

**STATE PERSONNEL BOARD, STATE OF COLORADO**

Case No. 823B087

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**INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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PRISCILLA A. LEDBURY,

Complainant,

vs.

DEPARTMENT OF HIGHER EDUCATION,  
UNIVERSITY OF COLORADO HEALTH SCIENCES CENTER,

Respondent.

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THIS MATTER came on for hearing before Administrative Law Judge Robert W. Thompson, Jr. on April 20, 1999. Respondent was represented by Senior Assistant University Counsel Stephen Zweck-Bronner. Complainant was represented by Vonda Hall, Attorney at Law.

The parties agreed that the essential facts were not in dispute and that the facts could be admitted into evidence upon a stipulation of the parties. Consequently, it was agreed that this case would be decided on the submission of legal briefs, inclusive of stipulated facts.

Complainant's Reply Brief, the conclusive pleading, was filed on July 28, 1999, constituting the conclusion of the hearing.

**MATTER APPEALED**

823B087

Complainant alleges that respondent violated the terms of a settlement agreement. For the reasons set forth below, complainant's appeal is denied.

### **ISSUE**

Whether respondent violated the terms of the settlement agreement entered into on July 18, 1983 to resolve a prior appeal by complainant before the State Personnel Board.

### **PRELIMINARY MATTERS**

Complainant filed a Petition for Hearing with the State Personnel Board requesting a discretionary hearing and alleging that respondent did not comply with the terms of a settlement agreement. See current Board Rule R-8-18, 4 Code Colo. Reg. 801-1, which is identical to the rule in effect at the time this action was filed. On February 18, 1999, the Board granted complainant's Petition for Hearing.

### **STIPULATIONS OF FACT**

The following facts were submitted by the parties as written stipulations. Stipulated facts are conclusive upon the parties and the tribunal. *Faught v. State*, 319 N.E. 2d 843, 846-47 (Ind. App. 1974).

Included with the factual stipulations were four attachments marked individually as Attachments A, B, C, and D. The attachments are received into evidence as stipulated Exhibits A, B, C and D.

1. Complainant Priscilla A. Ledbury ("Complainant") began

employment with Respondent, University of Colorado Health Sciences Center ("UCHSC"), on or about September 5, 1972.

2. At all times relevant to this case, Complainant was a certified employee employed by the Respondent.

3. On July 18, 1983, the parties entered into a settlement agreement in resolution of State Personnel Board Case Nos. 823-B76, 112, 114, 136, *et al.*, *Priscilla Ledbury v. University of Colorado Health Sciences Center*. A copy of the settlement agreement is attached hereto as Attachment A and incorporated herein. As a result of the settlement agreement the case was dismissed with prejudice. A copy of the dismissal order is attached hereto as Attachment B and incorporated herein.

4. The settlement agreement constituted a valid and legally enforceable contract.

5. The settlement agreement provided, among other things, that "Ledbury will be paid at the Researcher IV level through April 30, 1983, and will receive pay at the Researcher III level from that date forward." Attachment A, p.3.

6. Subsequent to entering into the settlement agreement, Complainant was assigned to a position as a Researcher III, under the supervision of Dr. John Lehman. She held this position until June 30, 1985.

7. On July 1, 1985, Complainant transferred to a position under the supervision of Dr. David Talmadge at the Webb Waring Institute, Department of Immunology, as Researcher III.

8. Beginning on July 22, 1986, effective July 1, 1986, Complainant was offered a position in the Department of Medicine-Gastroenterology, but the position was abolished before Complainant was transferred to the department.

9. On October 1, 1986, because of the elimination of Complainant's position at Web Waring, the University transferred Complainant to a vacant Administrative Officer II position in the School of Medicine Animal Resource Center at the same grade, step, and salary.

10. On June 15, 1992, Complainant transferred to Education Support Services as an Administrative Officer II.

11. On September 1, 1993, certain job classes underwent job title conversions as a result of Phase I of the System wide Classification Study initiated by the State Department of Personnel. The Phase I conversion resulted in Complainant's position being changed from an Administrative Officer II to an Administrative Program Specialist II, at the same pay, grade, step, and salary. Phase II of the Classification Study determined the compatibility of each job title and its actual duties. Each position in the personnel system was reviewed to decide its proper classification.

