

STATE PERSONNEL BOARD, STATE OF COLORADO

Case No. 98 B 133

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

CHARLES B. GREENE,

Complainant,

v.

DEPARTMENT OF STATE,
SECRETARY OF STATE,

Respondent.

THIS MATTER was heard in evidentiary hearing before Administrative Law Judge Michael Gallegos on September 3, 1998 at 1525 Sherman Street, B-65, Denver, Colorado. Respondent was represented by Assistant Attorney General Elizabeth Weisapl. Complainant appeared and was represented by Vonda G. Hall, Attorney at Law.

MATTER APPEALED

Complainant appeals a step 4 grievance which denied the removal of a corrective action from Complainant's personnel file, a second corrective action issued at the same time as a disciplinary action and one day's wages in the form of leave without pay, which is the disciplinary action. For the reasons set forth below, **Respondent is affirmed.**

PRELIMINARY MATTERS

1. Exhibits

Complainant's Exhibits A, B and C were accepted into evidence as if stipulated because they are Respondent's Exhibits 9, 4 and 3 respectively, which were also accepted into evidence as if stipulated. The parties stipulated to the admission into evidence of Complainant's

Exhibit D.

Respondent's Exhibits 2, 5, 6, 7, 11, 12 and 16 were accepted into evidence without objection from Complainant.

Respondent's Exhibit 8, a transcript of the R833 meeting held in this matter was accepted into evidence over objection by Complainant based on the "Best Evidence" rule (Colorado Rules of Evidence (C. R. E., sections 1001 and 1002, Colorado Revised Statutes, as amended). Complainant argued that the audio-taped recording of the R833 meeting, the best evidence as per C.R.E. 1001-1002, was in the possession of Respondent but had not been produced according to Complainant's request for discovery. Respondent argued that the audio-taped recording of the R833 meeting was made available to Complainant who never came to listen to the tape and that the transcript contained exactly the same information, word for word, and was easier to refer to at hearing. The administrative law judge took both the written transcript, for use at hearing, and the audio-taped recording (the best evidence) of the R833 meeting into evidence as Respondent's Exhibit 8.

Judicial notice is taken of Respondent's Exhibit 10 and 13 which are copies of Complainant's completed appeal forms filed in this consolidated matter.

Respondent's Exhibit 14 is two pages. The first page is Exhibit 2. The second page is Exhibit 1 which was not offered into evidence.

Respondent's Exhibit 17 was accepted into evidence over the objection of Complainant, as supporting documentation for the testimony of Respondent's witnesses: Mr. Whitelaw and Ms. Jackson. (See "Witnesses" herein.)

Respondent's Exhibit 18, a transcript of Ms. Cynthia Gomez' R833 meeting, was accepted into evidence over the objection of Complainant as irrelevant. The objection was overruled because Ms. Gomez' statements at that meeting, relative to her grievance against Complainant in this matter, were considered by the appointing authority in arriving at a decision to discipline Complainant.

2. Witnesses

All witnesses, other than Complainant and Respondent's advisory witness, were sequestered throughout hearing,

Respondent called the following witnesses: Mr. Charles Greene, the Complainant; Ms. Cynthia Gomez, the named victim; Mr. Keith Whitelaw, Director of the Corporate Division of the Secretary of State's office; Ms. Karen Jackson, an Administrative Specialist on policies and procedures for the Secretary of State; Ms. Victoria Buckley, the Secretary of State and the appointing authority in this matter; Mr. William Compton, Director of the Elections Division at the

time of the incidents involved in this matter.

Complainant testified on his own behalf and called the following witness to testify on his behalf: Ms. Molly Johnson, Administrative Assistant II in the Secretary of State's office.

3. Protective Order

A prehearing order to compel discovery allowed Complainant to obtain copies of complaints filed by the named victim in this matter. A protective order was issued by the administrative law judge to insure that the discovered complaints would not be discussed outside the hearing. Additionally, the copies of the complaints were to be returned to the office of the Secretary of State at the conclusion of hearing.

ISSUES

1. Whether Complainant committed the acts for which he was disciplined;
2. Whether the actions of Complainant warranted the disciplinary action imposed;
3. Whether Respondent's actions were arbitrary, capricious or contrary to rule or law;
4. Whether Complainant is entitled to attorneys fees and costs.

FINDINGS OF FACT

1. Complainant was hired in March 1989 and is employed by the Secretary of State 's office as a Bingo Investigator.

2. Complainant was aware of the prohibitions against sexual harassment in the workplace through the 1997 Employee Manual, pages 13 and 14 (Respondent's Exhibit 12) and the 1998 Employee Handbook, Appendix A (Respondent's Exhibit 11).

