

STATE PERSONNEL BOARD, STATE OF COLORADO

Case No. 96B027

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

DAVID A. CASSIDY,

Complainant,

vs.

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

Respondent.

INTRODUCTION

This matter came on for six days of hearing between November 17, 1995 and February 9, 1996 before Administrative Law Judge Robert W. Thompson, Jr. Respondent was represented by Stacy L. Worthington, Assistant Attorney General. Complainant appeared and was represented by James R. Gilsdorf, Attorney at Law.

Respondent called the following witnesses: Mark Collins, Mental Health Clinician; Lisa Krum, Registered Nurse; Elaine Brookfield, Registered Nurse; Larry Macro, Mental Health Worker; Marilyn Tenorio, Head Nurse; Suzanne Moran, Division Chief Nurse; George Kerin, Chief of the Children and Adolescent Division, who was certified at hearing as an expert in the provision of clinical care and treatment to mentally ill children; and Diane Igle, Nursing Service Administrator, who was certified at hearing as an expert in psychiatric nursing and nursing practice standards that are in place for nurses at Fort Logan.

Complainant testified on his own behalf and called the following witnesses: Marge Smith, Mental Health Clinician; Linda McClure, Registered Nurse; Barbara Yannizzi, Registered Nurse; and Mary Adamson, Supervising Nurse.

Respondent's Exhibits 2 through 9, 11, 12, 16 and 17 were admitted into evidence without objection. Exhibit 18 was admitted as a rebuttal exhibit over complainant's objection. Respondent's Exhibit 13 was offered by complainant and admitted without objection. Exhibit 1 was not admitted.

Complainant's Exhibits A, B, C and K were stipulated into evidence. Exhibits H, I and L were admitted without objection. Exhibits M, N and O were admitted over objection.

MATTER APPEALED

Complainant appeals the August 25, 1995 disciplinary termination of his employment. For the reasons set forth herein, respondent's action is affirmed.

ISSUES

1. Whether respondent's action was arbitrary, capricious or contrary to rule or law;
2. Whether the discipline imposed was within the range of alternatives available to the appointing authority;
3. Whether there was just cause for the disciplinary termination;
4. Whether complainant failed to mitigate his damages;
5. Whether either party is entitled to an award of attorney fees and costs.

PRELIMINARY MATTERS

Per complainant's oral motion, an order was entered sequestering the witnesses. Excepted from this order were complainant and respondent's advisory witness, George Kerin. Also excepted from the order, over complainant's objection, was Diane Igle, whose presence was shown by respondent to be essential to the presentation of its cause pursuant to CRE 615. Igle was endorsed by respondent as an expert and was permitted to observe the testimony of other witnesses for purposes of her own testimony.

As an expert, Igle was permitted to testify with respect to nursing standards of conduct and whether complainant's conduct was in compliance therewith. Taking into consideration CRE 702, 703 and 704, as well as the other rules of evidence, the administrative law judge determined that this expert testimony was relevant and would be helpful with respect to the question of the seriousness of the alleged conduct. Igle's proffered testimony regarding the filing of a complaint with the State Board of Nursing was excluded as irrelevant.

It was ordered that the names of patients be removed from the exhibits, and that during testimony the patients be referred to by their first name or initials only.

FINDINGS OF FACT

1. Complainant, David Cassidy, became employed as a nurse by respondent Colorado Mental Health Institute at Fort Logan (Fort Logan) in July 1988 after earning an A.A. degree in nursing. He received his nursing license in September 1988, whereupon he obtained the classified title of Registered Nurse (RN) IA. He worked as an RN in the adult unit of Fort Logan until he voluntarily transferred to the children's unit in September 1992.

2. Fort Logan is an in-patient psychiatric hospital for children, adolescents and adults. There are two sixteen-bed children's units, known as C-1 and C-2. Complainant worked in C-1.

3. The children in C-1 range in age from five to nine. Eighty-five percent of them have suffered sexual abuse. Many have post-traumatic stress disorder (PTSD) due to abuse. PTSD can manifest itself in several ways, one of which is a delayed reaction to an event or circumstance. Most of the abusive situations occurred at night, after dark. Some of the patients possess thought disorders, such as hearing or seeing things which are not present. As a group, these children have poor impulse control, and it is important for them to feel safe in their environment.