12. In all of the positions described in paragraphs 6-11, *supra*, Complainant's salary remained at the Researcher III level.

13. In September of 1994, Complainant was advised that her job classification title was being changed to Accounting Technician III, effective January 1, 1995. Complainant was given the opportunity to challenge the classification before the

classification went before the panel for review. Complainant challenged the classification, but the initial Department of Personnel panel review resulted in the same classification. On November 7, 1994, Complainant was advised of her appeal rights.

14. As a result of the system wide revision of the classification system, the classification of Researcher III (A3812X) was converted to Life/Social Science Researcher/Scientist II (H3H3XX), effective January 1, 1995. The compensation for the classification is at grade 87.

15. As a result of the maintenance study, the Complainant's classification was changed to Accounting Technician III, compensated at grade 73. On January 1, 1995, Complainant was reclassified from an Administrative Specialist II at grade 87, step 7, to an Accounting Technician III, at grade 73, step 8. Complainant did not suffer a reduction in salary with this reclassification because a mandatory save pay provision was included in the reallocation. On January 30, 1995, the Director's decision was issued on her appeal of the Phase II decision. The Director and panel sustained the classification of the position as Accounting Technician III.

16. As a consequence of the 1995 statutory "save-pay" provision, see section 24-50-107, 10B C.R.S. (1995 Cum. Supp.), the downgrading of the Complainant's position did not result in the Complainant receiving a lower salary than the Researcher III-Life/Social Science Researcher/Scientist II until the salary survey increases were implemented on July 1, 1995, for that classification.

17. It is uncontroverted that beginning July 1, 1995, and

continuing through Complainant's date of retirement, Respondent has not paid Complainant at the Researcher III, now Life/Social Science Researcher/Scientist II, level.

18. After the reallocation of Complainant's position, Office of Education Support Services reorganized into two separate divisions.

In the departmental reorganization process, the Associate Director's position was abolished and the duties were delegated to other employees. This restructuring required additional review of four positions in the Department. Complainant's position was one of those four positions reviewed. Because of the added duties, Complainant and her supervisor felt she should be re-allocated to a Budget Analyst I or Administrative Program Specialist III. Complainant requested an evaluation of her position which resulted in a review by the State Department of Personnel classification panel on December 21, 1995.

19. The classification panel considered Complainant's new Position Description Questionnaire ("PDQ"), Class Series Descriptions for Administrative Program Specialist, Budget Analyst, and Program Assistant. The panel concluded Complainant's new position required her reclassification from an Accounting Technician III, grade 75, step 8, to a Program Assistant I, grade 77, step 8.

20. On January 11, 1996, Complainant was advised of the reallocation of her position from Accounting Technician III to Program Assistant I, and her appeal rights. Complainant disagreed with the classification panel's decision, and on January 22, 1996, appealed to Andre Pettigrew, the Executive Director of the State Department of Personnel.

21. Complainant met with Jody Webb, Assistant Chancellor for Business Services on January 18, 1996, to discuss the 1983 agreement. After the meeting, Mr. Webb wrote a memorandum dated January 22, 1996, to Complainant, stating his disagreement with Complainant's interpretation of the 1983 agreement.

22. On February 1, 1996, Complainant's job title and pay grade changed to Program Assistant I, grade 77, step 8, an increase of two pay grades over the Accounting Technician III position. Complainant appealed the classification decision to the State Personnel Director. On April 22, 1996, the Director issued his decision on the appeal. His decision upheld the Program Assistant I classification.

23. By letter dated February 6, 1996, Complainant sent a letter to Chancellor Vincent Fulginiti relating to the implementation of the settlement agreement. On February 14, 1996, Chancellor Fulginiti replied to Complainant's February 6, 1996 letter. Copies of the letters are attached hereto as Attachments C and D.

### **DISCUSSION**

In an appeal of an administrative action, unlike a disciplinary proceeding, the complainant bears the burden of going forward with the evidence and proving by a preponderance that the action of the respondent was arbitrary, capricious or contrary to rule or law. *Renteria v. Department of Personnel*, 811 P.2d 797 (Colo. 1991). See also *Department of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994). The Board may reverse respondent's decision only if the action is found arbitrary, capricious or contrary to rule or law. § 24-50-103(6), C.R.S.

