

STATE PERSONNEL BOARD, STATE OF COLORADO

Case No. 99B123

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

DEVON JENKINS,

Complainant,

vs.

DEPARTMENT OF HIGHER EDUCATION,
COLORADO STUDENT LOAN PROGRAM,

Respondent.

This matter came on for hearing before Administrative Law Judge Mary S. McClatchey on August 6, 1999. Respondent was represented by Coleman Connelly, Assistant Attorney General, Office of the Colorado Attorney General. Complainant appeared and represented himself.

Complainant was the only witness on his own behalf.

Respondent called Gabriele Kaczar, Office Manager of the Colorado Student Loan Program ("CSLP"), Department of Higher Education ("DHE"), Barbara Lennie, Administrative Assistant I at the CSLP, and Charles Heim, Associate Director of Legal Affairs, CSLP.

Complainant introduced no exhibits at hearing. Respondent's Exhibits 4 - 9 were admitted by stipulation. Respondent's Exhibits 1 - 3 were admitted over objection.

MATTER APPEALED

Complainant appeals his disciplinary termination on April 30, 1999. For the reasons set forth below, Respondent's action is affirmed.

ISSUES

1. Whether the Complainant engaged in the acts for which he was disciplined.
2. Whether the discipline imposed was within the range of reasonable

alternatives available to the appointing authority.

3. Whether the actions of the appointing authority were arbitrary, capricious, or contrary to rule or law.

FINDINGS OF FACT

1. Complainant commenced employment on February 2, 1998 as an Administrative Assistant I in the Operations Department Mail Center, at CSLP. His duties consisted primarily of distributing incoming mail and preparing outgoing letters for mailing.

2. Complainant worked closely with Barbara Lennie, another Administrative Assistant I. Lennie had the same job duties as Complainant. Complainant's job was such that it was critical that he be able to work with Lennie as a team.

3. Complainant's supervisor was Gabriele Kaczar, the Office Manager at CSLP. She hired Complainant.

4. In April, 1998, Kaczar personally observed an incident giving where Complainant was discourteous to a coworker in both the language he used and the manner of delivery of his statement. He also was inappropriately loud.

5. On April 15, 1999, Kaczar had a meeting with Complainant regarding a number of performance issues. This meeting was memorialized in an April 17, 1998 memorandum from Kaczar to Complainant. Item #3 in the memo concerned Complainant's this incident. It referenced Complainant's "discourteous response to an employee who advised us yesterday that she had not received 'reject' letters for the day." The memo further states, "Devon was advised that **ALL** employees were to be spoken to in a courteous manner and that excellent customer service was to be given in all circumstances. He said that he understood." On page 3 of this memo, Kaczar wrote, "The employee was given a copy of this memorandum but declined to sign. G. Kaczar." Complainant initialed page three of this memo.

6. Kaczar elected not to take corrective action at that time, believing that she had assured that Complainant knew the expectations of workplace behavior, namely, that all employees are to speak in a courteous manner to each other.

7. On July 13, 1998, Kaczar was out of the office. Lennie had problems with Complainant on that day.

8. Lennie's work station was very close to that of Complainant, close enough that they each could reach out and touch each other from a sitting position.

9. On July 13, Complainant was inappropriately rude, loud, abusive, and unprofessional towards Lennie. When Lennie asked him for letters she needed to mail with

other letters she had, his response was very negative, and he refused to give them to her. He said he would do it himself, in a screaming tone. Throughout the day, Complainant continued to yell and scream at Lennie in a rude manner. Lennie felt threatened by Complainant.

10. On July 14, 1998, when Kaczar returned to the office, Lennie informed her of Complainant's behavior. Kaczar asked Lennie to write up the incidents in memo form, which she did.

11. A day or two later, Kaczar wrote up the July 13 incident on a Performance Documentation Form, attaching Lennie's memo, as well as a portion of Complainant's PACE evaluation form to it. Kaczar then met with Complainant and verbally counseled him regarding his inappropriate behavior. Complainant admitted he had acted inappropriately to Kaczar. She advised him his behavior was unacceptable at CSLP, and referred him to his PACE plan, showing him that his rating in a number of areas, such as Organizational Commitment and Adaptability, Communications, and Interpersonal Relations, was unacceptable.

