

State Personnel Board, State of Colorado

Case No. 97 B 134

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

MADINA BUHENDWA,

Complainant,

v.

DEPARTMENT OF HIGHER EDUCATION,
REGENTS OF THE UNIVERSITY OF COLORADO,
UNIVERSITY OF COLORADO AT BOULDER,

Respondent.

THIS MATTER was heard in evidentiary hearing on April 30, 1998 and on June 18, 1998 at 1525 Sherman Street, B-65, Denver, Colorado. Complainant appeared and was represented by Mr. Thomas Arckey, Attorney at Law. Respondent appeared through University of Colorado Dining Service Manager, Ms. Patricia Testarmata and was represented by Assistant University Counsel, Ms. Elvira Strehle-Hensen.

MATTER APPEALED

Complainant appealed an administrative termination and alleges discrimination based on race and disability. For the reasons set forth below Respondent's actions are upheld.

PRELIMINARY MATTERS

1. Prehearing Motions

a. On April 22, 1998 Counsel for Respondent filed the University's Motion to Dismiss Complainant's Race and National Origin Claims. The motion was filed less than ten (10) days prior to hearing. In order to allow the opposing party a reasonable amount of time to respond, the motion was addressed on the date of hearing. Complainant's race and national origin claims were not dismissed based upon a finding that Complainant's claim of discrimination was specifically raised,

but not determined, through the following acts:

- 1.) Complainant checked the discrimination space on her appeal form dated April 14, 1997.
- 2.) In response to the State Personnel Board's request for information and acting *pro se*, Complainant again attempted to explain her position to the Board in a hand written letter stating "I believe that I was discriminated against on the basis of my disability and my race."
- 3.) Complainant's Charge of discrimination, filed with the Colorado Civil Rights Division, was administratively terminated and referred back to the State Personnel Board at Complainant's request. No findings were made.

b. On April 24, 1998 Counsel for Respondent filed the University's Motion to Add an Additional Day of Hearing. The motion was filed less than ten (10) days prior to hearing. In order to allow the opposing party a reasonable amount of time to respond, the motion was addressed on the date of hearing. Complainant joined Respondent in its motion to add a day of hearing in order accommodate testimony from two witnesses. The motion was granted. The second day of hearing was scheduled for June 18, 1998.

c. On April 27, 1998 Counsel for Complainant filed Complainant's Request for Leave to File Second Amended Prehearing Statement. The motion was filed less than ten (10) days prior to hearing. In order to allow the opposing party a reasonable amount of time to respond, the motion was addressed on the date of hearing. Based on Respondent's indication that the documents at issue were documents that had been in the control of Respondent and that Complainant's Counsel was new to the case, Complainant's Second Amended Prehearing Statement was accepted over the objection of Respondent's Counsel.

d. On April 29, 1998 Counsel for Complainant filed Complainant's Request to Add Further Exhibits. The motion was filed less than ten (10) days prior to hearing. In order to allow the opposing party a reasonable amount of time to respond, the motion was addressed on the date of hearing. One week prior to hearing, Complainant's Counsel, who was new to the case, requested documents within the control of Respondent. Complainant's Counsel received the documents six (6) days before hearing and began to review them in preparation for hearing. Complainant's Counsel discovered three (3) additional documents, potentially supportive of his case, and requested, through this motion that they be added to Complainant's list of potential exhibits. The documents at issue were documents that had been in the control of Respondent. Therefore, the addition of Complainant's Exhibits BB, CC and DD to Complainant's list of potential exhibits was allowed subject to objections by Respondent at the time each was offered during hearing.

2. Exhibits

- a. Complainant's Exhibits A, C, D, F through I, K through M, O through W, Y, Z and AA were accepted into evidence by stipulation of the parties.
- b. Pages 3, 4 and 5 of Complainant's Exhibit BB are part of Respondent's Exhibit 7. Therefore Complainant's Exhibit BB is a fax cover sheet accepted into evidence without objection.
- c. Complainant's Exhibits B, E, X, CC, DD and EE were accepted into evidence with no objection.
- d. Respondent's Exhibits 2 through 26, with the exception of 8, 10, 14 and 17, were accepted into evidence by stipulation of the parties.
- e. Respondent's Exhibit 10 was accepted into evidence with no objection.
- f. As part of Dr. Mark Frank's testimony, Dr. Frank drew a matrix diagram. The drawing was used for illustrative purposes only and was not offered or accepted into evidence.