3. The Secretary of State's office is divided into three areas: licensing (including bingo inspectors), elections and corporations.

4. Ms. Cynthia Gomez worked in elections customer service and processing oaths. She had two desks/areas where she performed her duties. One area was the front counter. The other was a desk in the elections area.

5. Ms. Gomez did not know Complainant.
6. During a one week period, Complainant walked to Ms. Gomez' desk, in the elections area, three or four times per day. Each time he leaned over Ms. Gomez' desk, as if trying to get a better look at her full body, and he would look up and down Ms. Gomez' body, from head to foot, without saying anything.
7. These actions are actions of a sexual nature.
8. There was no legitimate reason for Complainant, a Bingo Investigator, to be in the elections area.
9. The manner in which Complainant looked at Ms. Gomez made her feel uncomfortable.
10. On a number of occasions, when Complainant looked up and down Ms. Gomez' body, she would say "Back off" or "Stop" or "Don't go there". Complainant did not stop his behavior in response to these requests.
11. There were elections' file cabinets along both walls in the hallway between the elections area and the licensing area.
12. On one occasion Ms. Gomez was on her knees filing oaths in a bottom drawer, when Complainant approached, put his hand on her shoulder and leaned around the opposite side of her body to speak to her.
13. There is dispute as to whether he said "I finally have you where I want you down on your knees" or "Now I have you where I want you down on your knees" (Ms. Gomez' version) versus "The job finally brought you to your knees" (Complainant's version).
14. Complainant does not recall touching Ms. Gomez at or near the time he made the comment.
15. Ms. Gomez said nothing to Complainant.
16. Complainant then walked down the hall toward the restroom without saying anything more.
17. Ms. Gomez was frightened both by his actions (paragraph 11) and the implication of his statement (paragraph 12).
18. Immediately after this incident Ms. Gomez went to her supervisor, Mr. Bill Compton, who explained the options for addressing the incident. Mr. Compton remembers that Ms. Gomez

was shaky and upset when she came to see him, she reported that Complainant put his hand on her shoulder and said something like "...finally where I want you - down on your knees." Mr. Compton had no reason to doubt Ms. Gomez' veracity.

19. Mr. Compton is uncertain whether Ms. Gomez used the words "sexual harassment".

20. On July 3, 1997 Ms. Gomez filed a grievance that included both "the file cabinet incident" and Complainant's behavior at Ms. Gomez' desk. (Respondent's Exhibit 2.) The reason she filed a grievance was that she wanted Complainant to leave her alone.

21. Sometime during the week of July 7, 1997, after the grievance was filed but before it was investigated, Ms. Gomez was working at the front counter. Two women came to meet with Complainant and he took them into the library. Complainant left the door to the library open. He sat facing Ms. Gomez and looked directly at her the entire time he was meeting with the two women in the library.

22. Ms. Gomez again became fearful and again immediately reported Complainant's behavior to her supervisor, Mr. Compton.

23. Ms. Gomez did not amend her grievance to include "the library incident".

24. During the latter part of June 1997 and in July 1997, a coworker, Ms. Molly Johnson, noticed that Ms. Gomez was upset but attributed it to "job stress", i.e. she didn't notice anything unusual about Ms. Gomez' behavior or attitude. Ms. Gomez never mentioned anything having to do with sexual harassment to Ms. Johnson.

25. The library is rarely used, if at all, by the bingo investigators.

26. Ms. Johnson, whose work area is the front counter adjacent to the library, has seen the library used by a bingo investigator only once, by Complainant, on the day of the library incident. Ms. Johnson did not notice Complainant staring at Ms. Gomez.

27. Mr. Compton saw Complainant in the library on the day of the library incident. He did not see Complainant staring at Ms. Gomez

28. Following the library incident Ms. Gomez avoided Complainant and Complainant stayed away from Ms. Gomez.

29. Mr. Keith Whitelaw, Director of the Corporate Division of the Secretary of State's office and Ms. Karen Jackson, an Administrative Specialist on policies and procedures, were assigned by the Secretary of State to investigate the grievance filed by Ms. Gomez. Mr. Whitelaw and Ms. Jackson first reviewed guidelines for a full investigation.

30. Mr. Whitelaw was chosen as "neutral party" because he works in division/area

(corporations) that is different from Complainant (licensing) and the named victim, Ms. Gomez (elections).