12. Kaczar was certain that at that point Complainant knew his behavior towards Lennie had been inappropriate. Once again, she elected not to issue a corrective action, believing that she had clearly communicated what was expected of Complainant.

13. After the July 13 incident, Complainant's treatment of Lennie changed for the worse, and his abusive conduct towards her became a pattern of behavior. He raised his voice at her more often, primarily during the one hour period prior to Kaczar's arrival for work, between 6:30 and 7:30 a.m. Lennie became uncomfortable around him, and began to feel a great deal of stress about her working relationship with him.

14. On August 21, 1998, Kaczar personally observed another angry outburst by Complainant. Kaczar had checked Complainant's and Lennie's work for accuracy, as part of her job as office manager. She had found approximately 24 documents sorted in the wrong outgoing mail bin. When she asked Lennie and Complainant who had distributed the documents into the bin, Complainant answered that they both had. Kaczar then informed both of them that the 24 documents were in the wrong bin, and handed the documents to Complainant, asking him to separate them correctly.

15. Complainant then jumped to his feet and began shouting, "I'm not that incompetent!" and other angry, inappropriate statements. Complainant's loud and angry outburst continued for two to three minutes. He then sat down, continuing to make angry statements in a lower tone, but still a loud tone of voice. He slammed papers on his desktop. Complainant's choice of words and tone and volume of voice were inappropriate.

16. On August 24, 1998, Kaczar wrote up a second Performance Documentation Form. She wrote a description of the August 21, 1998 incident she had witnessed, which both she and Complainant initialed. She met with Complainant on August 24 to discuss his conduct,

giving him his third verbal counseling on the same behavior problem. Kaczar informed him about the Colorado State Employee Assistance Program ("CSEAP"), through which he could obtain professional counseling, informed him of Department of Personnel courses in Anger Management and Conflict Resolution, and warned him that any further incidents of this type would result in a corrective action. The statement initialed by Complainant states, "Devon has been informed that if an incident of this type occurs again, a Corrective Action will be issued."

17. On February 18, 1999, Complainant became angry and abusive towards Kaczar during a conversation. Complainant was angry that a PC had not yet been installed in his area for his use. During a discussion of the issue with Kaczar, he became increasingly agitated. The volume of his voice increased so much that he disrupted the work area of a number of other employees (who were working on the telephone with borrowers regarding defaulted student loans).

18. Kaczar asked Complainant to lower his voice and to continue their conversation in a private area; he did not lower his voice. Complainant's comments to Kaczar became increasingly combative and insubordinate. One employee actually left her office and came to the scene to see what was the problem. Complainant's harangue continued for eight to ten minutes.

19. On March 4, 1999, Kaczar issued a corrective action to Complainant based on his February 18 behavior. The corrective action recounts in detail the Complainant's inappropriate conduct, and states that he is expected to be courteous and professional in all dealings in the work place, and to conduct himself in a manner that conveys a positive image of the unit and the agency in the future. It directs Complainant to immediately enroll in the Department of Personnel Anger Management and Conflict Resolution courses. It encourages Complainant to reconsider CSEAP's "confidential supportive counseling service" as a resource. It states that "Individual self-control is vital in creating and maintaining a work environment free of violence for all employees. Should there be any other incidents of inappropriate conduct and discourtesy by you, we may consider taking further corrective and/or disciplinary action."

20. Kaczar discussed the corrective action with Complainant.

21. Complainant had a meeting with a counselor at CSEAP, after which he expressed interest in the courses in anger management and conflict resolution. He was terminated prior to attending these courses.

22. On March 30, 1999, several employees witnessed threatening and abusive behavior of Complainant towards Lennie. Kaczar was out of the office that day, so, when she returned on March 31 and received the reports of Complainant's conduct, she asked the witnesses to write descriptions of the incident.

