

STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. 96B017(C)

DISMISSAL ORDER

JOSE C. ORTEGA,

Complainant,

vs.

DEPARTMENT OF CORRECTIONS,

Respondent.

THIS MATTER came on for hearing on December 22, 1995. The Administrative Law Judge hereby Finds and Orders:

1. On October 18, 1995, Case No. 95G040 was consolidated with Case No. 96B017 under Case No. 96B017(C).
2. In Case No. 95G040, Complainant grieved a job reassignment. In Case No. 96B017, Complainant appealed an administrative termination that followed the exhaustion of his short-term disability benefits. Complainant alleged discrimination on the basis of national origin.
3. On November 15, 1995, the State Personnel Board issued a Notice of Waiver of Discrimination Investigation; Notice of Hearing setting the hearing for December 22, 1995 at 9:00 a.m.
4. A Prehearing Order was issued on November 15, 1995 ordering each party to file a prehearing statement on or before December 1, 1995.
5. On December 8, 1995, an Order was entered granting in part Respondent's Motion for Extension of Time Out of Time to file a prehearing statement, noting that neither party had filed a prehearing statement and ordering both parties to file a prehearing statement by December 12, 1995.
6. On December 20, 1995, an Order was entered granting in part Respondent's Second Motion for Extension of Time and Complainant's Request for Additional Time to File Prehearing Statement, affording both parties the opportunity to file a prehearing statement prior to the commencement of the hearing on December 22.
7. The hearing commenced on December 22, 1995. Neither party appeared in person or through a representative. Neither party filed a prehearing statement. Neither party filed a motion to continue the hearing. Neither party advised the State Personnel

Board of a reason for the failure to appear.

8. This case involves the appeal of an administrative termination and the denial of a grievance. Complainant bears the burden of going forward and the burden to prove by a preponderance of the evidence that Respondent's actions were arbitrary, capricious or contrary to rule or law. Complainant also bears the burden of proof on the issue of discrimination.

9. As the party with the burden of proof, Complainant has failed to prosecute his appeal. By his failure to appear at hearing and his failure to show good cause therefor, Complainant is deemed to have withdrawn his appeal pursuant to section 24-50-125(7), C.R.S., and the action of the appointing authority is now final.

10. Complainant's appeal is DISMISSED WITH PREJUDICE.

DATED this _____ day of
December, 1995, at
Denver, Colorado.

Robert W. Thompson, Jr.
Administrative Law Judge

CERTIFICATE OF MAILING

This is to certify that on the ____ day of December, 1995, I placed true copies of the foregoing **DISMISSAL ORDER** in the United States mail, postage prepaid, addressed as follows:

Jose C. Ortega
2028 Roanoke Street
Colorado Springs, CO 80906

and in the interagency mail, addressed as follows:

John August Lizza
First Assistant Attorney General
State Services Section
1525 Sherman Street, 5th Floor
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 \$N/A. 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-

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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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