3. Witnesses

- a. All witnesses, with the exception of Complainant and the Respondent advisory witness, were sequestered throughout the hearing until released by the administrative law judge or until hearing was concluded.
- b. Complainant called the following witnesses: Dr. Mark Frank, M. D., Occupational Health Specialist; Ms. Wanda Kucera, University of Colorado at Boulder, Department of Housing, Manager of Payroll; Ms. Theresa Stephens, Operations Manager for Dining Services and appointing authority in this matter; Ms. Patricia Testarmata, University of Colorado at Boulder Diner Service Manager at Libby Dining Hall and Complainant's immediate supervisor.
- c. Respondent testified on her own behalf and called the following witnesses: Ms. Theresa Stephens, Operations Manager for Dining Services and appointing authority in this matter; Dr. Mark Frank, M. D., Occupational Health Specialist; Ms. Mollie Morton, Human Resources Specialist.

ISSUES

1. Whether Respondent's actions were arbitrary, capricious or contrary to rule or law.

2. Whether the actions of Respondent were a pretext for discrimination based on race, national origin or disability.
3. Whether Complainant is entitled to costs including attorney's fees.

FINDINGS OF FACT

1. Complainant is a single parent and the sole support of her children.
2. Complainant was employed by the University of Colorado at Boulder as a Food Service Worker I between August 17, 1992 and April 1, 1997. As a Food Service Worker I Complainant worked in the following areas:
 - a. in the pantry,
 - b. in the dishroom,
 - c. checking I.D.'s (identification cards) at the entrance to the dining hall,
 - d. doing "salad prep" and
 - e. being "cook's help".
3. Complainant's position was a "light duty" position, i.e. 63% (Sixty-three percent) light duty designation and 37% (Thirty-seven percent) medium duty designation. (Complainant's Exhibit EE.)
4. Lifting is an "essential function" of the Food Service Worker I position.
5. In September of 1995 Complainant sustained a back injury by falling while on the job in the dishroom at Sewall Dining Hall. The injury was not reported until November of 1995 when Complainant continued to have pain and discomfort both at work and at home. (Complainant's Exhibit CC.)
6. Dr. Mark Frank, M. D. treated Complainant for her injury from November, 1995 through the Fall of 1996. (Complainant's Exhibit B.)
7. Complainant's back injury resulted in a 2% (two percent) whole body impairment. Complainant was treated for the back injury through Wardenburg Student Health Center and was placed on lifting restrictions. (Complainant's Exhibit E.)
8. An "impairment" is not a disability for purposes of the Americans with Disabilities Act (ADA).
9. Respondent accommodated Complainant's impairment and Complainant continued to work in Boulder and commute from Denver on scheduled workdays. Complainant worked through the majority of 1995 at Sewall Dining Hall in the pantry and the dishroom, doing "salad prep" and being "cook's help".

10. In the Fall of 1995 Complainant transferred from Sewall Dining Hall to Libby Dining Hall. She transferred from Sewall to Libby in order to avoid what Complainant believed was sexual harassment. Complainant's duties at Libby were "salad prep".

11. Sexual harassment of Complainant was not at issue in this hearing.

12. Complainant's duties were "slightly difference" at Libby compared to her duties at Sewall.

13. "Salad prep" includes chopping and putting salad vegetables on trays. However Complainant did not take the prepared salad vegetables upstairs because that would involve lifting beyond her restrictions.

14. Complainant received instruction on how to avoid stress and strained to her back by lifting only a few vegetables at a time or asking for help if she needed to lift greater than 25 (twenty-five) pounds of cheese or other food and by bending in a certain way when necessary, e.g. to clean tables.

15. Complainant did not use the electric slicer because it was broken and consequently put too great a strain on her back. She could and did use a manual slicer when needed to complete her duties.

16. On occasion Complainant would be assigned to check IDs at the door. Between meals Complainant's job was to prepare bagged meals for the students including preparing sandwiches, fruit, packing already-prepared cookies, etc. These lunches would be placed on a "warmer cart" which was very heavy. Then the cart would be pushed into position. Complainant pushed the cart on the days she was assigned to check IDs. Occasionally Complainant's supervisor, Ms. Testarmata, helped her push the cart.