23. On March 31, 1999, Complainant made a threatening statement in the context of an

angry outburst towards Lennie. As soon as Kaczar arrived at work, Lennie approached her and informed her about the March 30 and March 31 incidents. Kaczar asked Lennie to put them in writing.

24. Lennie's March 31, 1999 statement said, in part:

While you were out of the office on Tuesday, March 30, 1999 at approximately 7:00 am, I asked Devon, 'Where is the report CL88062 (control totals)?' He started yelling, 'Relax, don't be so hyper.' I told him I needed to e-mail Brie . . . that Pat Redford had received her report. He continued yelling and said, 'If she didn't get the report, she will e-mail Brie.'

On March 31, 1999 I had asked Devon to please leave the e-mail system up, so that I could e-mail Brie when the reports are distributed. He again started yelling and said, 'this is my space, and I want you out of it!' Then under his breath he said, 'If everybody doesn't leave me alone I'm going to start shooting people in this place.' This is not the first time that he has yelled at me. Every day that I come in I'm afraid for my safety, due to the constant harassment. I feel that no one should have to worry about their safety, and/or tolerate this type of behavior."

25. Complainant's statement about "shooting people in this place" traumatized and frightened Lennie. She left the work area and tried to find something to do elsewhere, until Kaczar arrived. When she approached Kaczar, she told her that it was urgent. That day, it was difficult for Lennie to get any work done, she could not focus on her work, because she was focused on her and everyone else's safety at work.

26. On March 31, 1999, Kaczar wrote a memo to Robert Fomer, Director of CSLP, requesting that disciplinary action be taken against Complainant. She attached written statements by Lennie, and other witnesses.

27. The March 31 statement of Judy Benkendorfer said, in part:

"In the six months I have worked in the same area as Devon Jenkins, I have witnessed numerous incidents that can only be described as temper tantrums. He has particularly bullied his co-worker Barbara Lennie early in the mornings, belittling her, cussing her, ordering her to stay away from him and let him do as he wanted. This week in particular, March 29 & 30, he became louder and more abusive than ever - the poster boy for 'postal' behavior. The tension could be cut with a knife, and I have felt very relieved when the other employees began to arrive for the day. Devon then dons his nice-guy mask.

"I wish to note that Barbara has never instigated any of these situations but has remained task-oriented and as efficient as possible under what must be doubly frightening to her, being in his immediate vicinity and the target of his rage. I make that judgment due to her blanched and drawn appearance during and after each

assault.”

28. Tami Martinez’s March 31 statement said, in part,

“on March 30, 1999 at approximately 6:30 am, there was a lot of hollering going on in the OPS mail area between Barbara Lennie & Devon Jenkins. I didn’t hear the context of the argument, but I can tell you that it was very heated & Devon’s voice kept getting louder & louder.”

29. Kaczar elected to place Complainant on administrative leave with pay pending investigation into the incidents of March 30 and 31. He was escorted from the building on March 31.

30. Fomer delegated appointing authority to follow up on the request for disciplinary action to Charles W. Heim, Associate Director for Legal Affairs for CSLP.

31. On April 2, 1999, the CSLP Human Resources Director sent a letter via certified mail to Complainant notifying him of the upcoming R6-10 meeting on Friday, April 9, 1999.

32. On April 3, 1999, an unknown agent signed on behalf of Complainant regarding receipt of the April 2 letter.

33. Complainant did not appear at the April 9 meeting.

34. On April 9, 1999, the CSLP Human Resources Director sent a memorandum to Complainant, stating that since he had missed the April 9 meeting, they were asking him to respond in writing to the allegations in Kaczar’s March 31 memo, with attachments. This was sent to Complainant via Federal Express, and was signed for by the same agent as the April 2, 1999 letter.

35. On April 19, 1999, Complainant did respond to this request. In his written response, he stated the following, in part:

“In answer to the alleged recommendations, I would like to say over the course of an entire year, yes I did raise my voice occasionally to respond to various actions going on around me. I worked in an environment totally administered by females. The workplace is not divided off and we all had a tendency to get in each others way and reach around, above, across, below and over each other quite often. My voice carries and is baritone. I am 6 feet tall, 180 pounds, I am not a mouse.”

