

**INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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OMAR JAH ROCWA,

Complainant,

vs.

DEPARTMENT OF HIGHER EDUCATION,  
COLORADO STUDENT LOAN PROGRAM,

Respondent.

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Administrative Law Judge Robert W. Thompson, Jr. heard this matter on August 12, 13 and 19, 2002. Melissa Mequi, Assistant Attorney General, represented respondent. Complainant appeared in-person and was represented by W.A.M. Al-Haqq, Attorney at Law.

**MATTER APPEALED**

Complainant appeals his disciplinary termination of employment. For the reasons set forth below, the disciplinary action is affirmed.

**ISSUES**

1. Whether respondent's action was arbitrary, capricious or contrary to rule or law;
2. Whether the discipline imposed was within the range of available alternatives;
3. Whether complainant was discriminated against on the basis of race;
4. Whether complainant failed to mitigate his damages;

5. Whether either party is entitled to an award of attorney fees and costs.

### **PRELIMINARY MATTERS**

On May 28, 2002, this matter came on for hearing. Complainant did not appear in-person or through counsel. Instead, counsel's paralegal appeared to request a continuance on the ground that counsel was appearing in another court.

By Order dated May 28, 2002, complainant, having been charged with the delay in the proceedings, was denied an award of back pay from May 28 until the rescheduled hearing date should he prevail at hearing. Also by Order of May 28, complainant was directed to immediately serve respondent with a copy of his amended prehearing statement and indicate the method and location of service, and to whom served.

On July 30, 2002, respondent filed its Motion for an Order Barring the Introduction of Testimony and Exhibits by Complainant, alleging that complainant still had not provided respondent with a copy of his Amended Prehearing Statement. Complainant did not timely respond to respondent's motion by August 9. At hearing on August 12, the motion was argued, and complainant's Amended Prehearing Statement was stricken. Complainant was allowed to call any witnesses and introduce any exhibits endorsed by respondent, and to testify in his own behalf. See *Weiss v. Dept. of Public Safety*, 847 P.2d 197 (Colo. App. 1992) (regarding sanctions for failure to file prehearing statement).

### **FINDINGS OF FACT**

The Administrative Law Judge has considered the exhibits and the testimony, assessed the credibility of the witnesses, and makes the following findings of fact, which were established by a preponderance of the evidence.

1. Complainant, Omar Jah Rocwa, an African American, became employed by the Colorado Student Loan Program (CSLP) of the Department of Higher Education on January 9, 1999, as an Accounting Technician I. He worked in the accounts receivable section of CSLP's accounting department. His duties were primarily to post payments on the Unipac system, the database system utilized by CSLP. Eighty-five percent of his time was spent using the Unipac system. He did not use the Internet in the performance of his duties.
2. Around the middle of June 2000, Holly Moore, supervisor of the accounts receivable unit, began receiving complaints from employees who told her that complainant's whistling distracted them from doing their duties. (At hearing, Moore named five individuals who had complained.) The work area is a small, closed-off space for twelve or thirteen workers.
3. As complainant's supervisor, Moore e-mailed him on July 24, 2000, as follows: "Omar, I have had several complaints that you are disrupting your fellow co-workers with your whistling. Please refrain from whistling. Thanks for your cooperation."
4. Complainant replied to Moore's e-mail in the following manner: "Holly, several of my co-workers have complained to you and others about the discrimination practices in the accounting department, could you get together with the other managers and supervisors in accounting and address our issues? Also, I would like to complain about the way Liz laughs, it is very loud and sounds like she's going to die, could you ask her not to laugh anymore? Also, I don't like it when Connie and Carolyn talk for an hour or so in the morning before they start working, could you please ask them to not chit-chat in the morning? Also, I don't like it when I hear people whispering and telling secrets, could

you ask everyone to please speak loud and clear so I can hear them when they're talking? Also, I don't like to smell smoke from the smokers when they get back from smoking, could you please ask everyone who smokes to please spray themselves down with some type of deodorizer before they return to the accounting department? Also, I don't like it when the smokers go smoking every hour or so, could you please time them or schedule their smoke breaks so that they refrain from so many smoke breaks? Also, I don't like it when I see Carolyn walking around the agency all day chit-chatting, could you or Connie please make sure she's not just wandering the halls aimlessly? Also...well that's all for now, give me a little time and I'll try to think up some more complaints to join in on the complaining."