4. Complainant worked the evening shift, from 3:00 p.m. until 11:00 p.m. On the evening of Saturday, July 22, 1995, he decided to play a joke on patient Jackson. Jackson was nine years-old, diagnosed psychotic, and was known to have hallucinations. Complainant and Jackson had developed a close relationship. In the past, they had joked about the "bogeyman". Complainant did not believe that Jackson believed that the bogeyman existed or was afraid of the bogeyman.

5. On the evening of July 22, 1995, Complainant took with him to work a Halloween mask which he had owned since 1988. The mask was pale with yellowish-green curly hair, heavy red lips and accented eye makeup. On duty that night were complainant, mental health clinician Mark Collins and supervisor Mary Adamson. Complainant told Adamson early in the shift that he had brought a mask in order to play a joke on Jackson. Adamson, who was familiar with Jackson's interest in the bogeyman, indicated that she did not want to know anything about it. She did not tell complainant to not do it.

6. Adamson left the premises at 9:00 p.m., leaving complainant and Collins on duty. Complainant was in charge. There were roughly thirteen or fourteen patients. Complainant told Collins that he was going to play a prank on Jackson. He told Collins that he had a mask with him and that he was going to give Jackson a scare. Collins expressed misgivings, which were founded in his belief that some staff members would not approve. Like Adamson, Collins did not specifically tell complainant to not do it.

7. There is no scheduled bedtime on Saturday nights; the children may stay up as late as 9:30 or 10:00. On weekdays, bedtime is between 8:00 and 8:30 p.m.

8. After night had fallen, at approximately 9:15, complainant sent Jackson on an errand to the kitchen. He then went outside to get the mask, taking a flashlight with him. Complainant got Jackson's attention by scratching on the kitchen window. Then he flashed the light on the mask. Jackson turned around and ran out of the kitchen and told Collins that there was something outside.

Jackson was excited and did not know what it was, but he thought it might have been Mary Adamson. Collins told Jackson that it could not have been Mary because she had already left. Then Jackson wondered if it was the bogeyman. According to Collins, Jackson seemed to have a notion that what he had seen or heard was the complainant.

9. Complainant left the mask outside and then went in, pretending to not know what was going on.

10. Jackson was excited and started getting some of the other boys involved, who also became excited and went to the window to look for whatever was out there. After several minutes, complainant told them that there was nothing outside, but just to make sure, he would call Safety and have them come look into it. He picked up the telephone, saying, "Hello, Safety, this is David on C-1. The kids say something's outside. Come and check it out."

11. Following the fake telephone call, complainant went to Collins and said that he was going to try the same thing on another child, D.K. Collins responded that he was not sure that would be such a good idea. Complainant rejoined, "Don't worry about it, I'll take responsibility for it."

12. D.K. was six years-old and diagnosed with PTSD. He, like Jackson, had a close relationship with complainant, but not regarding jokes about the bogeyman. D.K., along with three other children, had been sent to bed early, around 8:00 or 8:30. When he later got out of bed about 8:45, complainant and Collins sent him to the Restricted Area (R.A.). The R.A. is a room where the children are sent to settle down. It has a door that opens into the hallway. The door was left open for D.K.

13. Complainant went back outside, put on the mask and walked around to the window of the R.A. He scratched the screen, got D.K.'s attention, then flashed the light on the mask, as he had done with Jackson. D.K. became frightened and ran out to the room where Collins was at. Complainant testified at hearing that he decided to play the trick on D.K. in order to bring D.K. in on the fun because he figured that D.K. must have known that something was going on.

14. D.K., excited and fearful, served as a catalyst for the others becoming excited. Some ran to the Privilege Room (where the games are located).

15. Complainant came inside and tried to reassure the upset D.K. that there was nothing to be afraid of, that it was "just me". D.K. denied that what he saw was complainant. Then complainant brought the mask inside and showed it to D.K. and two other children (Bruce and Shawn). Those three ran out into the other room, yelling, "Bogeyman, bogeyman." All of the boys ran into the Privilege Room, some of them shoving others. Complainant did not believe that any of them were frightened, but merely hyperactive.

16. Either complainant or Collins called the children out of the Privilege Room. The children were excited and jumping around. Complainant allowed them to try on the mask. When Jackson put on the mask, Jonathan, also nine years-old, slapped or hit him in the head.

