

**STATE PERSONNEL BOARD, STATE OF COLORADO**

Consolidated Case No. 95B007

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**INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**  
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SHIRLEY G. HUGHES, CAROLYN CURRY, and ANN REEVERTS,

Complainants,

v.

DEPARTMENT OF HIGHER EDUCATION,  
UNIVERSITY OF COLORADO AT COLORADO SPRINGS,

Respondent.

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The hearing was convened on October 19, 1994, and concluded on December 5, 1994. Complainants Shirley Hughes, Carolyn Curry and Ann Reeverts were present at the hearing and represented by Ronald Gregson, attorney at law. Respondent appeared through Rosemary Augustine, senior assistant university counsel.

Complainants testified in their own behalf and called the following employees of the Department of Higher Education, University of Colorado at Colorado Springs ("University") to testify at hearing: Jim Daley, chairperson of the University budget committee; John Ormanowski, vice chancellor; Sue Allison; Debra Lee Ingalls-Nobels, director of financial aid; Joan McDaniels-Fairchild; Gloria Lawliss, administrative program specialists II; Danny Bristol, director of the bookstore, print shop and vending machines; Leslie Garner; Kay Anderson, program assistants; Richard Diecenza; Jeanne Knudson, administrative program specialists; Edward Paris, associate vice chancellor; Julianne Heintz, program assistant II; and Steve Ellis, University registrar. Complainant also called as a witness at hearing, Margaret Moramitsu, who is now retired from employment with the University. At hearing on October 24 and 26, 1994, the testimony of Complainants' witnesses Robert Patterson and Linda Bunnel Shade was taken via telephone. The testimony of Complainants' witness James T. Rothe was offered by deposition which was admitted into evidence as Complainants' exhibit AAA.

Respondent called the following employees of the University to testify at hearing: Ormanowski; Daley; Vickie Hilty, administrative program specialist II; Jan Tharp, director of affirmative action and diversity planning; Randy Coba, administrative program specialist III; Larry Hyatt, bus driver III; Marian Yacko, director of purchasing; Kathy Griffith, executive assistant to the chancellor; and Katherine Ann Abeyta, program assistant.

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Complainants' exhibits SS and AAA were admitted into evidence without objection. Respondent's exhibit 44 was marked, but was not admitted into evidence. The parties stipulated to the admission of the following exhibits: exhibits A through R, T through LL, NN, OO, QQ, RR, UU, VV, WW, YY, and exhibits 1 through 16, 19 through 32, and 34 through 43.

#### **MATTER APPEALED**

Complainant Shirley Hughes appeals the abolishment of her position as an administrative program specialist II, director of auxiliary services. Hughes exercised her retention rights to an administrative program specialist II position in the University's College of Business which was held by Complainant Carolyn Curry. Curry appealed. Curry exercised her retention rights and bumped into an administrative program specialist I position in the College of Business held by Complainant Ann Reeverts. Reeverts was laid off from her position with the College of Business and she appealed. At Complainants' request, the appeals were consolidated.

#### **ISSUES**

1. Whether Complainants established that the decision to abolish Hughes' position, thus affecting Curry and Reeverts' positions through the exercise of retention rights, was motivated by sex or age discrimination.
2. Whether the decision to abolish Hughes' position due to an alleged lack of funds was arbitrary, capricious or contrary to rule or law.
3. Whether either party is entitled to an award of attorney fees and costs.

#### **PRELIMINARY MATTERS**

1. On September 12, 1994, an order was entered denying Complainants' motion for a temporary restraining order and preliminary injunction to prevent the University from implementing the lay off plan. The Administrative Law Judge ("ALJ") found that the Board is without authority to grant injunctive relief.
2. On September 13, 1994, Respondent moved to dismiss the appeal for failure to state a claim upon which relief could be granted. Respondent argued that Complainant Hughes did not have a right to appeal because she suffered no injury. On September 19, 1994, the motion was denied.

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3. On October 5, 1994, Respondent moved to limit the issues to be considered at hearing. Respondent argued that Complainants attempted to raise in the prehearing statement issues which were not raised in the notice of appeal. Specifically, Respondent argues that Complainants seek to present evidence related to the assignment to Hughes of inconsequential duties in the College of Business following the abolishment of her position and the assignment of the same or more onerous duties to Curry following her exercise of retention rights.

On October 13, 1994, Complainants responded to the motion. Complainants argued that Hughes appealed the abolishment of her position and Curry appealed her displacement from her position and resulting demotion. Complainants further argued that their appeals raised issues of sex and age discrimination. Complainants contended that evidence related to the nature of the duties assigned to Hughes and Curry following the abolishment of Hughes' position was directly relevant to these issues.

