

STATE PERSONNEL BOARD, STATE OF COLORADO

Case No. 2000B034

SUPPLEMENTAL INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

BRIAN GONZALES,

Complainant,

vs.

DEPARTMENT OF CORRECTIONS,
YOUTHFUL

OFFENDER

SYSTEM,

Respondent.

This matter came on for hearing on August 8, 2000 before Administrative Law Judge Robert W. Thompson, Jr. Respondent was represented by Susan J. Trout, Assistant Attorney General. Complainant appeared in person and was represented by Charles F. Kaiser, Attorney at Law. Respondent's advisory witness, Brian Gomez, also appeared.

INTRODUCTION

The evidentiary hearing in this matter was held on December 13-14, 1999. The Initial Decision, ordering the reinstatement of complainant, was issued on January 26, 2000. Respondent filed a timely appeal of the Initial Decision.

On April 21, 2000, complainant filed a Motion For Relief From Order, And For a Post-Hearing Deposition To Preserve Testimony, requesting the opportunity to take the deposition of Pam Yeo, a witness for respondent at hearing, on grounds of the attached

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affidavit of Jennifer Mascarenas alleging that Yeo had told her that there had been a meeting at which respondent's witnesses were told what to say at hearing and, implicitly, that parts of Yeo's hearing testimony were false. Complainant did not ask that the case be re-opened for any purpose other than to take Yeo's deposition.

Respondent filed a response to complainant's post-hearing motion on May 1, 2000, asking that the hearing be re-opened for the testimony of Mascarenas, Yeo and any other person on the limited issue of alleged perjury by Yeo or any other alleged misconduct against respondent.

On June 22, 2000, the State Personnel Board entered an Order directing that the hearing be reconvened and that the hearing be limited to "issues as briefed by the parties, and as identified in Complainant's Motion and Respondent's Response." The hearing was then set for August 8, 2000.

DISCUSSION

At hearing on August 8, complainant went forward with the evidence and called Jennifer Mascarenas, his sole witness. Respondent called Pamela Yeo as its only witness. Exhibits 50, 51, 52 and 53 were offered by respondent and admitted into evidence without objection.

Mascarenas testified that, on February 26, 2000, Yeo told her that all of the shift commanders went into the Director's office and that they were all schooled in what to say at the evidentiary hearing.

Yeo testified that she said to Mascarenas that other shift commanders were in and out of the Director's office. This is consistent with her December testimony. (Ex. 52, transcript.) Yeo otherwise denied Mascarenas' allegations.

Neither party is requesting a change in the Findings of Fact, Conclusions of Law or Order of the January 26 Initial Decision.

Complainant affirmed that all he was asking for in his post-hearing motion was an opportunity to depose Yeo, which he had on July 31, 2000, and that "she denied everything." Thus, he received the relief he requested.

Respondent seeks only a finding that the testimony of respondent's witnesses was not false and manufactured, in view of Mascarenas' affidavit (Ex. 51.), and that there be no changes in the credibility determinations of the Initial Decision.

The evidence presented at the August 8 hearing concerned only the allegations of the Mascarenas affidavit. There was no testimonial or documentary evidence from which to derive additional facts pertaining to complainant's termination of employment. There was insufficient credible evidence to support any findings of fact on the issue of the credibility of witnesses.

This Supplemental Initial Decision has no effect on the Initial Decision of January 26. The Findings of Fact, Conclusions of Law and Order remain the same.

Respondent withdrew its request for attorney's fees for this post-hearing proceeding.

DATED this _____ day of
August, 2000, at
Denver, Colorado.

Robert W. Thompson, Jr.
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. The notice of appeal must be received by the Board no later than the 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) 894-2136.

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 August, 2000, I placed true copies of the foregoing **SUPPLEMENTAL INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** in the United States mail, postage prepaid, addressed as follows:

Charles F. Kaiser
Attorney at Law
1801 Broadway, Suite 1100
Denver, CO 80202

and in the interagency mail, addressed as follows:

Susan J. Trout
Assistant Attorney General
1525 Sherman Street, Fifth Floor
Denver, CO 80203