17. Complainant told the children that there was no bogeyman, and that the biggest thing they had to fear was their own imagination. It was an afterthought on complainant's part to try to make this a lesson. He had only intended it to be play.

18. The children were allowed to watch TV for approximately ten minutes, then were sent to bed shortly after 10:00 p.m.

19. At bedtime, Jackson expressed a desire to keep his window closed overnight, so complainant went outside to close the bedroom window. Jackson then ran outside his room, yelling, "It's the bogeyman, it's the bogeyman." All of the other children got up again. Some of them, like Jackson, wanted to close their windows. Collins told them that they were not being helpful and should return to their rooms.

20. When patient Carlos got into bed, he was upset and afraid and asked if he could sleep with his light on. Both Collins and complainant tried to reassure him. The light in his room was left on, and Carlos eventually fell asleep.

21. At 11:00 p.m., complainant and Collins were relieved by Linda McClure and Marge Smith. Complainant advised Smith of the mask incident. He did not relate that there were any problems at bedtime.

22. Complainant told McClure that it had been a rather routine evening, except for the mask incident, and that he thought it might be perceived in a way in which he did not intend. He told McClure that he had good intentions. Complainant was concerned that some of the children might be upset. He reported to Mclure that there were no problems at bedtime.

23. Neither complainant nor Collins charted the incident.

24. The following evening, Sunday, July 23, Lisa Krum, Elaine Brookfield and Larry Macro were on duty. At dinner, shortly before 5:00 p.m., the children and the workers were seated around a table. Jonathan asked Lisa Krum if she had heard about the bogeyman on Saturday night, to which Krum responded, "No." D.K. then started talking about the incident. Jonathan remarked that he had been frightened by the bogeyman and said he was so scared that he started hitting two other kids. D.K. and two other children began describing how complainant put on the mask. They described running around and hiding under tables. D.K. said that he was in the R.A. when a monster appeared at the window. Jackson said that he was not scared. A couple of the children said they had difficulty falling asleep because of the bogeyman. Another told the workers that complainant had called Safety to tell them about the monsters. Jackson began teasing and provoking another child, Freddy, about Freddy having been scared. The workers then put a halt to the conversation.

25. Later in the evening, the workers and the children sat down for a "weekend wrap-up". The mask incident was something the children wanted to talk about. Jonathan, Jackson, D.K., and a child named Chris talked about having been frightened. The workers reassured the children that there was no such thing as a bogeyman. A couple of the children stated that they had had difficulty falling asleep because they were afraid of the bogeyman.

26. At bedtime on Sunday, several of the children wanted to sleep on the floor by their beds because they were afraid of the bogeyman.

27. Sunday night bedtimes are generally more difficult than other nights of the week because it is the end of the weekend and the children tend to be more excited and less willing to go to sleep. This particular Sunday night was more difficult than others. The children appeared more needy than usual and wanted more attention.

28. Krum, Macro and Brookfield discussed what, if anything, to do about what the children had told them. They decided that they would not chart the children's comments until they had an opportunity to talk about it with complainant and Collins. They felt that complainant and Collins should have the opportunity to respond before anything else was done.

29. Krum worked the day shift on Monday, July 24. During the day, she advised the head nurse, Marilyn Tenorio, that Tenorio might be hearing something about an issue that came up over the weekend. Tenorio asked Krum to write a statement. In her written statement, Krum related what the children had said but did not

make a determination as to whether or not it was true. Brookfield and Macro later signed the statement as essentially reflecting the events of Sunday night. (Exhibit 7.)

30. After receiving the information from Krum, Tenorio interviewed Jonathan and D.K. individually. She took each one outside to the picnic table and asked him what had happened on Saturday night. Jonathan told Tenorio that D.K. came running out shouting that there was a bogeyman and was very scared. He said that complainant then came in through the kitchen. All the kids started running to the Privilege Room. Jonathan stated that he was so scared he started hitting other kids, that he was scared even after he knew that it was complainant and that he was still scared. Jonathan described the mask as a scary face with yellow hair, fangs, veins sticking out and dripping blood.

31. Initially, in Tenorio's interview with D.K., D.K. could only stutter. (D.K. is known to stutter when he gets excited.) Tenorio calmed him down, and D.K. said he was in his room when a monster scratched on his window, and he got scared and ran to the R.A., and the monster scratched on that window also. Then he ran out into the room where the others were present. He said he was scared and that afterwards he had trouble sleeping.

