

**STATE PERSONNEL BOARD, STATE OF COLORADO**  
Case No. 95B067

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**INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**  
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WILLIAM JOHNSON,

Complainant,

vs.

DEPARTMENT OF HUMAN SERVICES,  
OFFICE OF DIRECT SERVICES,  
WHEAT RIDGE REGIONAL CENTER,

Respondent.  
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Hearing in this matter was convened on May 23, 1995, and concluded on August 9, 1995, in Denver before Administrative Law Judge ("ALJ") Margot W. Jones. Respondent appeared at hearing through Stacy Worthington, Assistant Attorney General. Complainant, William Johnson, was present at the hearing and represented by Randall C. Arp, Attorney at Law.

Respondent called the following employees of the Department of Human Services, Wheat Ridge Regional Center ("WRRC"), to testify at hearing: Donna Johnson; Wanda Gage; Ken Kaiser; Loretta Reed; Eddie Navarro; Don Weaver; and Marjorie Kahat. Respondent also called Officer Graydon Lee Houston and Detective James Vanderohe, employees of the Arvada Police Department, to testify at hearing.

Complainant testified in his own behalf and called the following WRRC employees to testify at hearing: Henry Sayles; Dennis DeLorey; Joeever Jackson; Mark Ortiz; and David Baldwin.

Respondent's exhibits 1 through 3, 5, 6, 10, 11, 22 and 23 were admitted into evidence without objection. Respondent's exhibits 8, 9 and 27 were admitted into evidence over objection.

Complainant's exhibits C through F were admitted into evidence without objection. Complainant's exhibit B was admitted into evidence over objection. Complainant's exhibit A was marked but was not admitted into evidence.

**MATTER APPEALED**

Complainant appeals the termination of his employment.

## **ISSUES**

1. Whether Complainant engaged in the conduct for which discipline was imposed.
2. Whether the conduct alleged to have occurred constitutes grounds for discipline.
3. Whether the decision to terminate Complainant's employment was arbitrary, capricious or contrary to rule or law.
4. Whether Respondent is entitled to an award of attorney fees and cost.

## **PRELIMINARY MATTERS**

1. Catherine Garcia, a business representative for the Colorado Federation of Public Employees, represented Complainant at the R8-3-3 meeting. She also prepared the appeal of Complainant's termination filed with the Board in this matter. She was subsequently advised by Complainant that he would not require her representation at hearing because Complainant retained legal counsel.

On February 10, 1995, Garcia was subpoenaed by Respondent to appear at hearing on February 13, 1995, as a witness for Respondent. On February 13, Garcia appeared at hearing with counsel for the Colorado Federation of Public Employees to move to quash the subpoena.

Garcia moved to quash the subpoena on the grounds that it was not personally served on her nor was it timely served. Garcia also argued in the motion that she could not be subpoenaed to testify because she was Complainant's representative of record.<sup>1</sup>

Respondent represented that Garcia may be called for impeachment or rebuttal testimony. Respondent opposed the motion to quash arguing that Garcia was present at the R8-3-3 meeting and that she may be called to testify about matters occurring at that meeting.

The motion was denied on the grounds that Garcia was properly served and could be required to appear and give rebuttal or impeachment testimony.

Garcia represented that she did not have authority to appear on

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<sup>1</sup>At hearing on February 13, 1995, Garcia withdrew this claim as a basis for moving to quash the subpoena because she was informed by Complainant that she would not be required to represent him.

Complainant's behalf at the February 13, hearing. She stated that she was aware that Complainant retained counsel for the purpose of representing him at the hearing. Garcia represented that she warned Complainant, that in the absence of an order continuing the February 13, hearing date, Complainant should appear at the hearing.

2. On May 23, 1995, Respondent moved to quash a subpoena served on the custodian of client medical records at WRRC on May 17, 1995. Complainant sought the production of D.G. medical records. The motion was granted on the grounds that client medical records are confidential pursuant to section 27-10.5-120 C.R.S. (1987 Repl. Vol. 6A) and section 13-90-107, C.R.S. (1989 Repl. Vol 11B).