17. At hearing Complainant testified that all of the women, except one¹, who worked in Food Service at Libby Hall would ask for help lifting and pulling heavy things and the men Food Service Workers would help them. Complainant stated that there was always someone there who could help her if necessary.

18. On June 18, 1996 Dr. Frank determined that Complainant had reached Maximum Medical Improvement (MMI). He placed permanent lifting restrictions on her work and stated that she "should work in a light duty job category". (Respondent's Exhibit 11.)

19. A second opinion confirmed Dr. Frank's restrictions as necessary. (Respondent's Exhibit 11, pages 3 and 4.)

20. After Dr. Frank's report dated June 26, 1996 (Respondent's Exhibit 11), Complainant no longer

¹Everyone at Libby Hall, including the men, asked "Becky" for help if they needed to lift or move something heavy. On occasion Becky would help Complainant lift or push heavy items

pushed carts (*see* paragraph 9 above) due the restrictions contained in the report.

21. On June 27, 1996 Complainant injured her shoulder lifting a 5 pound bag of lettuce. This was classified by Respondent as a “re-injury” based on the type of injury and the fact that she had not yet been administratively reclassified as having reached MMI on her back injury. She was treated for this second injury at the Wardenburg Student Health Center. (Respondent’s Exhibit 26.)

22. On July 8, 1996 Dr. Frank indicated in a Worker’s Compensation Employee Disposition Report that Complainant “is able to work with the following restrictions: on permanent restrictions.” (Complainant’s Exhibit S.)

23. On July 22, 1996 Complainant was deemed to have reached MMI on her second (shoulder) injury. (Respondent’s Exhibit 26.)

24. Complainant’s PACE evaluation for July 1995 through July 1996 gave her a “commendable” rating. (Complainant’s Exhibit Q.)

25. In August of 1996 Complainant moved her family to Boulder in order to be closer to her work.

26. On August 5, 1996 Respondent decided, at a meeting that did not include Complainant, that because the lifting restrictions continued to be necessary, they could no longer accommodate Complainant’s light duty requirements. (Respondent’s Exhibit 21.)

27. Respondent made reasonable and continuing attempts to accommodate Complainant’s injuries. Beginning in November 1995 and continuing through August 6, 1998.

28. Throughout the process Ms. Stephens, who is Ms. Testarmata’s supervisor and the appointing authority in this matter, and Ms. Testarmata extended every possible leave option to Complainant, including short term disability, family/medical leave, leave without pay and Leave Bank, in the hopes that Complainant would recover enough to perform essential functions, including lifting, and return to work.

29. On August 6, 1996 Complainant was advised, by letter, that she would be placed on family/medical leave because Respondent could no longer accommodate her impairment with light duty work. (Respondent’s Exhibit 13.)

30. Complainant did not want to be on family/medical leave and felt that she could handle all parts of her job, salad prep, except using the slicer and pushing the carts.

31. On August 19, 1996 Dr. Frank indicated in a Worker’s Compensation Employee Disposition Report that Complainant had “improved.” (Complainant’s Exhibit T.)

32. On September 3, 1996 Dr. Frank indicated in a Worker’s Compensation Employee Disposition Report that Complainant had “stayed the same.” (Complainant’s Exhibit U.)

