

**STATE PERSONNEL BOARD, STATE OF COLORADO**  
Case No. 912B112R

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**INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**  
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DAVID H. LAWTON,

Complainant,

vs.

DEPARTMENT OF LOCAL AFFAIRS,  
DIVISION OF LOCAL GOVERNMENT,

Respondent.

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The hearing in this matter was convened before Margot W. Jones, administrative law judge ("ALJ"), on December 13, 1994, and concluded on March 3, 1995. Complainant, David H. Lawton, appeared at the hearing and was represented by Vonda Hall, attorney at law. Respondent appeared through Robert C. Ripple, assistant attorney general.

Complainant testified in his own behalf and called the following witnesses to testify at hearing: Richard Hatten; Harold Knott; and David Holm. Respondent called the following witnesses to testify at hearing: Richard Worley; Jerry Smith; and Len Boulas.

Complainant's exhibits E, F, I, J, K1 through K11 and K13 through K17 and Respondent's exhibits 1 through 12 were admitted into evidence without objection. Complainant's exhibits L through Y were admitted into evidence pursuant to the parties' agreement following the conclusion of the December 13, 1994, hearing.

**MATTER APPEALED**

Complainant appeals Respondent's action in failing to appoint him to a position in the Office of Emergency Management ("OEM").

**ISSUE**

Whether a position in OEM was created with substantially the same duties and responsibilities as the position Complainant held prior to December 31, 1991, in Division of Disaster Emergency Services ("DODES"), Department of Public Safety ("DPS").

## PROCEDURAL MATTERS

This matter was remanded from the Colorado Court of Appeals on August 8, 1994. The Court's remand order directs that further proceedings be held consistent with Bardsley et. al. v. Colorado Department of Public Safety, 870 P.2d 641 (Colo. App. 1994). The Complainants in Bardsley, supra, were all former state certified employees of DODES, DPS. Complainant David Lawton was also a party in Bardsley, supra. Complainants asserted that their rights under the Colorado Constitution, art. XII, sec. 13(8), ("the Civil Service Amendment") were violated by abolishing DODES and transferring its functions to OEM, without allowing Complainants to transfer to the new positions in OEM.

The Court ruled in Bardsley, supra, that under the Civil Service Amendment a position may not be abolished and the incumbent employee terminated if a new position is created with substantially the same duties and responsibilities as the old position, but filled by another employee. These proceedings were held to determine this issue with regard to the position held by the Complainant David Lawton.

## PRELIMINARY MATTERS

1. Respondent moved to dismiss the appeal on the grounds that the appeal was not timely filed. Respondent maintained that on or about November 20, 1991, Complainant received notice that he would not have retention rights to the new OEM positions to be created in the Department of Local Affairs ("DOLA"). Respondent asserts that Complainant filed an appeal of that decision on December 27, 1991, in excess of ten days after receiving notice of the action appealed.

Complainant opposed the motion to dismiss on the grounds that he timely filed the appeal. Complainant asserts that the notice dated November 20, 1991, was notice that Complainant's position with DPS would be abolished on December 31, 1991. Complainant further asserts that the November 20 notice advised him how employees in OEM would be selected and that the re-entry provisions of the State Personnel Board ("the Board") rules applied to employees selected for positions in OEM.

Complainant maintains that on or after December 17, 1991, he learned that some DODES employees were offered positions in OEM. Complainant contends that it was at this time that he learned that he would not be offered a position in OEM. Complainant maintains that he did not receive written notice that he was not selected for an OEM position and that he also received no notice of his right to appeal that decision. Complainant finally asserts that when he discovered that he would not be appointed to a position in OEM, he filed a timely appeal on December 27, 1991.

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Complainant contends that because of Respondent's failure to afford him notice of his appeal rights under Renteria v. Department of Personnel, 811 P.2d 797 (Colo. 1991), the December 27, 1991, appeal must be deemed to be timely filed.