#### **FINDINGS OF FACT**

1. Complainant, William Johnson ("Johnson"), was employed by WRRC from September, 1982, to October 24, 1994. In August and September, 1994, the time relevant to this appeal, Johnson worked at Garnet House caring for five developmentally disabled adults. Johnson worked alone at Garnet House on the night shift from 10:45 p.m. to 6:30 a.m. The appointing authority for Johnson's position was Marjorie Kahat ("Kahat"), Program Director for on-campus residential facilities.

2. One of the clients at Garnet House in September, 1994, was D.G. <sup>2</sup> D.G. has resided at WRRC for at least 15 years. D.G. is a male client who is very large and aggressive. He is not verbally communicative, however, he is ambulatory. D.G. engages in self abusive, abusive and compulsive behavior. D.G. has an obsession with food and he must be carefully watched and frequently restrained from leaving Garnet House in pursuit of food.

3. D.G. frequently injures himself while acting in an aggressive and compulsive manner. In the fall of 1994, staff members were accustomed to finding bruises and other injuries on D.G.'s abdomen, arms and legs. These injuries were believed to be caused by D.G. running into furniture and by staff members attempting to restrain D.G. by holding him by his upper arms. Bruising on D.G.'s body was also believed to have been enhanced by the fact that he was taking a new medication which had a side effect which made D.G. bruise more easily.

4. In August, 1994, D.G. exhibited unusual injuries. These injuries were not consistent with the injuries seen in the past caused by D.G. running into furniture or staff members restraining

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<sup>2</sup> The WRRC client's right to privacy is protected by referring to the client throughout this proceeding by his initials, D.G.

him by his upper arms. In order to pinpoint the cause of the injuries, a nurse was required to examine D.G.'s body for injuries at 8 a.m. and 8 p.m. each day.

5. At 8 p.m. on September 9, 1994, D.G. was examined by a nurse and no new injuries were noted.

6. Johnson worked at Garnet House on September 9, 1994, beginning at 10:45 p.m. Johnson wore a chain which dangled from his belt loop in the front and was attached to his keys at the end of the chain which was stuffed in his back pocket. The chain was approximately 10 to 12 inches long.

7. At 6:30 a.m. on September 10, 1994, Ken Kaiser and Henry Sayles came on duty at Garnet House. Kaiser arrived at work first and received a report from Johnson. Johnson reported that the night had been uneventful. Prior to Johnson's departure, Kaiser was present talking with Johnson when D.G. exited his room, walked past Kaiser and went to the restroom. Due to the lighting and Kaiser's vantage point, he did not observe anything unusual about D.G. at this time.

8. After Johnson left Garnet House at the end of his shift and D.G. returned to his room on September 10, 1994, at 6:30 a.m., Sayles remained posted outside of D.G.'s room waiting for him to get up and come to breakfast. Because of D.G.'s compulsive and aggressive behavior, Sayles was posted by his room to direct him to breakfast when he exited his room.

9. D.G. remained in his room until 8:00 a.m. when a nurse arrived to check his body for injuries. D.G. did not have contact with anyone from 6:30 a.m. to 8:00 a.m. while Sayles was posted outside of his door.

10. Donna Johnson checked D.G. for injuries at 8 a.m. on September 10, 1994. Donna Johnson observed that D.G. had an unusual injury on his neck and the back of his left shoulder. It appeared that D.G. was hit on the neck and shoulder from behind with a chain. The skin on D.G.'s neck and the back of his left shoulder was red and raised. The mark left by the object that D.G. was struck with left an impression on his skin of a chain link with a ring on the end.

11. Donna Johnson asked Kaiser to look at the marks on D.G. Kaiser told the nurse that the marks looked like they were made by the type of chain worn by William Johnson.

12. On September 10, 1994, Eddie Navarro, the Residential Director, and Don Weaver, Director of Quality Assurance, were advised that unusual marks were found on D.G. Navarro went to Garnet House at approximately 10 a.m. Navarro examined D.G. He

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searched Garnet House in an effort to locate any object which might have caused the type of injury suffered by D.G. Navarro spoke with the employees assigned to work at the house, including William Johnson, Sayles, Kaiser and Donna Johnson.

13. On September 12, Weaver began his investigation of the incident. Weaver reviewed documents and he spoke with staff members at Garnet House. When Weaver came to Garnet House to investigate, Kaiser reported to him his observation that D.G.'s injury appeared to have been made by the type of chain worn by William Johnson.