32. After talking to Jonathan and D.K., Tenorio went to Larry Styza, the team leader, and Suzanne Moran, the division chief nurse. Moran advised Tenorio to get written statements and to talk to the kids. Styza agreed that they needed to follow up on the information they had.

33. Tenorio called Mark Collins at home on Monday and asked him to prepare a written statement. Collins delivered his statement on Tuesday. (Exhibit 6.) Tenorio asked complainant to prepare a written account, which he brought with him to work on Wednesday. (Exhibit 8.) She also wrote her own statement. (Exhibit 9.)

34. Moran's first reaction upon hearing of the mask incident from Tenorio was to become upset because a scary happening to the children brings out their conscious and subconscious fears and sets the therapeutic process backward. She instructed Tenorio to set up a meeting with complainant.

35. On Wednesday, July 26, Moran and Tenorio met with complainant. Moran told complainant that he had demonstrated a lack of good clinical judgment. Complainant disagreed, saying that it was not that big of a deal, that it was just for fun and was being blown out of proportion. Complainant explained that he had a different philosophy than other staff members and that he thought the staff should be normalizing the behavior of the patients. He stated that he was sorry, but he did not think it was a big deal. He told Moran that he pretended to call the safety officer in order to provide the children with some

reassurance, to which she responded that this would frighten the children even more because then they could not count on Safety when needed. Complainant did not seem to understand. Complainant told Moran that he was being treated differently from other staff members, that people were out to get him and that it would be covered up if someone else did the same thing. Moran advised complainant that she was going to refer the matter to the appointing authority. (See Exhibit 5.)

36. Contrary to what he told Moran, complainant testified at hearing that the purpose of the fake telephone call was to bolster what Jackson had said to the other children. He was trying to "add a little spice to it."

37. After her interview with complainant, Moran discussed the matter further with team leader Styza. By memo dated July 27, 1995, Moran and Styza advised George Kerin of what they had learned and asked Kerin to review the information for further action. (Exhibit 4.)

38. George Kerin has served as the chief of the children and adolescent division for nine years. He has worked at Fort Logan for 29 years. Kerin is the appointing authority and was certified at hearing as an expert in the provision of clinical care and treatment for mentally ill children.

39. By letter dated August 1, 1995, Kerin notified complainant of an R8-3-3 meeting to be held on Wednesday, August 16, 1995. (Exhibit 3.) Enclosed with the notice were the memo from Moran and Styza (Exhibit 4), the written statement of Collins (Exhibit 6), the statement of Krum, Macro and Brookfield (Exhibit 7), and the written statement of Tenorio (Exhibit 9).

40. Prior to the R8-3-3 meeting, Kerin talked to Moran, Tenorio, Collins and Styza. He read all of the statements, including that of complainant. Kerin also reviewed the minutes of a staff meeting in which a staff decision was made to not show scary movies to the children. (Exhibit 12.)

41. The R8-3-3 meeting was held on August 16, 1995. In attendance were complainant and his attorney, Kerin and Billie Busby, Chief of Personnel. Kerin had prepared a statement of the incident to serve as a structure for the meeting and gave the statement to complainant's counsel at the outset of the meeting. (Exhibit 11.)

42. Prior to the R8-3-3 meeting, Kerin had asked complainant in writing to bring the subject Halloween mask with him to the meeting. At the meeting, complainant stated that he had thrown the mask into the trash and that the mask no longer existed.

43. Complainant stated at the meeting that he had meant no harm

to the children, that the mask incident was intended only to be a prank. Complainant expressed his opinion that the mask incident was no different from other events which have taken place with the Fort Logan patients, such as night hikes on camping trips, the showing of a sex education video, and annual Halloween activities.

Complainant asserted that he was being held to a different standard from others because he had been critical of certain policies and procedures of the unit, and that there had been other incidents of a similar nature where no discipline had been imposed upon an employee. Complainant expounded that the policy against showing scary movies, with which he disagreed, applied solely to movies and was not relevant to the mask incident.

44. Kerin subsequently investigated the events and activities alleged by complainant to have taken place. Kerin interviewed the people involved. Kerin concluded that the other activities had been planned in advance for a therapeutic purpose, the children had prior notice of what was to occur and the children were individually selected for the various activities as being appropriate for a particular activity, which Kerin found to be beneficial to their treatment. Kerin found the other incidents brought up by complainant to not warrant disciplinary action. All activities and events mentioned by complainant Kerin found distinguishable from the current situation.