33. On September 23, 1996 Dr. Frank indicated in a Worker's Compensation Employee Disposition Report that Complainant had again "improved." (Complainant's Exhibit V.)
34. On October 7, 1996 Dr. Frank indicated in a Worker's Compensation Employee Disposition Report that Complainant had yet again "improved." (Complainant's Exhibit W.)
35. Following Complainant's October 7th visit with Dr. Frank, Complainant's supervisor, Ms. Testarmata, advised Complainant that she needed Risk Management to say it was okay for Complainant to return to work.
36. On November 11, 1996 Complainant reached MMI on her second injury. (Respondent's Exhibit 5.)
37. On November 12, 1996 Respondent, by letter, notified Complainant the Housing Department was reviewing whether they could allow her to return to work, that Complainant's on-the-job injury leave had expired and that she would remain on family/medical leave concurrent with sick and personal leave. (Respondent's Exhibit 4.)
38. Complainant's supervisor, Ms. Testarmata, began to review and modify, where necessary, the job description (PDQ) for a Food Service Worker I. A new Food Service Worker I PDQ was developed based on Ms. Testarmata's experience, observation (e.g. the need for lifting, bending, pushing and pulling), and on-the-job injuries such as Complainant's. (Respondent's Exhibit 7.)
39. It was appropriate for Complainant supervisor, Ms. Testarmata to draft the PDQ for Complainant's position, Food Service Worker I.
40. Ms. Stephens requested Dr. Frank do an on-site review because she was concerned about Complainant's ability to perform essential functions and concerned regarding possible re-injuries.
41. In November of 1996, nearly three (3) months after Complainant had been placed on family/medical leave, Dr. Mark Frank reviewed Complainant's new job description (PDQ) given to him by Respondent and inspected Complainant's worksite. Complainant was not present at the work-site inspection.
42. There was no requirement that Complainant be invited to a work-site inspection.
43. Based on his inspection and the new job description, given him by Respondent, Dr. Frank concurred with Respondent that Complainant's position, Food Service Worker I, was a medium duty job. (Respondent's Exhibit 6.)
44. On December 11, 1998 Respondent notified Complainant, by letter that they were continuing to review her situation, that her paid leave had run out on December 6, 1998 and that she was being placed on leave without pay. (Complainant's Exhibit 2.)

45. In December of 1996 Respondent met with Complainant. Respondent gave Complainant a copy of the new job description for the first time. (Respondent's Exhibit 7.) The job itself had not changed. However, the job *category* had changed from light duty to medium duty.
46. At hearing Complainant testified that, because the job itself had not changed, she believed the change in the job category was insignificant. Complainant signed the new job description (PDQ). (Respondent's Exhibit 7.)
47. Complainant's experience in Food Service at Libby Dining Hall was that no accommodations were necessary for her to do salad prep or to work in the Deli (preparing delicatessen foods).
48. Complainant stated that she would not do work that would re-injure her back but that she wanted to come back to work doing "salad prep".
49. The new job description for a Food Service Worker I placed Complainant's duties at 100% (One hundred percent) medium duty. (Respondent's Exhibit 7.)
50. On occasion, due to the absences of co-workers, Complainant, after her transfer to Libby Dining Hall, had been assigned to perform duties other than salad prep. Some of those duties fall into a medium duty category.
51. Complainant pointed out to her supervisor, and at hearing, that other "white" employees continued to receive accommodations in spite of their problems, e.g. Freda Swanson was allowed to work full-time limited to checking IDs (light duty work), Betty Klipstien was allowed to continue work as a cook in spite of alcohol related problems, "Alma" hurt her back and was allowed to continue to work, "Ramona" was allowed to work limited to checking IDs at Williams Village.
52. Ms. Testarmata testified that Freda Swanson was not a Food Service Worker but a Clerical Assistant and that employing Ms. Swanson as a full-time checker was beyond Ms. Testarmata's control.
53. Ms. Stephens testified that Ms. Swanson is 72 (Seventy-two) years old and has been employed by Dining Services for over 17 (Seventeen years). She is classified as an administrative assistant which means she can either perform keyboarding (typing) tasks or non-keyboarding tasks, e.g. checking IDs but she cannot prepare food.
54. Ms. Stephens further testified that the University of Colorado at Boulder Dining Services employs other Black person, including one Black cook at Libby Hall. Other employees, Black or Caucasian, were not terminated if they recovered from their injuries sufficient to perform the essential functions of their positions.
55. In January of 1997 Complainant was granted use of 116.5 (One hundred sixteen and one half) hours from the Leave Bank.

56. On March 6, 1997 Respondent sent a letter to Complainant scheduling a “pre-termination meeting” in which Complainant could present “mitigating circumstances”. (Respondent’s Exhibit 23.)

57. On March 21 1997 Respondent met with Complainant. In that meeting Complainant again stated that she would not do work that would re-injure her back but that she wanted to come back to work doing “salad prep”.

58. By limiting herself to salad prep Complainant effectively said she would not perform other duties, e.g. pantry, dishroom, and “cook’s help”.

59. On March 31, 1997 Complainant was notified, by letter, of the termination of her employment. (Respondent’s Exhibit 19.)