14. Word spread among the staff that D.G. may have been hit with a chain by a staff member. Loretta Reed works at Garnet House on the first shift from 6:30 a.m. to 2:30 p.m. Reed was not at work on September, 10, 1994, however, she was working on September 11. On that date, she observed D.G.'s injury. Reed made a point of observing staff members at Garnet House who might have an object on their person which could have caused D.G.'s injury.

15. On September 12, 1994, Reed observed Johnson at work at Garnet House wearing a chain, which was approximately 12 inches long with a ring on the end. The chain was attached to the front belt loop of Johnson's pants and the end was placed in Johnson's back pocket. Reed continued to observe staff members in contact with Garnet House's clients until September 15. Reed did not observe any other employee in possession of a chain of this type. Reed reported her observation of Johnson's chain to Kahat, Eddie Navarro and Don Weaver.

16. On or about September 11, 1994, Navarro met with Johnson and Catherine Garcia, Johnson's representative from the Colorado Federation of Public Employees. The meeting was held to discuss the injury to D.G. Johnson denied that he struck D.G. with a chain or any other object. On September 13, Navarro placed Johnson on administrative suspension. Navarro provided Kahat the information that was collected about the incident involving D.G. and requested that Kahat conduct a R8-3-3 meeting with Johnson.

17. On September 13, 1994, Graydon Houston, a police officer with the Arvada Police Department was assigned to investigate a complaint filed by managers at WRRC concerning suspected client abuse. Houston went to WRRC to investigate. He spoke with Don Weaver. While speaking with Weaver, Johnson came into Weaver's office. Houston questioned Johnson about the marks on D.G. Johnson reported to Houston that the evening of September 9 and 10 had been uneventful at Garnet House. Johnson denied that he owned a chain.

18. Houston went to Garnet House, inspected the premises and

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looked at the injury on D.G. Houston also spoke with staff members at Garnet House. Kaiser told Houston that Johnson wore a chain that could have caused the injury to D.G.

19. In light of the information provided by Kaiser, on September 13, Houston again asked Johnson if he owned a chain. This time Johnson told Houston that he used to own a chain but it was only two or three inches long and that he had gotten rid of the chain two or three weeks earlier.

20. Houston filed his report with the Arvada Police Department on September 20, 1994. A copy of the report was provided to Kahat.

21. On October 11, 1994, Kahat held an R8-3-3 meeting with Johnson. Present at the meeting were Kahat, Johnson and Catherine Garcia, Johnson's representative. At this meeting, Johnson reiterated his contention that the evening of September 9 and 10, 1994, had been uneventful. Johnson admitted that he owned a chain, but he explained that he lost the chain several weeks earlier.

22. At the R8-3-3, Kahat confronted Johnson with the fact that three co-workers reported seeing Johnson with a chain like the one that was believed to have caused the injury to D.G. Johnson responded that he believed people get used to seeing a person with an item and they believe that they saw the item on the person when they did not.

23. At the conclusion of the R8-3-3 meeting, Catherine Garcia asked to be allowed to search Garnet House. Kahat refused this request. Garcia also asked that Kahat review Johnson's personnel file, search behind the dryer at Garnet House and check Henry Sayles' time card. Kahat agreed to look into the areas raised by Garcia.

24. Kahat's review of Johnson's personnel file revealed that, in 1986, Johnson was disciplined for wilful misconduct. His personnel file further reflected that he received job performance ratings of standard or above. The review of Sayles' time card did not reveal information considered by Kahat. Kahat searched Garnet House at 6:30 a.m. in order to observe D.G. going to the bathroom. Kahat wanted to determine if she could observe D.G.'s left shoulder if she stood where Kaiser stood in the hall at Garnet House on September 10, 1994.

25. Following a review of the information gathered during the investigation, Kahat decided to terminate Johnson's employment effective October 24, 1994. Kahat concluded that termination of Johnson's employment was the appropriate disciplinary measure to impose because the information she received lead her to believe that Johnson abused D.G. by striking him with a chain. Kahat did

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not feel she could retain Johnson in the employ of WRRC since he had abused a client.

26. On September 8, 1994, a detective with the Arvada Police Department was assigned to this case. In furtherance of his investigation, the detective contacted Johnson by telephone on November 8, 1994. During that conversation, Johnson advised the detective that he was represented by Randall C. Arp, Attorney at Law.