Respondent's Motion to Limit the Issues was denied. Complainants were permitted to present evidence pertaining to the nature of the duties assigned to Hughes and Curry. This evidence was deemed to be one piece of relevant evidence which may be presented to sustain Complainants' burden to show discrimination or the arbitrary and capricious nature of the lay off.

4. Following the evidentiary hearing in this matter, Complainants moved to reopen the hearing. Complainants requested that their exhibit BBB which was attached to the motion to reopen be admitted into evidence. Respondent objected to reopening the hearing. Respondent argued that exhibit BBB was irrelevant.

On November 23, 1994, the motion to reopen the hearing was granted. The parties were directed to contact the Board office to schedule this matter for hearing on the limited issue of the admissibility of exhibit BBB. On November 29, 1994, the motion to reopen the hearing was withdrawn. The November 29th, motion was granted on December 5, 1994.

#### **FINDINGS OF FACT**

1. Complainant Shirley Hughes is employed by the University of Colorado at Colorado Springs as an administrative program specialist II in the College of Business ("College"). She has been employed by the University for 20 years. Hughes is a 54 year old female.

2. Complainant Carolyn Curry is employed by the University as an administrative program specialist I in the College. She has been employed by the University for 10 years. Curry is a 50 year old

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female.

3. Complainant Ann Reeverts was employed by the University in the College. Reeverts was laid off from her position as an administrative program specialist I when Curry bumped into the position. Reeverts is a 53 year old female.

4. Hughes worked as the director of the University auxiliary services for 15 years. Auxiliary services are self funded services offered by the University. Hughes managed the University's telephone system serving the faculty and staff, printing and duplicating services, shipping and receiving unit, and vending machine operations. Hughes supervised three full time employees and nine student workers.

5. Hughes spent 50% of her time working in the telecommunications unit. She maintained offices located adjacent to John Ormanowski's office and in the telecommunications section.

6. During the last 10 years, Hughes worked under the supervision of the newly appointed Vice Chancellor, John Ormanowski. At the time Ormanowski supervised Hughes, he was the Executive Director of Administrative Services. Ormanowski did not exercise daily supervision over Hughes' job duties as the director of auxiliary services. Ormanowski evaluated Hughes' job performance three times in ten years. He rated her job performance as "good" or above.

7. In fact, Hughes managed auxiliary services in an exemplary manner. The operations were profitable services for the University. In 1979, Hughes began working in auxiliary services as a staff assistant to a vice chancellor for business and administrative services. She was asked by the vice chancellor to act as a troubleshooter. In 1979, Hughes was directed to make the quick copy service, which was operating in the "red", a profitable enterprise and to modernize the mailroom. Her goal was to update auxiliary services and to work within the budget. She accomplished the goals as assigned and continued to improve and enhance the services offered.

8. Curry received a bachelor of science degree from the University of Texas. She received her master's in business administration in 1983 from the University. Thereafter, she began working for the College.

9. Carolyn Curry was a valued staff member in the College. Her services to the College were invaluable. Curry advised undergraduate and graduate business students. The College has 337 graduate and 600 undergraduate students. She dealt with issues of student probation, suspension and graduation. She helped students

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with class scheduling and counselled them about the curriculum. Curry was responsible for getting American Assembly of Collegiate Schools of Business accreditation for the College. This is a highly valued accreditation which only 300 business schools in the United States have.

10. Curry was involved in student life activities. She formed and worked with the business fraternity, Delta Sigma Pi. She formed and worked with the minority business program. This program recruited minority students to attend the College and offered support to them while attending. She started an international business program and counselled students from foreign countries attending the College. She started an exchange program with a business school in Germany. As a result of her efforts, and the education and marketing campaign undertaken by the College in the 1993-94 academic year, the College grew by 7%.

11. Ann Reeverts is currently employed in a part time position at the University of Colorado in Denver. She administers a graduate business program for executives.

12. Reeverts began working for the University while she was enrolled in the College's masters program. In the latter part of the 1980's, she received her MBA and started working full time at the College.

13. Reeverts worked as a liaison with the business community in Colorado Springs. She kept the business community in touch with the College's programs. As a result of her liaison work, the College received significant donations which funded research assistant positions and research chairs.

14. Reeverts performed duties in the College which included formulating marketing strategies and promoting and advertising the College's programs. She published and edited the College's annual report. She published "The College of Business Letter". She coordinated alumni activities. She collected student resumes and distributed them in the business community to assist in obtaining employment for the College's students. She planned social activities that enhanced the schools stature in the community and increased donations to the College.