Respondent's motion to dismiss was denied on the grounds that the appeal was timely filed against DOLA on December 27, 1991. It was found that Complainant was not aware of his right of appeal nor was Complainant aware whether a cause of action existed for such an appeal until December 17, 1991, when Complainant learned that he was not offered a position in OEM.

2. At hearing on December 13, 1994, Complainant moved to compel the discovery of all position description questionnaires ("PDQ") and position descriptions ("PC-8") for all the positions created in OEM. Respondent produced all the PC-8's it deemed relevant. It maintained that it had no obligation to provide all PC-8's, but only those PC-8's which described positions for which Respondent deemed Complainant qualified and for which Complainant might assert retention rights. Respondent further maintained that PDQ's did not exist in 1992, and therefore none were provided.

On December 13, 1994, Respondent was ordered to produce all PC-8's and PDQ's for OEM positions. This information was deemed to be properly discoverable.

#### **FINDINGS OF FACTS**

1. Prior to December 31, 1991, Complainant, David H. Lawton, was the chief of operations and training in the DODES, DPS. Lawton's classification title was program administrator II. On or about November 20, 1991, Lawton was advised that pursuant to an executive order positions in DODES would be abolished on December 31, 1991. Lawton was further advised that emergency management duties would be transferred to the newly created OEM.

2. On or after December 17, 1991, Lawton learned that some DODES employees were offered positions in OEM. Lawton was not offered a position. Lawton remained employed by the State until December 31, 1991, at which time he retired from his position as a program administrator II, in lieu of being laid off. Prior to December 31, 1991, Lawton sought employment in DPS, DOLA and other agencies. He was not selected for any of the positions for which he applied. Lawton was certified in the positions of program administrator II, and disaster preparedness specialist I and II. In December, 1991, Lawton was the most senior employee classified as a program administrator II at DODES.

3. Prior to December 31, 1991, Richard Hatten was the director of DODES. There were three program administrator II positions

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under his supervision. The employees in these positions were in charge of the three primary sections of the division. Len Boulas was a program administrator II in charge of the local emergency preparedness section.<sup>1</sup> Lawton was a program administrator II in charge of the operations and training section. Jeff Everitt was a program administrator II in charge of the special programs section.

4. Prior to December 31, 1991, Lawton supervised 9 full time employees. He also supervised several military reservist assigned to DODES. Lawton performed the following duties.

#### GENERAL

As chief of the Operations and Training (O&T) Section of the Division of Disaster and Emergency Service (DODES) manages assigned missions and programs under broad policy guidance and direction from the Division Director. Designated as Acting Division Director during Director's absence with authority to activate the State Emergency Operations Center (EOC) and manage the activities of the State Recovery Team under Disaster emergency conditions.

25%Directly supervises and manages the operations of the O & T Section with responsibility for effective response to requests for emergency or disaster assistance from throughout the State, development of emergency preparedness capacity in local governments through training courses and seminars for emergency disaster response personnel, evaluation of emergency response capability through conduct of tests and exercises of plans and systems of State and local governments, and administration of assigned federal financial assistance programs.

25%Exercises management authority and control over resources such as funds, contracts, priorities, schedules and personnel in order to accomplish overall program objectives as specified in State legislation and as agreed to in the Federal Emergency Management Agency/State of Colorado Comprehensive Cooperative Agreement for the Emergency Management Assistance; Direction, Control and Warning; Emergency Management Training; and Radiological Instrumentation/ Maintenance and Calibration programs. Prepares program cost proposals, time/work units, target milestones, and develops and maintains a strict system to review, control and report on expenditures of allotted funds.

15%Supervises directly, functionally and technically a professional staff

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<sup>1</sup> A PC-8 for this position was not offered into evidence at hearing. Nor was their testimony at hearing concerning Boulas' duties as the DODES section chief for the local emergency preparedness section.

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and determines need and provides for their training and professional development.