27. On November 9, 1994, Johnson filed a timely appeal of his termination with the State Personnel Board ("Board"). On November 25, 1994, the parties were given notice that a hearing was scheduled to be held on December 27, 1994. On December 13, 1994, Respondent filed its prehearing statement. Respondent filed an amended prehearing statement on December 19, 1994. Complainant did not file a prehearing statement prior to the December 27, 1994, hearing date.

28. On December 19, 1994, Respondent moved to continue the December 27, 1994, hearing date. The basis of Respondent's motion was that Respondent's counsel did not learn of the hearing date until December 13, 1994, and that the appointing authority was unavailable to appear for hearing on December 27. On December 19, 1994, Respondent's motion was granted.

29. By order dated January 10, 1995, the hearing date was continued to February 13, 1995. Complainant did not file a prehearing statement between December 19, 1994, and February 13, 1995.

30. On February 10, 1995, Catherine Garcia was subpoenaed to appear as a witness for Respondent. At hearing on February 13, 1995, Garcia appeared with counsel for the Colorado Federation of Public Employees. The appearance was for the limited purpose of moving to quash the subpoena served on Garcia.

31. Respondent appeared at the February 13, 1995, hearing at 9:00 a.m. prepared to proceed.

32. Neither Complainant nor counsel appeared at the hearing. On February 13, 1995, after the hearing was convened and the appeal dismissed as abandoned, Randall C. Arp filed an entry of appearance in this case on behalf of Complainant. At the same time, on February 13, Arp also filed a motion to continue the hearing date.

33. At hearing on February 13, 1995, Garcia stated that she had not withdrawn as Complainant's representative, however, she had been informed by Johnson that he no longer needed her to represent him. Garcia spoke to Johnson prior to the February 13, hearing

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date and warned him that he needed to obtain a continuance of the hearing date or appear at the hearing.

34. On February 13, 1995, Garcia moved to continue the hearing date. The motion was denied. Garcia moved to withdraw as the representative of record in this matter and this motion was granted.

35. Respondent moved to deem Complainant's appeal abandoned and to dismiss the appeal with prejudice. Respondent argued that Complainant had not filed a prehearing statement and failed to appear at hearing, and therefore the appeal should be dismissed as abandoned. An order was entered on the record on February 13, and confirmed in writing on February 16, 1995, granting Respondent's motion. The appeal was deemed abandoned and dismissed with prejudice.

36. On March 7, 1995, Complainant petitioned for reconsideration of the dismissal order. Complainant contended that the order should be vacated and the appeal reinstated because Complainant had a dental problem on February 13, 1995, and could not appear at hearing. Complainant further contended in support of the petition that Complainant was not given proper notice of the February 13, hearing date and that Complainant's counsel, Arp, did not have notice of the hearing until February 10, 1994. Finally, Complainant argued that Respondent's action serving a subpoena on Catherine Garcia to appear as a witness at the February 13, hearing placed Complainant's representation in doubt and contributed to the confusion surrounding the hearing date.

37. Respondent objected to the petition on March 10, 1995. Respondent contended that Complainant failed to state good cause for his action in failing to appear at the February 13, hearing and the petition should be denied.

38. Complainant's Petition for Reconsideration was granted on March 21, 1995, and the appeal was reinstated. On April 4, 1995, the parties were given notice of a hearing to be held on May 23, 1995.

#### **DISCUSSION**

Certified state employees have a protected property interest in their employment and the burden is on Respondent in a disciplinary proceeding to prove by a preponderance of the evidence that the acts or omissions on which the discipline was based occurred and just cause exists for the discipline imposed. Department of Institutions v. Kinchen, 886 P.2d 700 (Colo. 1994); Section 24-4-105 (7), C.R.S. (1988 Repl. Vol. 10A). The board may reverse or modify the action of the appointing authority only if such action is found to have been taken arbitrarily, capriciously or in

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violation of rule or law. Section 24-50-103 (6), C.R.S. (1988 Repl. Vol. 10B).