60. Throughout 1997 Complainant sought alternate employment (Complainant’s Exhibits A, C, D, F and G.) and is presently seeking a degree in Kinesiology from Metro State College.

61. The appointing authority considered Complainant’s work performance and positive evaluations, the length of her employment, Complainant’s and Complainant’s comments that she would only do salad prep. The appointing authority considered the available medical reports on Complainant’s injuries, impairment and restrictions and the fact that accommodation of Complainant’s restrictions would be for an indefinite period of time.

DISCUSSION

1. Discrimination based on race, national origin or disability.

In a case involving allegations of discrimination the Complainant bears the burden of establishing a prima facie case of discrimination. *McDonnell-Douglas Corp. v. Green*, 411 U. S. 792, 93 S. Ct. 1817, 36 L. Ed.2d 668 (1973); *St. Mary’s Honor Center v. Hicks*, 509 U. S. 502, 113 S. Ct. 2742, 125 L. Ed. 2d 407 (1993). A prima facie case of employment discrimination can be established by evidence that would tend to prove the following, *Colorado Civil Rights Commission v. Big O Tires, Inc.*, 940 P.2d 397 (1997):

- A. Complainant belongs to a protected class;
- B. Complainant was qualified for the job in issue;
- C. Complainant suffered an adverse employment decision; and
- D. The circumstances give rise to an inference of discrimination.

If the Complainant presents a prima facie case, a presumption of discrimination arises and the burden shifts to the employer to present evidence that there was a legitimate non-discriminatory purpose for the adverse employment decision. *St. Mary's Honor Center v. Hicks, supra*.

In this case Complainant is a Black female of national origin other than the United States of America. However, there was no testimony or other evidence of this fact presented at hearing. There was question regarding whether Complainant was qualified for the job because the job category changed during the course of her employment. She was administratively terminated because the employer could not indefinitely accommodate a person with light duty restrictions in a medium duty position. Complainant, seeing accommodations made for others, believed that Respondent's actions were a pretext for discrimination based on her "disability" and/or based on her Race/national origin.

The position of Food Service Worker I was, at the time Complainant was hired, a light duty position with some medium duty requirements. After Complainant's injuries, the job category for Food Service Worker I was changed to a 100% medium duty job category. Complainant argues that this was a pretext for discrimination so that Respondent could terminate her employment.

The determination of credibility and the weight to be given testimony is within the province of the trier of fact, *Charnes v. Lobato*, 743 P.2d 27 (Colo. 1987). In this case the undersigned administrative law judge found all the witnesses, including Complainant, to be highly credible. Of particular importance to this case was the genuine concern and caring for Complainant's situation which Ms. Testarmata and Ms. Stephens expressed not only in their words and actions (*see* paragraph 28 above) but in their tone, manner and thoughtfulness.

Both Ms. Testarmata and Ms. Stephens testified to the legitimate nondiscriminatory reasons why others had been accommodated pending their recovery and why the job category had changed. (*See* paragraphs 51 through 54 and paragraphs 37 through 43, above.). The burden then was upon Complainant to show that the valid reasons presented were a pretext for discrimination. *Colorado Civil Rights Commission v. Big O Tires, Inc., supra*. Complainant, however, offered no further evidence or explanation for Respondent's actions. Rather Complainant simply restated examples of disparate treatment.

Therefore, Complainant did not meet the burden of proof set for discrimination cases because Complainant did not show that the reason(s) given were not valid; nor did Complainant offer any evidence that discrimination was the real reason for Respondent's actions. (*See St. Mary's Honor Center v. Hicks, supra*.)

2. Administrative termination

In an appeal of an administrative action the Complainant bears the burden of proof by a preponderance of the evidence that the action(s) of Respondent were arbitrary, capricious or contrary

to rule or law. *Renteria v. Department of Personnel*, 811 P.2d 797 (Colo.1991). The Board may reverse Respondent's decision only if the action is found to be arbitrary, capricious or contrary to rule or law. (Colorado Revised Statutes, Section 24-50-103 (6), as amended.) The administrative law judge, as the finder of fact, determines whether or not the burden of proof has been satisfied. *Metro Moving and Storage Co. v. Gussert*, 914 P.2d 411 (Colo. App. 1995).