10%Coordinates the operational response by the State during a disaster or emergency and monitors potential developing disasters and emergencies when possible. Includes serving as operations coordinator at the State EOC when activated; or management of the State Forward Command Post (FCP) when activated; to supervise and coordinate the activity of other agencies of State Government active at the scene of a disaster or emergency. Prepares and maintains operations logs and situation reports relative to the situation.

10%Performs a variety of professional liaison work in coordinating, reviewing and evaluating emergency management capability development of State, county and community governments and agencies, maintains contact with a wide range of senior level officials of the Federal Emergency Management Agency, other federal agencies (E.G. DOD, DOE, HHS, EPA), Colorado State and local governments and agencies. Acts as the major spokesman for assigned programs with industry, educational groups, State legislature, and in special presentations/ interviews with news media representatives, designed to foster greater exposure and understanding of comprehensive emergency management.

5%Maintains State EOC and FCP in a constant state of readiness to accomplish their emergency functions. Maintains current Standard Operating Procedures for activities of the State Response Team at both locations.

5%Maintains liaison with local governments and assists them in accomplishing their local programs and objectives. Assists local governments in the design, development, and construction of their EOC's.

2%Serves as DODES representative on various interagency groups coordinating State emergency management related programs. Coordinates the State program of disaster emergency preparedness in areas of responsibility with that of the Federal Government.

1%Proposes legislation to improve statutory definition of emergency management authorities, responsibilities and policies as need arises from experience.

2%Serves as the Division duty officer during off-duty periods to provide State point of contact for local jurisdictions seeking emergency assistance.

Performs other related work as assigned or required.<sup>2</sup>

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<sup>2</sup> The PC-8 admitted into evidence at hearing from which this

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5. Beginning January 1, 1992, by executive order, the State's disaster and emergency service functions were assigned to the new OEM. In January, 1992, the General Assembly adopted legislation creating OEM in DOLA, effective March 12, 1992.

6. Twenty positions were created in OEM to serve the State's disaster and emergency preparedness needs. This contrasted with the 30 employees who had performed these functions in DODES. DOLA organized OEM with an emphasis on service to local governments. OEM was also organized to perform disaster and emergency preparedness functions required by federal law in order for the section to continue to qualify to receive federal funding.

7. Hal Knott was the appointing authority for the new positions in OEM. He created the PC-8's for the new OEM positions. He based the OEM position descriptions on the position descriptions used for the DODES positions. Knott believed that even though the OEM job duties appeared to be the same as the description of duties for the DODES' positions, the OEM positions would function differently as a result of the orientation of OEM toward support of local government and away from a directive management style.

8. Jobs in OEM were announced only to the employees at DODES. DODES employees were expected to notify DOLA managers of the positions they were interested in. DODES employees were interviewed one time for the position or positions they were interested in at OEM.

9. In December, 1991, Len Boulas was selected to be director of OEM. The position of director is a program administrator II classification. Boulas had been classified as a program administrator II at DODES in charge of the local emergency preparedness section.

10. As director of OEM, Boulas' had the following job duties:

WORK PERFORMED

Manages the responsibilities and authorities of the Disaster Emergency Services section.

Non-Emergency Periods

1. Establishes long range developmental goals for improvement of the state's emergency management capabilities through review of historical hazard experience; intelligence information; university

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information was obtained, Complainant's exhibit J, was prepared in 1985.

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studies; federal statutes and rules and regulations; and evaluation of program status of state agencies, local units of government and private relief organizations.