31. Ms. Jackson was chosen to serve as an investigator because she works in a human recourse position.

32. Mr. Whitelaw is uncertain whether he met Ms. Gomez prior to the investigation.

33. At hearing, Ms. Jackson articulated the procedure for handling sexual harassment complaints including the “zero tolerance” policy of the Secretary of State. She explained that, if an employee feels that he or she has been sexually harassed, an investigation takes place. The issue of sexual harassment is taken very seriously at the Secretary of State’s office because every person has a right to work in an harassment free environment.

34. Mr. Whitelaw and Ms. Jackson, the investigators, interviewed Ms. Gomez and asked if there was anyone else they should interview or if she had any objection to them interviewing anyone else as part of the investigation. Ms. Gomez referred the investigators to

35. The investigators also interviewed Complainant; Mr. Bill Compton, who was Ms. Gomez supervisor, and Ms. Molly Johnson, who worked at the front counter. They interviewed “anyone with something to say” about the allegations contained in the grievance filed by Ms. Gomez.

36. Investigators also heard reports from all interviewees regarding the library incident.

37. Complainant told investigators that he was not in the library on the day of the library incident.

38. None of the interviewees, other than Ms. Gomez and Complainant, were present or heard the comments made by Ms. Gomez to Complainant at her desk in elections, e.g. “Don’t go there”, “Stop” or “Back off”.

39. The investigators tried to ask everyone the same questions. However, they did not write down everything *verbatim* that was said to them during the investigation.

40. The investigators later met, compared notes (Respondent’s Exhibit 17), made assessments of credibility and, on July 14, 1997, filed a written report of their conclusions. They also made recommendation to the Secretary of State that a corrective action issue in this matter. (Respondent’s Exhibit 3.)

41. In making their credibility assessments, the investigators considered the interviewees’ demeanor/reactions to questions, the facts each reported and the consistency of statements among the interviewees, and any feelings observed or reported about the incidents.

42. The investigators concluded that, even without considering the library incident,

Complainant's actions constituted sexual harassment.

43. Ms. Buckley, the Secretary of State and appointing authority in this matter, met with Ms. Gomez on July 15, 1997, after which she (Ms. Buckley) found that "the grievance is valid." (Respondent's Exhibit 16.)

44. Ms. Gomez explained her fears as a result of the incidents, e.g. during the time that she worked for the Secretary of State's office, after the incidents, she was afraid to go to the restroom alone and afraid to go down the stairs alone. She was afraid she would run into Complainant.

45. On July 22, 1997, the Secretary of State and appointing authority in this matter, Ms. Victoria Buckley, advised Ms. Gomez, by letter, that she would "deal with Mr. Greene using the means afforded to me through the State Personnel System." (Respondent's Exhibit 16).

46. Ms. Buckley then scheduled an R833 meeting with Complainant for August 13, 1997. (Respondent's Exhibit 5.) She later had to cancel the R833 meeting "due to scheduling conflicts". (Respondent's Exhibit 6.) A new date for the R833 meeting was not set.

47. Between August, 1997 and March of 1998, Ms. Buckley's schedule was unusually heavy including odd-year election duties, a fourteen day trip to Taiwan on state business, participation in 28 (twenty-eight) new legislation training sessions throughout the state, travel difficulties, litigation on Amendment 15 over a period of 8 (eight) weeks, out-of-state travel for a period of two weeks, and a part-time schedule for a period of 3 (three) weeks due to pneumonia.

48. Ms. Buckley has the authority to delegate appointing authority to hold an R833 meeting but has never done so.

49. Ms. Gomez was terminated from employment with the state before an R833 meeting was held in this matter. On November 26, 1997 Ms. Gomez challenged her termination alleging discrimination, i.e. that the Secretary of State, who is Black, terminated Ms. Gomez's employment, in part, because she (Ms. Gomez) filed a grievance against a Black man, Complainant. Ms. Gomez is Caucasian (white).

50. There was some question as to whether action needed to be taken on the grievance filed by Ms. Gomez after she (Ms. Gomez) was no longer employed with the state.

51. On March 5, 1998, Ms. Buckley scheduled an R833 in this matter to be held on March 12, 1998 (Respondent's Exhibit 7), nearly nine months after the investigation report was issued and eight months after she first attempted to schedule an R833 meeting (Respondent's Exhibit 5.)

52. Complainant argues that he was disciplined in this matter solely because a "law suit", alleging discrimination, was filed against the Secretary of State by Ms. Gomez.

53. At hearing, Ms. Buckley stated that, in spite of delays due to scheduling, she felt she needed to go forward with the R833 meeting in this matter due to the magnitude of the issues involved.

54. An R833 meeting was held in this matter on March 12, 1998. (Respondent's Exhibit 8.)

55. Complainant was represented at the R833 meeting by Mr. Williams of the Colorado Association of Public Employees (C.A.P.E.).