I.

Complainant indicates that the parties entered into the subject settlement agreement in order to resolve a pending case before the State Personnel Board, and the agreement provides that it is "binding upon the heirs, successors, assigns and agents of the parties," then argues that the terms of the agreement and respondent's obligations are clear, namely that complainant be placed in the position of Researcher III or an equivalent position and that her salary be maintained at that level from April 30, 1983 forward. Complainant argues that when the language of a contract is clear, the contract is to be enforced as written, relying on *Radiology Professional Corp. V. Trinidad Area Health Ass'n*, 577 P.2d 748 (Colo. 1978).

Complainant argues that the intent of the parties in entering into the contract can be seen by their conduct prior to the present controversy. Complainant asserts that respondent consistently placed her in positions consistent with its obligations as set forth in the settlement agreement until the system maintenance study, which resulted in complainant's downgrade. Complainant argues that the fact that her position was reclassified did not abrogate the obligations of respondent under the agreement. Complainant asserts that respondent cannot unilaterally modify the contract.

II.

Respondent asserts that the appropriate standard of review is that the Chancellor's interpretation of the settlement agreement cannot be reversed or modified unless it is found to be arbitrary, capricious or contrary to rule or law. Respondent asserts that

complainant has the burden of proof to meet that standard of review. Respondent contends that the Chancellor's decision was not arbitrary, capricious or contrary to rule or law.

Respondent argues that complainant's interpretation of the agreement is not supported by fact or law, and that she bases her interpretation on one sentence quoted in isolation. Respondent states that the entire agreement must be examined, relying on *Kuta v. Joint District No. 50(J)*, 799 P.2d 379 (Colo. 1990).

It appears, though it is not totally clear, that respondent agrees with complainant that the agreement is clear and not ambiguous. Respondent argues that if complainant's classification had gone to a higher level she would not be arguing that she must be paid at the rate of a Researcher III. Respondent also argues that the conduct of the parties indicates that the intent of the agreement was not the same as that asserted by complainant.

Respondent argues that complainant's interpretation of the settlement agreement would render the agreement void and contrary to law. Respondent states that as a state employee complainant's employment is governed by the State Personnel System, inclusive of the principle that positions are classified and paid based upon the duties assigned, yet a temporary deviation from this principle seems to have been built into the settlement agreement. Finally, respondent argues that complainant received the appropriate due process during the reallocation process, which is not at issue here.

### III.

The settlement agreement is a valid and legally enforceable

contract. Stipulation #4. The question before the Board is whether respondent breached the contract when complainant's position was reclassified under the state personnel classification system. The Chancellor's opinion in this regard is not determinative. Determination of the effect of a written document is a matter of law. *Radiology Professional Corp. V. Trinidad Area Health Ass'n*, 577 P.2d 748 (Colo. 1978).

After a considered review of the submissions of the parties, inclusive of the settlement agreement (Exhibit A), I conclude that the settlement agreement is unambiguous and fully integrated. Accordingly, the intent of the parties must be ascertained from the language contained in the settlement agreement. Even if it were determined that the agreement was ambiguous such that it would be proper to look at the conduct of the parties in ascertaining their intent, the outcome would be the same. *See Tucker v. Ellbogen*, 793 P.2d 592 (Colo. App. 1989).

When construing a contract, the entire agreement must be looked at and meaning given to all of its aspects. *Kuta v. Joint District No. 50(J)*, 799 P.2d 379 (Colo. 1990). Courts must be careful not to determine the intent by considering language in isolation when other relevant provisions cast doubt upon that interpretation. *In re Kettering's Estate*, 376 P.2d 983, 986 (Colo. 1962).

The disputed language arises from the obligations of respondent set forth in the settlement agreement. The agreement was entered into effective July 18, 1983. Complainant was to be placed into a Researcher III position effective July 19, 1983. While complainant was to be paid at the Researcher IV level through April 30, 1983, and "receive pay at the Researcher III level from that date forward," it is not stated what, if any, duties complainant was performing between April 30, 1983 and July 19, 1983.