2. Determines annual organizational goals, objectives and schedules, formulates policies and procedures, and decides priority of accomplishment. Derives budget justification for the legislature for federal and state funds required for operations of the section and those local units of government participating in programs supported by federal funds.
3. Manages performance under federal contracts, grants and cooperative agreements, including negotiation, administration and maintenance of execution records for audit.
4. Integrates the preparation, maintenance and updating of coordinated state government emergency operations plans, emergency response plans, obtaining the commitment of agency heads to internal training, preparation of operating procedures and agency participation in tests and exercises. Assures that plans identify and integrate capabilities of state agencies, private section and volunteer organizations; provide for notification, public warning and development of protective action advice to the public; and set forth preplanned communications support, and command and control procedures.
5. Develops and proposes state policy positions on proposed changes to federal disaster laws and rules and regulations, and on topics pertaining to state government's readiness to cope with major disasters, e.g. federal, state and local government sharing of disaster response and recovery costs. Promulgates rules and regulations governing the reimbursement of funds from the Disaster Emergency Fund to state agencies and political subdivisions.
6. Represents the state's interest to federal agencies assigned disaster program authorities, particularly the Federal Emergency Management Agency.
7. Derives standards for adequate local emergency management programs from the Disaster Emergency Act, supervises the preparation of model plans and operating procedures for local units of government through on-site assistance aids adaption of models to local conditions and capabilities.
8. Reviews and evaluates emergency management plans of local units of government and recommends to local officials actions to improve capabilities. Coordinates with organizations of local officials, e.g. Colorado Counties, Inc., Colorado Municipal League, Colorado Sheriff Association, to obtain assistance in promoting emergency management program development.

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9. Identifies, determines capabilities and provides coordination and assistance to volunteer organizations desiring to assist in emergency management planning and operations, e.g. Search and Rescue units, American Red Cross, Civil Air Patrol and others.
10. Performs contact visits and conducts meetings with the Office of the Governor, department and agency heads, members of the legislature and elected local government officials to advise on emergency management matters.
11. Supervises the development and execution of training, test and exercise, public education and public information programs for delivery from state level and through local units of government.
12. Ensures through duty officer and emergency notification system that local units of government can obtain state emergency response advice and assistance 24 hours a day, seven days a week.
13. Establishes, maintains in readiness and supervises operations at the state Emergency Operations Center during both routine and emergency periods. Ensures definition, development, acquisition and operation of communications support for EOC to function as the state command and coordination center for emergency response.

#### Emergency Periods

1. Organizes and executes an assessment of the extent of impacts and need for physical, advisory and/or financial assistance upon notification by local units of government or becoming aware from other source of existence of emergency conditions.
2. Maintains liaison with Governor and members of his staff when a disaster or emergency situation appears imminent to provide estimates of the situation and as much advance warning as possible.
3. Activates state Emergency Operations Center under emergency conditions, which requires assembly of State Response Team (coordinators from state agencies, Governor or representative on his decision, representatives from private sector and volunteer agencies), initiates damage assessment process, opens emergency communications channels and establishes direct link between the section and affected local government(s). Decides need to dispatch mobile command post and communications support to the scene. Directs operations of the State Response Team and provides advice to local government authorities on management of response operations. Evaluates information available and activates response resources based on priority needs.
4. Recommends issuance of disaster proclamation to \*governor if warranted and drafts Executive Orders for use of extraordinary powers of the Disaster Emergency Act as appropriate.

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5. Serves as chief advisor to the Disaster Emergency Council in direct support of the Chair, when convened.
6. Validates damage reports in terms of eligibility for state and federal physical and/or financial assistance for repair. Determines when local and state resources are inadequate and recommends Gubernatorial request for Presidential disaster declaration. Directs preparation of justification data.
7. Assists other state agencies in mitigation and recovery efforts and assures that the full resources of federal agencies contributing to these efforts are exploited.
8. Acts as state coordinating officer when recovery programs are authorized by Gubernatorial or Presidential decision, directing operations of the state recovery team (assistance program officers from appropriate state agencies).
11. OEM was divided into two sections under Boulas' direction, the local services section and the operations/special activities section. On January 1, 1992, Mike Reddi was placed in charge of the local services section and Jeff Everitt was placed in charge of the operations/special activities section.
12. Prior to December 31, 1991, Reddi was employed by DOLA. Reddi was selected for the OEM position because of his familiarity with DOLA's service orientation.
13. Prior to December 31, 1991, Everitt was employed by DODES, as a program administrator II, chief of the special programs section. Everitt remained in his position at OEM for 90 days or less, at which time his position was abolished. Everitt's OEM position was funded by the Health Department for a 90 day period for the purpose of easing the transition of some of DODES' programs to the Health Department. Everitt was selected for the OEM position by personnel of the Health Department. When Everitt's position was abolished in or around March, 1992, Everitt was employed in a permanent position by the Health Department. The position of the chief of operations/ special activities remains vacant at OEM.
14. Dave Holm, a disaster preparedness specialist in charge of the chemical stockpile emergency preparedness program ("CSEPP"), was employed by OEM in January, 1992. He was previously employed by DODES under Lawton's supervision as the senior operations and command officer. When Everitt vacated his position as chief of operations/special activities at OEM in March, 1992, Holm was assigned to supervise the section. Holm was not promoted to Everitt's position, he merely performed his assigned duties as a disaster preparedness specialist, while supervising the operations/special activities unit.