In this case Complainant began work as a Food Service Worker I at a time, 1992, when the job category was "light duty", i.e. 63% (Sixty-three percent) light duty designation and 37% (Thirty-seven percent) medium duty designation. She got injured on the job which resulted in an impairment of her physical abilities. She was placed on lifting and other permanent restrictions. Respondent accommodated her restrictions for a period of time. Before they could determine whether or not they could continue to accommodate her restrictions, Complainant had a related on-the-job injury.

Respondent continued to accommodate Complainant's restrictions pending her recovery. However, when Complainant reached her Maximum Medical Improvement on her injuries there were permanent lifting and other restrictions. Respondent reviewed Complainant's situation, including Complainant's job description, work-site and the reality of day-to-day Food Service work at Libby Dining Hall. It was reasonable for Respondent to consider the possibility of future injuries to Complainant and other Food Service Workers,

Respondent, seeing the reality of the work-site, up-graded the Food Service Worker I job category to 100% medium duty based on what they knew from experience and observation and based on Dr. Frank's on-site inspection. The change in job category was not due to discriminatory motives but it did effect Complainant. Complainant was restricted to light duty and, although her job itself hadn't changed, the new job category required more than she was allowed by Dr. Frank's restrictions.

The appointing authority considered Complainant's work performance and positive evaluations, the length of her employment and her commitment to her job. Complainant's desire to return to work was considered by the appointing authority together with Complainant's comments that she would only do salad prep. The appointing authority considered the available medical reports on Complainant's injuries, impairment and restrictions and the fact that accommodation of Complainant's restrictions would be for an indefinite period of time.

The appointing authority's decision to terminate Complainant's employment was reasonable. Respondent could not indefinitely continue to accommodate a light duty restriction in what was in reality a medium duty job.

CONCLUSIONS OF LAW

1. Respondents actions were reasonable and not arbitrary, capricious or contrary to rule or law.
2. Respondent had legitimate nondiscriminatory reasons for disparate treatment of Food Service Workers and for changing the Food Service Worker I job category from light duty to medium duty, i.e. these actions were not a pretext for discrimination.
3. Complainant is not entitled to costs including attorney's fees.

ORDER

The actions of Respondent are **affirmed**.

Dated this 3rd
Day of August, 1998
Denver, CO

Michael Gallegos
Administrative Law Judge

NOTICE OF APPEAL RIGHTS

EACH PARTY HAS THE FOLLOWING RIGHTS

1. To abide by the decision of the Administrative Law Judge ("ALJ").
2. To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is mailed to the parties. Section 24-4-105(15), 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 must pay the cost to prepare the record on appeal. The fee to prepare the record on appeal is \$50.00 (exclusive of any transcription cost). Payment of the preparation fee may be made either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS.

Any party wishing to have a transcript made part of the record must make arrangements with a disinterested recognized

transcriber to prepare the transcript. The party should advise the transcriber to contact the Board office to obtain the hearing tapes. In order to be certified as part of the record on appeal the original transcript must be submitted to the Board within 45 days of the date of the notice of appeal is filed. It is the responsibility of the party requesting a transcript to ensure that any transcript is timely filed. If you have any questions or desire any further information contact the State Personnel Board office at (303) 866-3244.

BRIEFS ON APPEAL

The opening brief of the appellant must be filed with the Board and mailed to the appellee within twenty calendar days after the date the Certificate of Record of Hearing Proceedings is mailed to the parties by the Board. The answer brief of the appellee must be filed with the Board and mailed to the appellant within 10 calendar days after the appellee receives the appellant's opening brief. An original and 7 copies of each brief must be filed with the Board. A brief cannot exceed 10 pages in length unless the Board orders otherwise. Briefs must be double spaced and on 8 ½ inch by 11 inch paper only. Rule R10-10-5, 4 CCR 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 CCR 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 CCR 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.

CERTIFICATE OF MAILING

This is to certify that on this _____ day of July, 1998, I placed true copies of the foregoing **ORDER** in the United States mail, postage prepaid, addressed as follows:

Mr. Thomas Arckey
Attorney at Law
26 W. Dry Creek Cir., Suite 740
Littleton, CO 80120

and in the interagency mail, addressed as follows:

Ms. Elvira Strehle-Hensen
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