36. In his April 19 response letter, Complainant further states that Kaczar and Lennie “have a tendency to complicate” the “manner of distribution” of mail. He states that Kaczar had changed the procedures at work without informing him, “causing lots of confusion on my part.” He states, “When I try to make a point my voice has a tendency to raise, the volume does. I never cursed or threatened anyone and I was never abusive.” He states

that during Lennie's maternity leave, he had to work with temporary workers. He states that he wanted to be promoted to an Administrative Assistant II position, but that Kaczar doesn't care about his advancement. He states that Kaczar and McCleod, the assistant manager of the unit, should focus more attention on professional matters instead of personal matters. He states that he has seen a CSEAP counselor and has made appointments for workplace issues conferences to be held in May. Lastly, he states that he is "trying to keep my demeanor intact and remember my voice should not go out of control. I have been totally disrespected and the entire set of incidents were distorted and blown way out of proportion."

37. Heim considered the following in imposing the determining what discipline to impose against Complainant: Kaczar's request for disciplinary action and attachments; Complainant's April 19 response letter; his prior corrective action regarding similar rude and abusive conduct; his three prior verbal counselings regarding similar rude and abusive conduct; interviews with Lennie, Kaczar, and Ms. McCleod, and assistant manager in Complainant's unit; and Complainant's performance appraisals. Of particular interest to Heim was the fact that Complainant did not specifically deny making the threat regarding obtaining a weapon and shooting people, nor did he specifically deny the other alleged conduct on March 30 and 31, 1999. Heim felt that Complainant's April 19 letter was more an argument in mitigation, rather than a denial of the truth of the allegations.

38. On April 30, 1999, Heim issued his formal disciplinary action in the form of a memorandum to Complainant. He concluded that Complainant's

"written response does not rebut those allegations [regarding March 30 and 31]. To the contrary, you admit that you have raised your voice, and you have as much as admitted that you are upset about the way 'the two women' have colluded to change a manner of distribution of reports with which you were very happy. Indeed, the tenor of your written response makes pretty clear that (a) you are unhappy that your co-workers in the Mail Center are women and (b) you are either unwilling or unable, for a variety of reasons, to carry on a civil relationship with those women - which is entirely consistent with the allegations brought against you and which tends to lend credence to those allegations."

He therefore found as follows:

On March 30, 1999, you yelled in a rude, hostile, and offensive manner at your co-worker, Barbara Lennie - which had the effect of harassing her. On March 31, 1999, you made a hostile and threatening comment to Ms. Lennie - which had the effect of placing her in fear for her safety. While you have not admitted to these instances of conduct, neither have you unequivocally denied them. Your conduct on March 30, 1999 was witnessed by others besides Ms. Lennie; and while there was apparently no one besides Ms. Lennie present to witness your conduct toward her on March 31, 1999, the conduct alleged by her on that date is consistent with other instances of documented conduct attributed to you toward her or toward others."

39. Heim also found that the previous corrective action and verbal counselings had not deterred or corrected Complainant's conduct, which seemed "to be escalating in frequency, hostility and threatening nature."

40. Heim concluded that Complainant's conduct of March 30 and 31 constituted both willful misconduct and/or willful failure or inability to perform his assigned duties within the meaning of CSLP Employee Handbook provision 16.01.2 and State Board of Personnel Rule 6-9.

41. Heim further stated,

"I conclude that the only appropriate resolution to this matter is that you be terminated from employment with CSLP. CSLP can not tolerate in its workplace one who has developed a pattern of utilizing hostile, abusive, rude and threatening language - because that kind of language, and the attitude which it manifests, makes a shambles out of the workplace by harassing co-workers and placing them in fear for their safety."

42. Heim also felt that the constant restructuring of the student loan program by the federal government necessitates that CSLP staff operate effectively as a team. Complainant's conduct was detrimental to the formation and functioning of a team.