The arbitrary and capricious exercise of discretion can arise in three ways: 1) by neglecting or refusing to procure evidence; 2) by failing to give candid consideration to the evidence; and 3) by exercising discretion based on the evidence in such a way that reasonable people must reach a contrary conclusion. Van de Vegt v. Board of Commissioners, 55 P.2d 703, 705 (Colo. 1936).

This case rests in part on credibility determinations. When there is conflicting testimony, as here, the credibility of witnesses and the weight to be given their testimony is within the province of the administrative law judge. Charnes v. Lobato, 743 P.2d 27 (Colo. 1987); Barrett v. University of Colorado Health Science Center, 851 P.2d 258 (Colo. App. 1993).

Determinations of fact in an administrative proceeding can rest on hearsay evidence where that evidence is shown to have indicia of reliability. 117th Associates v. Jefferson County, 811 P.2d 461 (Colo. App. 1991); Industrial Claims Appeals Office v. Flower Stop Marketing Corp., 782 P.2d 13 (Colo. 1989).

Respondent argues that it sustained its burden of proof to establish that Complainant engaged in the acts for which discipline was imposed and that the decision to terminate his employment was neither arbitrary, capricious or contrary to rule or law. Respondent argues that the action of the agency should be affirmed and that it should be awarded attorney fees and cost, including the cost associated with Complainant's failure to appear at the hearing on February 13, 1995.

Complainant contends that Respondent's case rest upon the contention that Complainant had sole access to D.G. and that Complainant was seen with the type of key chain which could have caused the marks on his neck and shoulder. Complainant argues that Respondent's case fails because it was established that Complainant did not have sole access to D.G. nor was he the only employee having access to D.G. that owned and wore a chain.

Complainant contends that the evidence established that D.G. was checked by a nurse at 8:00 p.m. on September 9, 1994, that Complainant did not come on duty until 10:45 p.m. on September 9, that he left work at 6:30 a.m. on September 10, and that D.G. was checked again at 8:00 a.m. It is argued that this shows Complainant was not the only staff member with access to D.G., since D.G. was at Garnet House under the care of other staff members on September 9, from 8:00 p.m. to 10:45 p.m. and on September 10, from 6:30 a.m. to 8:00 a.m.

Complainant further argues that his witness, Mark Ortiz, who

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worked on the third shift at Garnet House testified that he owned a chain that he wore on his pants belt loop. Ortiz testified that he did not work on September 9, 1994, and that he did not hit D.G.

Complainant argued that Ortiz' testimony that he also owned a chain established that Respondent's witnesses' testimony, that Complainant was the only employee that owned a chain, was not credible.

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Contrary to Complainant's contentions, the evidence established that Complainant engaged in the conduct for which discipline was imposed and that termination of his employment was an appropriate sanction.

The evidence presented at hearing established that Complainant was known to his co-workers, Henry Sayles, Ken Kaiser and Loretta Reed, to own a chain of approximately 10 to 18 inches in length and Complainant was known to wear the chain regularly. Kaiser and Sayles testified that they observed Complainant wearing the chain on his pants on September 10, when they relieved him from duty at 6:30 a.m. Kaiser testified that he observed Complainant with the chain on his pants with keys attached and without the keys attached to it.

Loretta Reed testified that she conducted her own investigation when she returned to work on September 11, and learned of the marks on D.G.'s shoulder. Reed testified that she closely observed people coming into Garnet House. She testified that on September 12, she observed Complainant in Garnet House with a chain. She testified that she continued to watch people coming into Garnet House until September 15, and no one else had a chain.

The evidence further established that Complainant was the only employee who was on duty at Garnet House during a prolonged period of time, from 10:45 p.m. to 6:30 a.m. on September 9 and 10, with access to D.G. The evidence established that a body check was performed on D.G. at 8:00 p.m. September 9, and again at 8:00 a.m. on September 10. The evidence established that during the body check at 8:00 p.m. the nurse noted no new or unusual marks, and at 8:00 a.m. the mark which gave rise to this investigation was apparent. The evidence further established that, other than going to the bathroom at 6:30 a.m., D.G. did not leave his bedroom after Johnson left Garnet House, and Sayles and Kaiser came on duty.

