, O'Brien submitted her supporting documentation to the investigators, Grace Leyba and Rebecca Carlson. In these documents, O'Brien made clear for the first time that her allegation against Hanum was one of sexual harassment. O'Brien elected to proceed under the State's sexual harassment grievance procedures and not under the University's.

26. The May 26, 1994 statement from O'Brien advised the investigators that during her temporary assignment to the

storeroom it appeared to her that Hanum had a crush on her. She maintained that this was evident from the fact that he smiled at her a lot, acted happy when she was around, and made long eye contact. She reported that Hanum drove her to her vehicle on some evenings when he was parked close to Wardenburg and she was in an outlying parking lot. She reported that during these encounters Hanum was flirtatious. She maintained that when they went out for lunch he held the door open for her, pulled out her chair and paid for her meal. She maintained that when they went out for lunch he made her feel as though she was on a date. She contended that she did not want to rock the boat because she was only a temporary employee and she wanted to be hired to a permanent position.

27. O'Brien reported to the investigators that at the December 1993 Wardenburg holiday party which she attend with her spouse, Hanum made lewd remarks to her and her spouse.

28. She maintained in her May 26, 1994 report to the investigator that when she competed for the permanent position, Hanum told her that he wanted to hire her. She claimed that when Hanum hired her permanently, he became more controlling, unfair, and critical. O'Brien maintained that Hanum told her that there was a candidate for the permanent position who would have done anything short of sexual favors to get the job.

29. O'Brien contended in the report that Hanum followed her to Safeway after work. She reported that Hanum was opposed to marriage and had told O'Brien that he would never marry. According to O'Brien, Hanum was uncomfortable whenever she discussed her marriage at work.

30. O'Brien reported to the investigators that Hanum confided to her information about an incident he was involved in when he feared for his safety as the result of the conduct of a co-worker. O'Brien maintained that Hanum was using this information as an opportunity to share lewd stories with her.

31. O'Brien reported to the investigators that Hanum kept condoms in his desk drawer and inquired of her whether she knew how a condom fits. O'Brien reported that Hanum discussed lewd and bizarre behavior which he attributed to his girlfriend. O'Brien reported that while a construction worker was in the storeroom using the phone, Hanum inquired of her one day whether she completed her task washing vaginal speculums.

32. O'Brien reported to the investigators that after she was hired permanently Hanum became mean and intimidating. He regularly lost his temper and raged at her out of control. She told investigators that she can think of no other reason for his behavior than that he had a sexual interest in her and when it was clear to him that she would not reciprocate he decided to fire her.

33. Staff members were surprised to learn of the allegation of sexual harassment. Most surprised by the allegation of sexual harassment were Torin Lee and Maria Amaro who work in or around the storeroom with O'Brien and Hanum. Both worked under Hanum's supervision. They reported that they observed no sexually harassing behavior by Hanum toward O'Brien. Amaro reported that Hanum showed preferential treatment toward O'Brien during her temporary employment, but following her permanent assignment, O'Brien became belligerent and insubordinate toward Hanum. Amaro reported that she had been O'Brien's confidante and that at no time prior to the end of May 1994 did O'Brien share her belief with Amaro that Hanum was interested in her or that he was sexually harassing her.

34. From May 27 to June 1, 1994, Carlson and Leyba investigated the allegations of sexual harassment. They interviewed staff at Wardenburg and reviewed documents. On June 2, 1994, they concluded in a brief memorandum that they received no information to credit O'Brien's claim of sexual harassment and retaliation. On June 6, each investigator prepared a six page report explaining and justifying her conclusion.

35. Carlson and Leyba's reports were received by Ralph Pearce who was acting appointing authority in Sam Makris' absence. Pearce advised O'Brien in a letter dated June 9, 1994 that there was insufficient evidence to credit her claim of sexual harassment.