45. Kerin believed the mask incident to be especially serious because it was beyond the control of the children. The bogeyman was made real and frightening. It was scary because the kids had no control.

46. In order for an intervention to be proper, it is necessary for the intervention to be approved by a senior psychologist and other team members. The mask incident was done outside of any treatment plan and had not been sanctioned by anyone as being germane to a therapeutic program.

47. Although complainant expressed remorse to Kerin over frightening some of the children, he did not exhibit an understanding that his conduct was wrong or that his behavior should be brought into question. Complainant did not acknowledge that the incident was serious in view of a population of vulnerable, mentally ill children.

48. Complainant had received a corrective action on March 8, 1995 as the result of two patients having been left alone on the unit while complainant was in charge. (Exhibit 13.) Kerin was aware of this corrective action and gave it some consideration. However, Kerin concluded that the correct disciplinary action was termination based solely upon complainant's own statements, both written and oral, regarding the mask incident. He concluded that complainant did not comprehend the seriousness of his acts, would not accept the opinion of others, and was capable of committing a

similar act in the future. Kerin felt that he did not need anything besides complainant's own statements to justify imposing a disciplinary termination. Nor did he need to see the mask. Kerin testified that his decision would have been the same if all things were equal except that a mask had not been used.

49. Diane Igle, Nursing Service Administrator at Fort Logan for the past eleven years and certified at hearing as an expert in psychiatric nursing and the standards of practice that apply to nurses at Fort Logan, testified that the mask incident was inappropriate and potentially dangerous to a child such as D.K., who was not yet seven years-old and who had been diagnosed with PTSD. Igle testified that D.K. has a "horrible" history of physical and sexual abuse and is afraid of monsters. D.K. has scary dreams about monsters and did not know what was going to happen on July 22 and could consequently be expected to be terrified.

50. Igle reviewed the histories of Jonathan, Jackson and D.K. and deducted that subjecting them to the mask incident was "outrageously wrong" because they did not control the outcome. The mask incident would tend to make the children feel powerless and victimized.

51. Igle concluded that faking a telephone call to safety officers was not in compliance with nursing standards of practice because complainant, in his position, is expected to serve as a role model and to be truthful. When a safety officer is called, the children should be made to realize that help will come within two or three minutes. Contrary to being therapeutic, Igle testified that the mask incident was "quite anti-therapeutic".

52. By letter dated August 24, 1995, Kerin terminated the employment of David Cassidy, effective August 25, 1995. Kerin wrote:

I believe that your behavior was a gross violation of nursing standards of practice and judgment. Without warning and without clearing your actions with anyone else, you went about intentionally scaring at least five young mentally ill and vulnerable children who were placed in your care. This activity was done outside of any acceptable therapeutic context and was done without it having been cleared with the team. At one point, your fellow worker, Mark Collins, told you he did not think it was such a good idea to which you retorted, "I will take responsibility for this." Many of the children on your unit suffer from post traumatic stress disorder, abuse, and experience night terrors as part of their mentally ill presentation. Again, in view of this, your activity was totally unacceptable.

. . . .

I disagree that there is any similarity between what you did and the activities you discussed as mitigating circumstances. However, I investigated those "like activities" that you mentioned and found that they were done with team consent and with clear therapeutic and/or learning objectives. All of the other offenses you mentioned in your defense were also investigated by me.

I believe there were no performance problems regarding these that were not appropriately dealt with.

(Exhibit 2.)

53. Mary Adamson, as complainant's supervisor, was issued a corrective action by team leader Larry Styza for not telling complainant in plain terms to not use the Halloween mask to play a prank on Jackson. Adamson had no knowledge that complainant would do the same thing with D.K. Adamson testified that by the time she left the hospital at 9:00, she was under the impression that the idea had been discarded. She acknowledged that she should have instructed complainant precisely to not wear the mask.

54. Complainant filed a timely appeal of the disciplinary action.

DISCUSSION

In this *de novo* disciplinary proceeding, the burden is on the agency to prove by preponderant evidence that the acts or omissions on which the discipline was based occurred and that just cause exists for the discipline imposed. Department of Institutions v. Kinchen, 886 P.2d 700 (Colo. 1994). 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 essential facts are not in dispute. That which has been described as the "mask incident" occurred. Some of the patients of C-1 may have exaggerated some elements of the event, out of excitement and youth, but the story that came to light is not fiction.