15. During Reeverts' employment, the dean of the College rated her job performance as "outstanding".

16. In the fall of 1993, a seventeen member University budget committee ("the committee") began meeting to discuss ways to reduce costs at the University. The Chancellor projected for the fiscal year 1993-94, a \$300,000 and for fiscal year 1994-95, a \$640,000 shortfall in funding for the University. The Chancellor appointed to the committee a cross section of the University

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community to prepare a cost reduction plan and to make recommendations to the Chancellor for consideration and action.

17. Jim Daley, a professor at the University, was appointed chairperson of the committee. The committee's charge from the Chancellor was to find ways to cut costs without jeopardizing student services. The University's vision statement was the document containing the committee's guiding principles. A guiding principle, among others, was to attract, develop and retain excellent faculty and staff.

18. Despite this direction, the committee did not consider the principles outlined in the University's vision statement. The committee did not consider the job performance or contribution of the individuals whose positions were abolished. The committee did not consider issues of diversity or discrimination in making decisions about abolishing positions. The committee relied on the recommendations of the heads of major University departments in making their budgetary proposal to the Chancellor. The committee expected the department heads to consider job performance, contributions made by individuals to the University, diversity and discrimination.

19. Additionally, the committee did not consider the affect that the exercise of retention rights would have on the budgeting process. Vickie Hilty, personnel director for the University, carried out the lay off after being advised which positions would be abolished. She was never consulted during the budget process and kept in the strictest confidence the information she compiled concerning bumping rights.

20. The committee began by looking at auxiliary services that were not profitable. This did not include the auxiliary services run by Hughes since they were profitable. Steve Ellis, a 38 year old male employee at the University, operated the continuing education auxiliary service. He had done so for 10 years. Continuing education operated at a loss. The continuing education section was an auxiliary service which was pinpointed early in the committee's process for consideration, since it was not profitable.

21. The Chancellor directed the vice chancellors, deans and executive directors of the University to prepare recommendations to cut their budgets by 2%, 4% and 7%. These proposals were submitted to the committee for consideration.

22. Ormanowski prepared the 2%, 4% and 7% cost reduction proposals for the areas under his authority. These areas included the auxiliary services directed by Hughes. Ormanowski's proposals included abolishment of Hughes' and Ellis' positions.

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23. From the proposals submitted by the vice chancellors, deans and executive directors, the budget committee accepted many of their recommendations at the 1%, 2% and 4% level resulting in a reduction in costs totalling \$1,001,094. The Chancellor accepted the committee's recommendations.

24. Following the notice of abolishment of Ellis' position as administrative program specialist III, director of continuing education, he exercised his retention rights to the position of University registrar.

25. The registrar position was vacated by a longtime employee of the University. The position was classified at the administrative program specialist IV level. When the position was vacated, it was audited and determined to be properly classified. The supervisor of the registrar position decided to remove some of the duties of the position and it was subsequently downgraded by the Department of Personnel to the administrative program specialist III level. As a result of the downgrade, Ellis was eligible to bump into the position.

26. For several weeks prior to the effective date of Ellis' lay off, he received training from the incumbent of the registrar position in order to learn the duties of the position. Ellis trained in the registrar position for 20 hours prior to assuming the duties of that position. Since Ellis' appointment to the position, he continues to meet with the former registrar once every two weeks for further training. These training sessions were initiated by Ellis.

27. As a result of the committee's recommendations to the Chancellor, nine unclassified positions were abolished for a total savings in annual salaries of \$310,890. Seven vacant state classified positions were abolished. These position paid salaries of \$164,736. Six classified positions were abolished. These positions included Hughes' and Ellis'. Three of the classified positions abolished were held by incumbents who bumped into positions at the same pay and grade. University records reflect a cost savings in salaries of \$140,010. However, because of the exercise of retention rights, this is an inaccurate reflection of the savings to the University.

28. Two positions were transferred to different departments. This had no apparent cost savings effect. However, a collateral effect of the decision to transfer one employee's position to a different department resulted in that employee's decision to retire. Margaret Moramitsu worked as a program assistant II maintaining faculty records for 16 and one half years at the University. She was hired by the University when she was 57 years

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old.

29. In May, 1994, Moramitsu was advised that her position would be reduced to one half time and transferred to the Personnel Department. She threatened to grieve this decision. In June, 1994, Moramitsu was advised that her position would remain full time and be transferred to the Personnel Department. Moramitsu felt that transferring her position to the Personnel Department undermined the integrity of the faculty records' section and that it made it impossible for her to perform her job. None of the University campuses maintains faculty records under the Personnel Department.