The agreement provides that after six months, and upon acceptable performance, complainant would continue in the Researcher III position or an equivalent position. Significantly, the agreement provides that after six months of satisfactory performance, respondent would review the position to see if the duties warranted movement from the Researcher III to Research IV level. If the intent of the parties was that the position could be reclassified to a different level at the end of six months, it is illogical to conclude that the parties' intention was that the position must remain at the same level thereafter. The agreement reflects that complainant was to be paid at the Researcher III level after April 30, 1983, that she would be placed in a Researcher III position effective July 19, 1983, and that after six months of satisfactory performance her classification could change.

Overall, the logical interpretation of the plain terms of the settlement agreement reflects that respondent's obligations were set out for the six months following the agreement. The parties could not have intended to guarantee complainant a specific salary for the rest of her career. The language "from that date forward" is interpreted to reflect the change in pay after April 30, 1983, not to literally mean forever. Similarly, the obligation that at the end of the six months complainant would remain in her position or an equivalent one arose at the end of the six-month period. It is not an obligation of respondent to keep complainant in her position or an equivalent one in perpetuity. The intent could not sensibly have been to guarantee that complainant would never be disciplined or laid off in appropriate circumstances.

The purpose of the agreement was to resolve the appeal that was then pending. The Board's duty now is to interpret the contract in

a manner that effectuates the manifest intention of the parties at the time the contract was signed. *Neves v. Potter*, 769 P.2d 1047 (Colo. 1989). Complainant's sole obligation was to withdraw her appeal, which she did. The agreement cannot reasonably be interpreted as being meant to control complainant's employment for the rest of her career.

In conclusion, complainant has not established by a preponderance of the evidence that respondent failed to comply with the terms of the settlement agreement or that respondent's actions were otherwise arbitrary, capricious or contrary to rule or law.

This is not a proper case for an award of attorney fees and costs under § 24-50-125.5, C.R.S. of the State Personnel System Act and R8-38, 4 Code Colo. Reg. 801.

#### **CONCLUSIONS OF LAW**

Respondent did not violate the terms of the settlement agreement entered into on July 18, 1983 to resolve a prior appeal by complainant before the State Personnel Board.

#### **ORDER**

Complainant's appeal is denied. The appeal is dismissed with prejudice.

DATED this \_\_\_\_\_ day of  
August, 1999, at  
Denver, Colorado.

\_\_\_\_\_  
Robert W. Thompson, Jr.  
Administrative Law Judge

## **NOTICE OF APPEAL RIGHTS**

### EACH PARTY HAS THE FOLLOWING RIGHTS

1. To abide by the decision of the Administrative Law Judge ("ALJ").
  
2. To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is mailed to the parties. Section 24-4-105(15), C.R.S. Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is mailed to the parties. The notice of appeal must be received by the Board no later than the thirty (30) calendar day deadline. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990); Sections 24-4-105(14) and (15), C.R.S.; Rule R-8-58, 4 Code of Colo. Reg. 801. If 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).

## **PETITION FOR RECONSIDERATION**

A petition for reconsideration of the decision of the ALJ may be filed within 5 calendar days after receipt of the decision of the ALJ. The petition for reconsideration must allege an oversight or misapprehension by the ALJ. The filing of a petition for reconsideration does not extend the thirty calendar day deadline, described above, for filing a notice of appeal of the decision of the ALJ.

## **RECORD ON APPEAL**

The party appealing the decision of the ALJ must pay the cost to prepare the record on appeal. The fee to prepare the record on appeal is **\$50.00** (exclusive of any transcription cost). Payment of the preparation fee

may be made either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. To be certified as part of the record, an original transcript must be prepared by a disinterested, recognized transcriber and filed with the Board within 45 days of the date of the designation of record. For additional information contact the State Personnel Board office at (303) 894-2136.

### **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 R-8-64, 4 CCR 801.

### **ORAL ARGUMENT ON APPEAL**

A request for oral argument must be filed with the Board on or before the date a party's brief is due. Rule R-8-66, 4 CCR 801. Requests for oral argument are seldom granted.

**CERTIFICATE OF MAILING**

This is to certify that on the \_\_\_\_ day of August, 1999, I placed true copies of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** in the United States mail, postage prepaid, addressed as follows:

Vonda G. Hall  
Attorney at Law  
1145 Bannock Street  
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and in the interagency mail, addressed as follows:

Stephen Zweck-Bronner  
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