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15. The duties previously performed by Lawton as section chief at DODES were assigned to the OEM director and his support staff. Some of the duties performed by positions in Lawton's DODES section were spread among the two sections under Everitt and Reddi in OEM.

#### DISCUSSION

The Colorado Constitution, art. XII, section 13(8), the Civil Service Amendment, provides, in pertinent part, that,

Persons in the personnel system of the state shall hold their respective positions during efficient service or until reaching retirement age, as provided by law.

In Bardsley v. Department of Public Safety, supra, the Court reviewed the actions of the Governor, legislature, DPS and DOLA in 1991, with regard to the abolishment of DODES and creation of OEM.

The Court concluded that there may be a violation of the Civil Service Amendment if it is determined that the Complainants in that case were improperly separate from their positions. The Court held that the employees who performed the job duties to accomplish the DODES functions had the right to transfer to OEM positions which have substantially the same duties and responsibilities as the positions held by them at DODES. Citing, People ex. rel. Kelly v. Milliken, 74 Colo. 456, 223 P. 40 (1923); Tising v. State Personnel Board, 825 P.2d 1011 (Colo. App. 1991). The issue here is what constitutes substantially similar duties.

In People ex. rel. Kelly v. Milliken, supra, all the duties of the old position remained the same when a state certified position was recreated. The only change in that case was the position's class title from "inspector" to "supervisor". The Court held that under these circumstances the positions had substantially the same duties and the employees were entitled to be transferred to the new positions.

In Tising v. State Personnel Board, supra, a private security firm was found by the Court to perform a substantial part of the services previously performed by two of the Complainants in that case, who were public safety officers. The Court concluded that it was unnecessary to find that the private security guards performed all the services previously performed by the Complainants, in order to determine that the positions were substantially similar.

In this case, the testimony of Respondent's witnesses was that Complainant's position as the DODES chief of operations and training was abolished. It is Respondent's contention that many duties previously performed by Complainant were no longer

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performed and other duties were assigned to the numerous positions in OEM. Respondent maintained that there was no longer a need for a manager of the operations and training section, and that any necessary oversight and management functions of the section chief position at DODES were carried out by the OEM director.

Based on the testimony of the witnesses, it was difficult to determine which positions were assigned which duties. Respondent's witnesses testified that even though the OEM job descriptions appeared to be the same as the DODES job descriptions, in actuality, they were not the same because of DOLA's philosophical change in emergency management to a local service orientation.

Complainant testified that he performed, or supervised employees who performed, the job duties of most of the positions in OEM. He argued that because of this he should have been transferred to one of the OEM positions. Complainant further argued that he was certified in the program administrator II and disaster preparedness specialist I and II positions. He maintained that this entitled him to be transferred to one of these positions in OEM.

To the contrary, Complainant's supervision of employees performing duties does not give Complainant the right to transfer to those positions. An employee exercising supervision over a position is not performing substantially the same duties as the position over which supervision is exercised. Tising v. State Personnel Board, supra at 1014. Additionally, positions for which Complainant might have retention rights are not the same positions that Complainant has the right to transfer into under Bardsley, supra.