Complainant submits that this is a case of overreaction by staff and management. He contends that his motives were good, that there is no record of permanent harm to the patients, that he was held to a higher standard than other employees under similar circumstances, that he was treated differently because he had made enemies among some staff members and supervisors by raising issues about certain policies and procedures, and that the mask incident is not much different from other patient activities that have taken place at Fort Logan. Complainant argues that his disciplinary termination represents a gross abuse of the

appointing authority's discretion.

Respondent contends that complainant's exercise of judgment was, and is, so poor that he still cannot see the wrongfulness of his conduct, or the potential consequences, but instead minimizes the seriousness of his acts. The administrative law judge agrees. There is sufficient evidence of record to sustain the conclusions of the appointing authority.

Despite efforts to characterize the mentally ill children as normal, by his own testimony complainant admits that it does not "take a lot to get these kids bouncing off the walls." Complainant, himself, testified that any type of change in their routine tends to elicit an anxious, hyperactive response.

Complainant chooses to believe that only two of the boys, D.K. and Carlos, were frightened, describing the others as hyperactive. While complainant testified that, in all but two of the children, what he saw was hyperactive behavior and not fright, he also conceded that sometimes it is difficult to distinguish between hyperactivity and a demonstration of fright. More than two of the boys communicated their fears to other staff members.

Complainant likens his conduct of July 22, 1995 to approved activities such as night hikes, dressing in costumes for Halloween, and taking the children through a "haunted house" on the premises of Fort Logan. Yet these activities were conducted in a controlled environment for a therapeutic purpose, the children knew in advance what was going to happen, the activities were approved by the treatment team, and only suitable patients were selected to take part in a particular activity. The children were not forced into participation.

The administrative law judge must give substantial weight to the testimony of two experts in the field, who presented evidence that complainant's conduct was improper and risky to the successful treatment of the patients and violated standard nursing practices.

Other staff members, experienced in the treatment of mentally ill children, joined in the opinion of the appointing authority. No one besides complainant testified that the mask incident was not a serious matter.

Complainant presented evidence of numerous occasions where he disagreed with peers and supervisors over various policies and procedures that were implemented at Fort Logan, attempting to show that the mask incident was blown out of proportion because some people wanted to get rid of him. Yet, on the various issues, he also had supporters, depending upon the concern rather than a personality.

The appointing authority based his decision primarily on complainant's written and oral admissions. He did not tailor his

professional judgment to suit a particular outcome. He was able to delineate the nature of the problem and supply the rationale for his action.

The appointing authority took complainant's statements from the predisciplinary meeting and personally investigated complainant's allegations of dissimilar treatment. The weight of the evidence supports the appointing authority's findings that the other incidents were not similar to the mask incident and that the appropriate action was taken in those cases.

Complainant made a terrible mistake. In the words of Diane Igle, he "messed with the minds" of mentally ill children who had been placed in a safe, controlled environment for the purpose of mental health treatment. This record supports a finding that the discipline imposed was within the realm of available alternatives. Rule R8-3-3(A), 4 Code Colo. Reg. 801-1.

This is not a case where an award of attorney fees and costs can be justified under § 24-50-125.5, C.R.S. of the State Personnel System Act.

CONCLUSIONS OF LAW

1. Respondent's action was not arbitrary, capricious or contrary to rule or law.
2. The discipline imposed was within the range of alternatives available to the appointing authority.
3. There was just cause for the disciplinary termination.
4. There was no evidence that complainant failed to mitigate his damages.
5. Neither party is entitled to an award of attorney fees and costs.

ORDER

The action of the respondent is affirmed. Complainant's appeal is dismissed with prejudice.

DATED this _____ day of
March, 1996, at
Denver, Colorado.

ROBERT W. THOMPSON, JR.
Administrative Law Judge

CERTIFICATE OF MAILING

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

James R. Gilsdorf
Attorney at Law
1390 Logan Street, Suite 402
Denver, CO 80203

and in the interagency mail, addressed as follows:

Stacy L. Worthington
Assistant Attorney General
State Services Section
1525 Sherman Street, 5th Floor
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