56. A copy of the investigation report was not provided to Complainant until the R833 meeting was held in this matter on March 12, 1998, approximately nine months after the investigation report was filed with the appointing authority.

57. At the R833 meeting Complainant explained what he remembered of the incidents. However, the amount of time between the incidents and the R833 meeting effected his memory, e.g. the details were not as clear as they might have been at or near the time of the incidents.

58. At the R833 meeting Complainant acknowledged the possibility that he could have been in the library. (Respondent's Exhibit 8, page 3.)

59. In making her determination to discipline Complainant, the appointing authority considered all the statements made at the R833 meeting (Respondent's Exhibit 8). She reviewed and considered the grievance against Complainant filed by Ms. Gomez, the investigation report on the grievance and Complainant's July 8, 1997 letter in response to the grievance (Respondent's Exhibit 15). She reviewed and considered the audio-tape recordings/transcripts of the R833 meeting in this matter (Respondent's Exhibit 8) and in the termination of Ms. Gomez (Respondent's Exhibit 18).

60. The appointing authority also considered the library incident and "dress code comments" in accessing credibility and in making her decision to discipline Complainant.

61. There is a dress code for the Secretary of State's office which states that skirts should not be shorter than 3 (three) inches above the knee. The dress code is enforced by supervisors.

62. Complainant admits to making a comment to Ms. Gomez about the length of her skirts. This comment was made prior to the incidents which gave rise to the grievance Ms. Gomez filed against Complainant. Complainant indicates that his comment was made only with regard to following the office dress code.

63. Complainant was not Ms. Gomez' supervisor.

64. The appointing authority imposed both a corrective action and a disciplinary action

on Complainant directing Complainant to attend “the next regularly scheduled workshop facilitated by the State Department of Personnel for interaction with office employees” and imposing one day’s leave without pay respectively. (Respondent’s Exhibit 9.)

65. In making her determination to discipline Complainant, the appointing authority did not consider the charge of discrimination (law suit) filed by Ms. Gomez against the Secretary of State.

66. Ms. Gomez settled her termination case (law suit/charge of discrimination) against the state and received a cash settlement from the state.

DISCUSSION

In a disciplinary action the burden is upon Respondent to prove by a preponderance of the evidence that the acts, on which the discipline was based, occurred and that just cause warrants the discipline imposed. *Department of Institutions v. Kinchen*, 886 P. 2d 700 (Colo. 1994). The administrative law judge, as the trier of fact, must determine whether the burden of proof has been met. *Metro Moving and Storage Co. v. Gussert*, 914 P. 2d 411 (Colo. App. 1995).

Respondent argues that it met its burden both with regard to 1.) whether or not the act or omission occurred and 2.) whether just cause warrants the discipline imposed.

1. **Whether the acts occurred - Credibility.**

- Complainant admits commenting on Ms. Gomez’ short skirts but states that it was only in reference to the office dress code.
- He denies leaning over Ms. Gomez’ desk to look her body up and down/head-to-toe.
- Complainant admits making a comment to Ms. Gomez similar to: “This job finally brought you to your knees” but he states that he was just trying to be friendly.
- He does not recall touching Ms. Gomez as he made the comment.
- In the investigation stage, Complainant denied having been in the library at all.
- At the R833 meeting Complainant acknowledged the possibility that he could have been in the library.

In order to determine whether the acts occurred at all the administrative law judge must make

assessments of credibility. Complainant admits making comments attributed to him but states that his intent was misunderstood. He denies touching Ms. Gomez or looking at her in an harassing manner. Ms. Gomez states that he repeatedly looked at her in a harassing way, touched her in an unwelcomed manner and made at least one comment that frightened her.

In assessing credibility the administrative law judge must look to a number of factors, e.g. Demeanor on the witness stand, consistency of testimony within itself and when compared to other evidence accepted at hearing and the totality of the circumstances reported at hearing. Having considered all the evidence properly available to the trier of fact in this matter, it is the opinion of the undersigned administrative law judge that Complainant is less credible than Ms. Gomez.

It was not Complainant's job to monitor the length of Ms. Gomez's skirts. Yet he admits to commenting on her skirt length. He states he was just trying to be friendly but his memory is uncertain, e.g. whether or not he touched Ms. Gomez, whether or not he could have been in the library. Ms. Gomez, on the other hand, had very specific recollections of these incidents. Mr. Compton observed her immediately after one of the incidents. His testimony supports Ms. Gomez's testimony as does Ms. Johnson's testimony. The investigator's came to the same conclusion.