43. At hearing, Complainant testified that on March 30, he said "relax, don't be hyper," because he was trying to calm Lennie down. He said she was very "uptight" on both the 30th and 31st of March.

44. Complainant testified that he had not threatened to shoot people at his workplace, but that he had been "mad at the bank" across the street, and had said he was going to go to the bank and start shooting people. He stated that Lennie misinterpreted what he had said. He implied that he was just venting and letting off steam about his financial situation when he made this statement.

45. Complainant also testified that he felt that Kaczar and Lennie had "fits of jealousy" regarding his second job, and that on March 31, he had informed Kaczar that he had applied for an Administrative Assistant II position. He implied that she was retaliating against him for applying for another job when she requested discipline.

46. Complainant testified that he and Lennie had different lifestyles, she being a mother, he being a bachelor, and that this "caused us to be irritable towards one another." He stated that she was facetious and snappy with him, didn't want to be bothered, and blew him off when he spoke to her.

47. Complainant did admit on the stand that his "temper flared" in dealing with Lennie.

48. Complainant made a blanket denial, stating that he "denies the allegations."

49. Complainant's denials at hearing as well as his implications that Kaczar had a motive to be "against him" are given little weight here. The statements are self-serving, motivated by Complainant's desire to retain his position, and are countered by overwhelming documentary and testimonial evidence demonstrating that he committed the acts for which he was disciplined.

50. It is found that Kaczar did not have any motive to retaliate against Complainant, and was not in any way biased against him. In fact, she gave Complainant two extra chances to correct his behavior prior to even issuing a corrective action against him. Kaczar went out of her way to provide Complainant with the opportunity to succeed and to maintain a clean disciplinary record. He did not take advantage of this opportunity.

51. Complainant requested a number of potential remedies in his appeal form, including not only reinstatement, but a transfer, interviews for other positions, or a "physical science intern position."

DISCUSSION

Introduction.

Certified state employees have a property interest in their positions and may only be terminated for just cause. *Department of Institutions v. Kinchen*, 886 P. 2d 700 (Colo. 1994). Such cause is outlined in State Personnel Board Rule R6-9, 4 CCR 801 (1999), in effect at the time of the actions at issue herein, and generally includes: (1) failure to perform competently; (2) willful misconduct or a violation of the State Personnel Board's rules or the rules of the agency of employment; (3) willful failure or inability to perform duties assigned; and (4) final conviction of a felony or any other offense involving moral turpitude.

In this disciplinary action of a certified state employee, the burden of proof is on 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. *Kinchen, supra*. 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). The Board cannot reverse or modify an action of an appointing authority unless it finds the action to have been arbitrary, capricious, or contrary to rule or law. Section 24-50-103(6), C.R.S. (1998).

In *Charnes v. Lobato*, 743 P.2d 27, 32 (Colo. 1987), the Supreme Court of Colorado held that:

Where conflicting testimony is presented in an administrative hearing, the credibility

of witnesses and the weight to be given their testimony are decisions within the province of the agency.

In determining credibility of witnesses and evidence, an administrative law judge can consider a number of factors including: the opportunity and capacity of a witness to observe the act or event, the character of the witness, prior inconsistent statements of a witness, bias or its absence, consistency with or contradiction of other evidence, inherent improbability, and demeanor of witnesses.

Colorado Jury Instruction 3:16 addresses credibility and charges the fact finder with taking into consideration the following factors in measuring credibility:

1. A witness' means of knowledge;
2. A witness' strength of memory;
3. A witness' opportunity for observation;
4. The reasonableness or unreasonableness of a witness' testimony;
5. A witness' motives, if any;
6. Any contradiction in testimony or evidence
7. A witnesses' bias, prejudice or interest, if any;
8. A witness' demeanor during testimony;
9. All other facts and circumstances shown by the evidence which affect the credibility of a witness.

Did the Complainant commit the actions for which he was disciplined?

The evidence demonstrates that the Complainant did commit the acts for which he was disciplined. Moreover, the evidence further demonstrates that Complainant also committed the prior actions that gave rise to the three verbal counselings by Kaczar and the corrective action.