36. Following Sam Makris' return to Wardenburg, on June 28, 1994, he advised O'Brien that her employment was terminate. The letter advised O'Brien that she would not be certified to her position and that her employment would be terminated because of absenteeism. Makris was advised by the Human Resources Office that an elaborate explanation of his reason for O'Brien's termination was not needed. Makris was advised that he only needed to provide one explanation for her termination. Makris believed that O'Brien should be

terminated not only because of attendance problems, but also because of her lack of punctuality, poor attitude, too much socializing, and insubordinate behavior.

37. On July 11, 1994, O'Brien petitioned the Board to seek review of the decision to terminate her employment.

DISCUSSION

To avoid having my opinion of this case buried in paragraphs of case cites and legal authority about sexual harassment and retaliation, let me state it here. This case has been manufactured by Complainant and her representative. This case is a vicious and sick attempt to recover damages from the University for allegations of sexual harassment and retaliation that did not occur. During the eight arduous days of the evidentiary hearing, no evidence was presented to support Complainant's allegations.

Complainant was provided ample opportunity to present evidence, if it existed. Complainant testified at length and called numerous witnesses. Complainant's testimony was interrupted numerous times for the convenience of the parties in order to take other witnesses' testimony. Complainant began her testimony on July 28, 1997, was interrupted and she continued her testimony on July 29, 1997. On July 29, 1997, O'Brien testimony was interrupted twice. O'Brien resumed her testimony on October 27, 1997, during which she was interrupted one time. Complainant's testimony resumed on October 28, 1997. Complainant rested her case on this date. On December 10, 1997, Complainant was recalled as a rebuttal witness. As the trier of fact, I was provided numerous opportunities to observe Complainant over many months. These opportunities affirmed the belief that Complainant is not in touch with reality on the subject of this case. Complainant was not a credible witness.

In making credibility determinations, the ALJ is guided by the factors set forth in Colorado Jury Instruction 3:16, which provides:

You are the sole judges of the credibility of the witnesses and the weight to be given their testimony. You should take into consideration their means of knowledge, strength of memory and opportunities for observation; the reasonableness or unreasonableness of

their testimony; their motives; whether their testimony has been contradicted; their bias, prejudice or interest, if any; their manner or demeanor upon the witness stand; and all other facts and circumstances shown by the evidence which affect the credibility of the witnesses.

If you believe that any witness has willfully testified falsely to any material fact in this case, you may disregard all or any part of the witness' testimony.

Complainant manner and demeanor was observed while she was on the witness stand. The impression left as a result of these observations, in conjunction with the knowledge of Complainant's motive, bias, and interest, resulted in the conclusion that Complainant should not be believed.

Sexual harassment is defined under the Board rules . State Personnel Board Rule R11-1-3 provides:

Sexual Harassment. Harassment on the basis of sex is a violation of Policy 11-1.

(A) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

The Equal Employment Opportunity Commission describes sexual harassment in a similar manner. It is described as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when submission to such conduct is made, either explicitly or

implicitly, a consideration of an individual's employment; and submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individuals; or such conduct has the purpose or effect of substantially interfering with an individual's work performance or creates an intimidating, hostile or offensive work environment. This definition results in two types of sexual harassment, *quid pro quo* and hostile environment.

Quid pro quo sexual harassment occurs when submission to unwelcome sexual advances is either explicitly or implicitly made a condition of employment, or submission to or rejection of such conduct is used as the basis for employment decisions affecting the individual. The harasser has the employer's authority to alter the terms and conditions of employment, either actually or apparently. See e.g., *Karibian v. Columbia University*, 14 F.3d 733 (2nd Cir. 1994), cert. denied, 114 S.Ct. 2693 (1994); *Sauers v. Salt Lake County*, 1 F.3d 1122 (10th Cir. 1993); *Kotcher v. Rosa & Sullivan Appliance Center, Inc.*, 957 F.2d 59 (2nd Cir. 1992); *Chamberlin v. 101 Realty, Inc.*, 915 F.2d 777 (1st Cir. 1990). A *quid pro quo* claim requires that it be shown that the employee's submission to advances was a condition of receiving a benefit, or that the employee's refusal resulted in a tangible job detriment. *Quid pro quo* sexual harassment imposes strict liability on the employer. A *quid pro quo* claim does not lie if the employer/supervisor threatens to retaliate against an employee for rebuffing advances, but does not, in fact, do so.