2. Sexual harassment.

Respondent argues that in order to determine whether the acts (conduct) constitutes sexual harassment, the trier of fact must look to a number of factors including: whether the conduct was welcome, the frequency of the conduct, the totality of the circumstance, the severity of the conduct, whether it was physically threatening or humiliating or merely offensive, whether the conduct unreasonably interfered with an individual's work performance or created and intimidating, hostile or offensive work environment, *Meritor Savings Bank FSB v. Vinson*, 477 U.S. 57, 65 (1986), e.g. whether the comments were intolerable, publicly made, caused humiliation and caused loss of self-respect, *Smith v. Norwest Financial Acceptance, Inc.* 129 F. 3d 1408, 1413 (10th Cir. 1997), i.e. whether the conduct is sufficiently pervasive or sufficiently severe to alter the terms, conditions or privileges of the named victims' employment, *Smith, supra*. And further that the standard for such review is a reasonable person standard. *EEOC v. Wiltel, Inc.*, 81 F. 3d 1508, 1513 (10th Cir. 1996).

Complainant argues that in determining whether the conduct was so severe or pervasive as to constitute a hostile environment the trier of fact must consider: 1) whether the conduct was physical or verbal, or both; 2) the frequency of the conduct; 3) whether the conduct itself was hostile or patently offensive; 4) whether the alleged harasser was a co-worker or a supervisor; 5) whether others joined in the harassment and 6) whether the harassment was directed at more than one individual, *EEOC Policy Guidelines on Current Issues of Sexual Harassment*, 8 Fair Emp. Man. (BNA) 450:6689 (March 19, 1990).

In this case, both Complainant's comments and actions were unsolicited. It is clear they were unwelcome, e.g. Ms. Gomez told Complainant to "stop" a number of times, in a number of

ways. When Complainant did not stop and escalated the situation by touching her, she filed a grievance in order to get him to stop. She was afraid to run into him at the office, in the hallway or on the way to the restroom. Such fear is an unreasonable interference with Ms. Gomez work environment. For purposes of this case, it is of no importance whether others joined in the harassment or were the target of the harassment.

Complainant's actions clearly violate the Secretary of State's policy against sexual harassment as "other verbal or physical conduct of a sexual nature". (Respondent's Exhibit 13). His actions fall within the definition of sexual harassment contained in the State of Colorado 1998 Employee Handbook (Respondent's Exhibit 12) specifically: "Sexual harassment may include actions such as...sex-oriented verbal teasing...Physical contact such as patting, pinching or constant brushing against another's body."

3. Arbitrary and capricious

Arbitrary and capricious can arise in one (or more) of three ways: a) by neglecting or refusing to procure evidence; b) by failing to give candid consideration to the evidence; and c) by exercising discretion based on 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).

The Secretary of State's failure to timely hold an R833 meeting in this matter does not rise to the level of arbitrary or capricious action. While the R833 meeting could have and certainly should have been held earlier in this matter, Complainant was afforded the opportunity to respond to the allegations. More importantly the investigation upon which the appointing authority relied in making her decision was conducted at the time of the incidents.

CONCLUSIONS OF LAW

1. Complainant touched Ms. Gomez in an unwelcomed manner and made a harassing statement to her (the file cabinet incident). Complainant, over a period of a week, consistently looked Ms. Gomez' body up and down, at her desk, in a way that made her feel uncomfortable and eventually frightened. He did not stop this activity when she requested that he stop.
2. Complainant's actions constitute sexual harassment in the work place as per the definitions contained in the Secretary of State's policy against sexual harassment and the State of Colorado 1998 Employee handbook. Therefore, disciplinary action against Complainant was warranted.
3. Respondent's actions in imposing discipline in this matter were not arbitrary or

capricious.

4. Respondent's actions were not instituted frivolously, in bad faith, maliciously, or as a means of harassment nor were they otherwise groundless. Therefore Complainant is not entitled to costs including attorney's fees.

ORDER

1. Respondent's actions are affirmed.

Dated this 19th
day of October 1998
at 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 should contact the State Personnel Board office at 866-3244 for information and assistance. To be certified as part of the record on appeal, an original transcript must be prepared by a disinterested recognized transcriber and filed with the Board within 45 days of the date of the notice of appeal.

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 October, 1998, I placed true copies of the foregoing **INITIAL DECISION** in the United States mail, postage prepaid, addressed as follows:

Ms. Vonda Hall
Attorney at Law
1390 Logan St., Suite 402
Denver, CO 80203

and in the interoffice mail to:

Ms. Elizabeth Weisaupl
Assistant Attorney General
1525 Sherman Street, 5th Floor
Denver, CO 80203