30. Moramitsu retired in June, 1994, feeling that she was coerced into making this decision by the plan to reorganize. Moramitsu is 73 years old.

31. The Chancellor announced in a June 16, 1994, letter to the University community the decisions made with regard to the budget. In closing, the Chancellor also announced the promotion of Ormanowski and Edward Paris to the positions of Vice Chancellor for Administration and Finance and Associate Vice Chancellor of Administration and Finance, respectively. These appointments are subject to the Board of Regents' approval. Paris has previously served for two years as Interim Director of Financial Services.

32. As a result of their appointments to Vice Chancellor and Associate Vice Chancellor, Ormanowski's income increased \$20,000 per year, from \$65,000 to \$85,000. Paris' annual income increased \$19,000, from \$50,500 to \$69,500.

33. At no time during the committee's deliberations over budget issues were the \$39,000 in salary increases for Ormanowski and Paris considered. This is true even though the Chancellor's June 16, 1994, letter to the University community represented that she made the announced budgetary decisions relying fully upon the recommendations of the budget committee.

34. On August 29, 1994, Hughes' position was abolished and she began working in the College in the position formerly held by Curry. She was never offered training to perform the administrative program specialist II duties in the College before she assumed the position or thereafter. Hughes was not assigned any of Curry's job duties. She was assigned busy work.

35. Hughes was assigned only a few of Reeverts' duties which were primarily social. Hughes was assigned to plan a retreat, distribute an annual report and assist the Dean's wife in planning a social gathering. Curry and Hughes inquired about Hughes'

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assignment of duties. They were told by the Dean that Hughes would not be assigned any of the duties previously performed by Curry.

36. The Dean advised Curry that he did not know what to do with Hughes and that Hughes would make a mess of the job of advising the students. The Dean advised Jean Knudson, an administrative program specialist III in the College, that he wanted to get rid of Hughes in three to four months because she had a high salary and her skills were unknown. The Dean planned to assign duties to Hughes which were expendable.

37. In August, 1994, Curry assumed Reeverts' position. Initially, Curry was assigned all the duties she previously performed and many of Reeverts' duties. When she complained that she had been demoted, was making \$500 less each month and was performing all her old duties and more, she was told by the Dean that if she was not happy with the assignment of duties that she could look for another job.

38. Curry was overworked by the assignment of duties. Curry again expressed her concern to the Dean about the work assignment in her new position. She was told that she could perform the work assigned or it would be negatively reflected in her job performance evaluation. Curry's duties continue to be under consideration by the Dean.

#### DISCUSSION

A certified state employee has a right to appeal a decision to lay her off. Section 24-50-125.5, C.R.S. (1988 Repl. Vol 10B). At hearing, the employee who has been laid off has the burden of proof and the burden of going forward to establish that the decision to lay her off was arbitrary, capricious or contrary to rule or law. Renteria v. Colorado State Department of Personnel, 811 P.2d 797 (Colo. 1991). A presumption of regularity attaches to the many administrative decisions made on a daily basis by state agencies. Chiappe v. State Personnel Board, 622 P.2d 527, 532 (Colo. 1981). However, if arbitrary and capricious action can be shown, it may overcome any presumption of regularity.

Also, in an appeal in which age and sex discrimination are alleged, the burden at hearing is on the employee to establish a prima facie case of discrimination. A prima facie case of employment discrimination in a lay off is established in this case through the following facts: 1) that the affected individuals belong to a protected class; 2) that they were treated less favorably than other non-protected class members by the employer in the administration of the lay off. See, McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

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If Complainants make a prima facie showing of discrimination by establishing the requisite facts, Respondent must then rebut the presumption of discrimination by presenting evidence of a legitimate non-discriminatory business reason for the allegedly discriminatory practice. 411 U.S. at 802. If the employer does so, the burden then shifts back to Complainants to establish by a preponderance of the evidence, that Respondent's asserted business reason for its action is a mere pretext for unlawful discrimination. St. Mary's Honor Center v. Hicks, 509 U.S. \_\_\_, 113 S.Ct. \_\_\_, 125 L.Ed.2d 407 (1993). Evidence of pretext may be either direct or indirect. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981).

Complainants argue that an order should be entered for them because they have sustained their burden of proof to show age and sex discrimination. Complainants maintain that the evidence presented supports both claims.