A hostile environment case exists where a reasonable person would find the environment hostile or abusive, and the harassed party found the environment to be so. *Harris v. Forklift Systems, Inc.*, 114 S.Ct. 367 (1993). When the harasser is a supervisor, the employer faces a higher standard of liability. An employer is liable for hostile work environment sexual harassment if the employer knew or should have known of the harassment and failed to take prompt, remedial action. *Steiner v. Showboat Operating Co.*, 25 F.2d 1459 (9th Cir. 1994). Employer liability extends to failing to take appropriate action in the face of actual, constructive, or imputed knowledge of the alleged harassment. See *Hicks v. Gates Rubber Co.*, 833 F.2d 1406 (10th Cir. 1987). See also *Yates v. Avco Corp.*, 819 F.2d 630 (6th Cir. 1987).

For the determination of sexual harassment, Rule R11-1-3(B), 4 Code Colo. Reg. 801-1, provides:

In determining whether alleged conduct constitutes sexual harassment, the board will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

Complainant had the burden of proof to establish evidence by a preponderance that she was sexually harassed. She presented no evidence of either *quid pro quo* harassment or a hostile work environment. The conduct Complainant alleged to have occurred did not amount to either forms of sexual harassment. The conduct Complainant points to as evidence of sexual harassment, if accepted as true, is not so egregious as to amount to sexual harassment. *Meritor Saving Bank v. Vinson*, 40 FEP Cases 1822 (1986). Complainant presented no evidence that the offending conduct was sufficiently severe or pervasive to alter the conditions of her employment or to create a hostile or abusive work environment. *Id.* at 1827. Complainant's problems on the job emanated from her failure to comply with the work rules regarding punctuality and attendance and her poor job attitude.

Complainant alleges that because she filed a grievance alleging sexual harassment that she was retaliated against. In order to establish retaliation, Complainant must establish a *prima facie* case. To do so, Complainant must show that she was engaged in a protected activity, that she suffered an adverse employment action, and that there is a causal connection between the protected activity and the adverse action. *Lowe v. Angelo's Italian Foods, Inc.*, 87 F.3d 1170 (10th Cir. 1996); *Meredith v. Beech Aircraft Corp.* 18 F.3d 890,896 (10th Cir. 1994); *See, McDonnell Douglas Corp. v. Green, supra.*

The causal connection can be demonstrated by direct or circumstantial evidence that creates an inference of retaliatory motive, such as protected conduct closely followed by adverse action. Examples of retaliatory treatment include termination and extension of probationary period. *Cooper v. Cobe Laboratory, Inc.*, 743 F.Supp. 1422,1433 (D.Colo. 1990).

An inference of retaliatory motive can only be made where close temporal proximity exists between the protected conduct and the subsequent adverse action. *Candelaria v. EG & G Energy Measurements, Inc.*, 33 F.3d 1259, 1262 (10th Cir. 1004).

Complainant filed a grievance alleging sexual harassment and her employment was terminated soon thereafter. Therefore, Complainant must be found to have established a prima facie case of retaliation. However, the evidence presented by Respondent established that Complainant's allegations contained in the grievance were not true and there is a legitimate business reason for Complainant's termination from employment.

CONCLUSIONS OF LAW

1. Complainant failed to present evidence to support the conclusion that she was sexually harassed.

2. Complainant failed to present evidence from which it could be established that she was retaliated against for filing a sexual harassment grievance.

ORDER

The action of the agency terminating Complainant's employment during employment probation is affirmed. The appeal is dismissed with prejudice.

Dated this _____
day of February, 1998.

MARGOT W. JONES
Administrative Law Judge

NOTICE OF APPEAL RIGHTS
EACH PARTY HAS THE FOLLOWING RIGHTS

1. To abide by the decision of the 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 ½ 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 February, 1998, I placed true copies of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** in the United States mail, postage prepaid, addressed as follows:

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