The evidence further established that on September 13, 1994, when Complainant was questioned about the events of September 9 and 10, 1994, he told Officer Houston that he did not own a chain of the type that made the marks on D.G. When Officer Houston inquired a second time on September 13, about whether Complainant owned a chain, Complainant explained that he owned a chain but it was only two or three inches long and he had gotten rid of the chain two or three weeks earlier. On October 11, 1994, at the R8-3-3 meeting when Complainant was asked about the chain he explained that he owned a chain but he lost the chain two weeks prior to the September 9, incident.

While there is no direct evidence that Complainant was observed striking D.G. with a chain, there was adequate circumstantial evidence upon which to conclude that Complainant was responsible for the injury to D.G. Complainant had the opportunity during his

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shift on September 9 and 10, to strike D.G. with a chain. Complainant was observed to have a chain 8 to 10 inches long with him on September 10 and 12.

The decision to terminate Complainant's employment was neither arbitrary, capricious or contrary to rule or law. It was the choice of a sanction available to a reasonable and prudent administrator. While Complainant's employment record established that he was disciplined eight years earlier and received standard or better performance reports, the seriousness of the action shown to have occurred in this case warrants termination of Complainant's employment.

D.G. was described during testimony as a helpless individual who cannot verbally communicate and suffers from a severe developmental disability. The injury inflicted by Complainant with the chain was abusive. Respondent's refusal to tolerate this type of treatment of clients by staff is an appropriate exercise of managerial discretion.

Respondent seeks an award of attorney fees and costs. It cannot be found that Complainant's appeal was instituted frivolously, in bad faith, maliciously or as a means of harassment entitling Respondent to an award of attorney fees and cost under section 24-50-125.5. C.R.S. (1988 repl. Vol 10B).

It can be found that Complainant's failure to appear at hearing on February 13, 1995, constituted inexcusable neglect justifying a limited award of attorney fees and cost under section 24-4-105(4) C.R.S. (1988 Repl. Vol. 10A).

Complainant represented in the Petition for Reconsideration that he had a dental appointment on February 13, 1995, however, there was no evidence to support his contention that he was prevented from appearing at the hearing or contacting the Board office on February 13, by telephone. Complainant contends that he did not receive notice of the February 13, hearing until February 8. However, the Board records reflected that the notice of hearing was sent to Complainant's representative of record, Catherine Garcia, on January 10, 1995.

Complainant's counsel represents that he did not receive notice of the hearing until February 10, when his services were retained by Complainant. Counsel represented that he was unavailable to appear at the hearing on February 13. Counsel had a duty to appear at the hearing or obtain an order continuing the hearing date. Counsel's failure to do so along with the other actions taken by Complainant or his representative prior to February 13, described above, constitutes inexcusable neglect.

Complainant is ordered to pay attorney fees for Respondent's

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counsel's appearance at the February 13, hearing and any witness fees paid to witnesses by Respondent for their appearance at the February 13, hearing. Complainant is further responsible for attorney fees and cost arising from the filing of Respondent's objection to Complainant's Petition for Reconsideration.

#### CONCLUSIONS OF LAW

1. Respondent established that Complainant engaged in the conduct for which discipline was imposed.
2. The conduct proven to have occurred justified the imposition of discipline.
3. The decision to terminate Complainant's employment was neither arbitrary, capricious or contrary to rule or law.
4. Respondent is entitled to an award of attorney fees and costs, under section 24-4-105(4), as a result of Complainant's inexcusable neglect in failing to appear at hearing on February 13, 1995.

#### ORDERS

1. The action of the Respondent is affirmed.
2. Respondent is awarded attorney fees and costs. Complainant is ordered to pay Respondent the witness fees paid to witnesses who were subpoenaed to appear at hearing on February 13, 1995. Complainant is further ordered to pay Respondent's attorney fees arising from Respondent's counsel's appearance at hearing on February 13, 1995, and attorney fees and costs incurred in preparing a response to the Petition for Reconsideration.
3. The appeal is dismissed with prejudice.

DATED this 25th day of  
September, 1995, at  
Denver, Colorado.

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Margot W. Jones  
Administrative Law Judge

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**CERTIFICATE OF MAILING**

This is to certify that on this 25th day of September, 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:

Randall C. Arp  
Attorney at Law  
2325 West 72nd Ave.  
Denver, CO 80221

Stacy L. Worthington  
Assistant Attorney General  
Department of Law  
Human Resources 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 **\$1242.00**. 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

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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.

**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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