Complainants argue that their burden was to show that employees who were younger than themselves were treated more favorably during the reorganization and lay off. Complainants maintain that, in fact, they established that while many of the affected positions in the reorganization and layoff were held by individuals over the age of 40, these employees were younger than Complainants and were treated more favorably.

Complainants further argue, relying on the evidence presented with regard to Steve Ellis, that the 38 year old male employee who bumped into the registrar position after the position was vacated and downgraded, was treated more favorably because of his age and sex. Complainants presented evidence concerning his relationship with Ormanowski in an effort to show that Ellis' contacts with the Vice Chancellor made his advancement possible. Complainants further point to the fact that Ellis received training before assuming the duties of the registrar position. Complainants argue that Hughes experienced less favorable treatment because her position was selected for abolishment by Ormanowski because he did not like her and because she received no training in the College of Business.

Complainants further argue that Ormanowski micro-managed the female employees under his supervision, that he or the University as a general practice assisted males in placement in state classified positions at higher rates of pay, while female employees were appointed to unclassified positions at lower rates of pay.

Complainants presented several witnesses who testified that in separate incidents over an approximate five year period, Ormanowski raised his voice in an inappropriate manner in the workplace when addressing them. All the employees addressed

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inappropriately by Ormanowski were females, except for one. Most of these employees were Ormanowski's subordinates, except for one woman who was a professor. The incidents generally occurred when the employee came to Ormanowski's office to discuss a work related issue. Generally, the remark made by Ormanowski was with regard to the employee's presence in his office and he yelled at them to "get out and stay out".

Respondent argues that Complainants failed to establish any evidence of discrimination. Respondent maintains that the isolated incidents pointed to by Complainants do not amount to discrimination. Respondent argues that the evidence established that Ellis' position as registrar was not downgraded for the sole purpose of accommodating him. And, it is argued by Respondent, that he took the initiative to seek the training for the position, the training was not engineered by Ormanowski.

The Administrative Law Judge agrees with Respondent. There was insufficient evidence upon which to conclude that the decision made with regard to Complainants' positions was discriminatory. Each instance relied on by Complainants as evidence of discrimination was explained on the basis of legitimate non-discriminatory purposes and Complainants failed to show that the stated reasons for the actions was a pretext for discrimination. Further, while there was evidence of misconduct by individuals, these instances were shown to be isolated misconduct by individual employees and did not establish a pattern of discriminatory treatment of Complainants or females in general at the University.

The area which is of concern is the question whether the lay off was arbitrary and capricious. 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 P2d 703,705 (Colo.1936).

The budget committee failed to consider in its budgetary deliberations the fact that Ormanowski and Paris would receive \$39,000 in raises at the same time that Complainants' positions were abolished. The evidence established that the cost savings resulting from the abolishment of Complainants' positions was speculative at best. The committee was not privy to information about the effect that the exercise of retention rights would have on the budget process. Nor was the committee fully apprised of the plans that would be implemented in the Auxiliary and the College of Business following the lay off.

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At most, the abolishment of Hughes' position saved the University the \$43,600 salary she was paid as the director of auxiliary services. However, there was evidence presented that the cost savings realized by abolishing Hughes' position was actually significantly less.

It was arbitrary and capricious action for the budget committee to recommend the abolishment of Hughes' position when in fact it did not have all the information necessary or available to make an informed recommendation about the budget. The lay off of Hughes and the resulting action affecting the positions of Curry and Reeverts cannot be sustained in light of the arbitrary and capricious nature of the decision making process proven to have occurred here.

The ALJ can find no basis upon which to conclude that either party is entitled to an award of attorney fees and costs under section 24-50-125.5, C.R.S. (1988 Repl. Vol. 10B).

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**CONCLUSIONS OF LAW**

1. Complainants failed to establish that the decision appealed here was motivated by age or sex discrimination.
2. The evidence established that the decision to lay off Complainant Hughes was arbitrary and capricious.
3. Neither party is entitled to an award of attorney fees and costs.

**ORDER**

Respondent is ordered to reinstate Complainant Hughes to her position as an administrative program specialist II, director of auxiliary services. Respondent is further ordered to reinstate Complainants Curry and Reeverts to the positions they held prior to the lay off. Complainants shall be paid all back pay and benefits lost by them as a result of Respondent's arbitrary and capricious action.

Dated this 19th day  
of January, 1995,  
at Denver, Colorado.

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Margot W. Jones  
Administrative Law Judge

**CERTIFICATE OF MAILING**

This is to certify that on the 19th day of January, 1995, I placed true and correct copies of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** in the United States mail, postage prepaid, addressed as follows:

Ronald E. Gregson  
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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 **\$1,585.00**. 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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