Kaczar did her best to work closely with Complainant regarding his inability to control his temper in the workplace. She provided Complainant with the information and resources necessary for him to succeed at work. She informed him of CSEAP and the Department of Personnel courses in anger management and conflict resolution, prior to administering corrective action. Complainant was unable to discipline himself enough to control his temper at work.

Kaczar's patience and her decision to delay corrective action demonstrate her lack of bias in this case. Kaczar demonstrated exceptional forbearance in administering three verbal warnings prior to imposing corrective action. Under the circumstances presented here, many other supervisors in Kaczar's position would have imposed corrective action much earlier.

Lennie also presented as a credible witness. There was no evidence of bias against Complainant. In fact, Complainant actually elicited from Lennie in cross examination that she had offered to give him dinnerware, and that at the outset of their working relationship

the two enjoyed a friendly rapport.

Was the discipline imposed within the range of reasonable alternatives available to the appointing authority?

The appointing authority felt he had only one choice in handling this case, and that was to terminate Complainant's employment. In view of the fact that three verbal counselings and a corrective action did not deter Complainant's conduct, and that in fact Complainant's conduct did escalate as time passed, it was reasonable for Heim to conclude that one more chance would not modify Complainant's behavior.

At the time discipline was imposed here, Complainant's working relationship with Lennie had completely broken down. Lennie was not even comfortable being in the same room with Complainant on March 31, 1999. It would not be reasonable for CSLP to force Lennie to endure further abuse from Complainant. It would be unreasonable to force CSLP to accommodate Complainant's inability to get along with his co-worker. To place Complainant back in his position would have rendered it extremely difficult for Lennie to function. The work of the unit would have suffered.

It is also clear that Complainant had no respect for the authority of his immediate supervisor, Kaczar. Complainant refused to lower his tone when requested to do so by Kaczar. Complainant failed to modify his behavior after being verbally counseled and corrected by Kaczar. To place Complainant back in the workplace under Kaczar would render it difficult, if not impossible, to effectively manage the unit.

Was the action of the appointing authority arbitrary, capricious, or contrary to rule or law?

The appointing authority closely considered all information submitted to him by Complainant. Further, the appointing authority sought out all available relevant information. As discussed above, his conclusion in this matter was reasonable. Therefore, his actions in handling this matter were neither arbitrary nor capricious. Van De Vent v. Board of Commissioners of Larimer County, 55 P.2d 703, 705 (Colo. 1936).

Complainant submitted no evidence or argument regarding the issue of whether the appointing authority's actions were contrary to rule or law. Heim complied fully with the Board's rules governing predisciplinary meetings and the imposition of discipline. Further, the agency imposed progressive discipline in this case to an extent seldom seen (three verbal counselings and a corrective action).

CONCLUSIONS OF LAW

1. Complainant did engage in the acts for which he was disciplined.

2. The appointing authority's action was within the range of reasonable alternatives available to him.

3. The actions of the appointing authority were not arbitrary, capricious, or contrary to rule or law.

ORDER

The action of the Respondent is affirmed. Complainant's appeal is dismissed with prejudice.

DATED this _____ day of
September, 1999, at
Denver, Colorado.

Mary S. McClatchey
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), C.R.S. 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), C.R.S.; Rule R-8-58, 4 Code of Colo. Reg. 801. 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).

PETITION FOR RECONSIDERATION

A petition for reconsideration of the decision of the ALJ may 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. 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.

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 is responsible for having the transcript prepared. To be certified as part of the record, an original transcript must be prepared by a disinterested, recognized transcriber and filed with the Board within 45 days of the date of the designation of record. For additional 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 R-8-64, 4 CCR 801.

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 R-8-66, 4 CCR 801. Requests for oral argument are seldom granted.

CERTIFICATE OF MAILING

This is to certify that on the ____ day of September, 1999, I placed true copies of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** in the United States mail, postage prepaid, addressed as follows:

Devon Jenkins
3000 East Colfax Avenue, #134
Denver, Colorado 80206

Coleman Connelly
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