The ALJ relied on the duties described in the job descriptions offered into evidence at hearing in order to determine whether DOLA created a position in OEM which had substantially similar duties to those performed by Complainant in December, 1991. The testimony of the witnesses was sufficiently varied as it concerned the duties performed, that reference to the job descriptions was the most reliable way of determining the duties performed.

The description of duties for the OEM director position is substantially similar to the duties that Complainant performed at DODES. DODES was a division of a department in which Complainant was chief of a section. OEM is a section in DOLA. As a program administrator in charge of a section, Complainant's DODES duties were substantially the same as those described in the OEM director position description. Complainant, like the OEM director, had responsibility for emergency preparedness programs statewide, managed the division's performance under federal contracts, worked

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as a liaison and spokesperson for the division to federal, state and local agencies in matters pertaining to emergency preparedness, had budgetary responsibility, supervised personnel of his section, was responsible for activation of the Emergency Operations Center, proposed legislation, was responsible for public education and information and was responsible for staff development and training.

While a line by line comparison of the job descriptions of the two positions does not produce an exact parallel, the duties of these positions are sufficiently similar to warrant the conclusion that Complainant should have been permitted to transfer to the OEM director position because the duties of his DODES section chief position were substantially similar to the duties of the OEM director position.

It might be argued that Boulas' position as a section chief at DODES was also substantially similar to the position he held at OEM as director. However, no evidence relevant to this question was offered, despite the fact that the parties offered into evidence numerous PC-8's, PDQ and organizational charts reflecting DODES and OEM positions.

Based on the evidence presented at hearing, there is no basis for a finding that the personnel action from which this appeal arose provides justification for an award of attorney fees under 24-50-125.5, C.R.S. (1988 Repl. Vol. 10B).

#### **CONCLUSION OF LAW**

The position of director of OEM has substantially the same duties and responsibilities as the position held by Complainant prior to December 31, 1991, as chief of operations and training in DODES.

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**ORDER**

Respondent is ordered to appoint Complainant to the position of OEM director. Complainant shall be awarded all back pay and benefits, with the appropriate offset as provided by law, from March 12, 1992, to the date of his reinstatement.

DATED this 17th day of  
April, 1995, at  
Denver, CO.

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Margot W. Jones  
Administrative Law Judge

**CERTIFICATE OF MAILING**

This is to certify that on this 17th day of April, 1995, 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  
Colorado Association of Public Employees  
1390 Logan Street, Suite 402  
Denver, CO 80203

Neil L. Tillquist  
Assistant Attorney General  
Department of Law  
Legal Services Section  
1525 Sherman Street, 5th Fl.  
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 and advance the cost therefor. 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 - APPELLANT - 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**. The estimated cost to prepare the record on appeal in this case with a transcript is **\$828.00**. Payment of the estimated cost for the type of record requested on appeal must accompany the notice of appeal. If payment is not received at the time the notice of appeal is filed then no record will be issued. Payment 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. If the actual cost of preparing the record on appeal is more than the estimated cost paid by the appealing party, then the additional cost must be paid by the appealing party prior to the date the record on appeal is to be issued by the Board. If the actual cost of preparing the record on appeal is less than the estimated cost paid by the appealing party, then the difference will be refunded.

**BRIEFS ON APPEAL**

The opening brief of the appellant must be filed with the Board and mailed to the appellee within twenty calendar days after the date the Certificate of Record of Hearing Proceedings is mailed to the parties by the Board. The answer brief of the appellee must be filed with the Board and mailed to the appellant within 10 calendar days after the appellee receives the appellant's opening brief. An original and 7 copies of each brief must be filed with the Board. A brief cannot exceed 10 pages in length unless the Board orders otherwise. Briefs must be double spaced and on 8 1/2 inch by 11 inch paper only. Rule R10-10-5, 4 Code of Colo. Reg. 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 Code of Colo. Reg. 801-1. Requests for oral argument are seldom granted.

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**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 Code of Colo. Reg. 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.***

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