

STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. **2000B076**

DISMISSAL ORDER AND INITIAL DECISION

RICHARD A. CRUZ,

Complainant,

vs.

**DEPARTMENT OF CORRECTIONS,
COLORADO STATE PENITENTIARY,**

Respondent.

THIS MATTER came on for hearing on October 24, 2001.

1. Section 24-50-125(7), C.R.S. states that failure, without good cause, of an employee or his representative to appear at a hearing shall be deemed a withdrawal of his or her appeal.
2. Complainant did not appear at hearing, nor did he contact the Board to indicate any reason for his failure to appear.
3. Respondent and its advisory witness were present and ready to proceed.
4. Complainant's failure to appear is hereby deemed a withdrawal of his appeal.

WHEREFORE, this case is dismissed with prejudice.

Dated this 24th day of October, 2001.

Mary S. McClatchey
Administrative Law Judge
State Personnel Board
1120 Lincoln Street, Suite 1400
Denver, CO 80203

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 2 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 _____, I placed true and correct copies of the foregoing **DISMISSAL ORDER AND INITIAL DECISION** in the United States mail, postage prepaid, addressed as follows:

Richard A. Cruz
705 Kalispel Avenue
Pueblo, Colorado 81005

and in the interagency mail, to:

Susan J. Trout
Assistant Attorney General
Employment Law Section
1525 Sherman Street, 5th Floor
Denver CO 80203

Andrea Woods