5. In subsequent July 24 e-mail messages, Moore warned complainant that he would be "written up" if he did not stop whistling because his whistling was disruptive to the department. Complainant replied that his whistling was "some sort of nervous medical condition." Moore requested a note from complainant's doctor documenting his medical condition. She noted that she would review and respond to his issues but would not address personal attacks on co-workers.
6. Complainant testified that he telephoned his doctor for an appointment on July 24, but the appointment was "two and one-half to three weeks out." He did not so inform his supervisor.
7. By e-mail of July 26, 2000, Moore set a deadline of Monday, July 31, for complainant to provide a statement from his doctor. Complainant replied that he would make an appointment with a doctor as soon as possible but might not be able to do it on her schedule, and if she wrote him up in the meantime he would consider it retaliation for his

raising the issues of discrimination, racism, and bigotry in the accounting department.

8. With delegated appointing authority to issue corrective actions, not having received a doctor's note attributing the whistling to a medical condition, Moore issued a corrective action to complainant on August 1, 2000, for the insubordination of continuing to whistle in the workplace after being told to stop. When Moore handed him the corrective action, complainant looked her in the eye, started to whistle, and told her that he could guarantee that the whistling would continue. It appeared to Moore that the whistling was deliberate. Complainant did not grieve the corrective action or submit a written statement concerning it.
9. Complainant continued to whistle in the workplace. In Moore's view, it became worse. She noticed that complainant would start to whistle when she walked by his cubicle. She continued to receive complaints about the whistling disrupting other employees.
10. On August 4, 2000, Moore issued another corrective action, calling complainant's continued whistling "blatant insubordination." Complainant read the corrective action and began to whistle. Complainant did not grieve this corrective action or file a written statement concerning it.
11. Complainant whistled more and more.
12. On August 7, 2000, Moore wrote a memo to Robert Fomer, CSLP Director, asking that disciplinary action be taken against complainant for violating the two corrective actions.

13. At an unspecified time, but subsequent to the disciplinary action request, complainant informed Moore that he had gone to Rocky Mountain HMO regarding his whistling and was referred to a specialist. She informed her supervisor, Kingsolver.
14. As Assistant Manager of the CSLP Accounting Department, Tom Kingsolver is responsible for the day-to-day operations of the accounting department. He reports to the Accounting Manager.
15. Around June 21, 2000, complainant asked the human resources office for the job title and salary of approximately seventeen employees in an effort to show that blacks were overlooked for promotions and were not provided the necessary training to qualify for advancement.
16. Complainant concluded from the information he received from the human resources office that the higher level was exclusively white, the middle level was all white except for one minority, and all blacks were at the lower level. He filed an internal complaint of racial discrimination.
17. On June 27, 2000, Carolyn Verquer of the payroll unit brought to Kingsolver's attention the fact that complainant had submitted a revised timesheet for May 2000 that added four hours worked on Saturday, April 29. On several prior occasions, Verquer had complained to Kingsolver and Bill Schlaufman, Manager of Accounting, about complainant turning in inaccurate timesheets and not turning in leave slips for time off.
18. On June 29, 2000, complainant drafted a petition asking that the opportunities for advancement and professional growth that were extended to white employees be made available to minority

employees. The petition was signed by complainant and four co-workers and turned into CSLP Director Robert Fomer.

19. On June 28, 2000, Sherry Gansert, Associate Director for Administration, returned from vacation and received a copy of complainant's written complaint. On June 29 she received a copy of the petition.
20. Gansert conducted an investigation of complainant's allegations. Although concluding that there was no discrimination in the promotion and training practices of the accounting department, she decided that she had a conflict of interest because she supervised the Manager of Accounting. Rather than rely on her report, Gansert suggested to Director Fomer that someone from outside the agency be brought in to investigate the matter. This was done.
21. Complainant's supervisor, Moore, had gone over his monthly timesheets with him and made corrections to them on several occasions so that the timesheets would reflect 40 hours per week. Moore described complainant's timekeeping as initially accurate but then becoming "sloppy" at some point.
22. CSLP has a written policy against using the Internet for non-CSLP business. Apparently, however, this policy is not strictly enforced. Complainant was known to access the Internet to check real estate listings and follow the stock market. In June or July of 2000, Moore advised him that he needed to cut down on his Internet usage, and to turn the Internet off when not in use, because one month CSLP had to pay \$8,000 for his Internet time.

23. Kingsolver requested reports for each Saturday in May shown on complainant's May timesheet. Finding what he viewed as additional discrepancies in May, he requested reports for any Saturday complainant worked since January 1, 2000. He hoped to determine if the timesheet discrepancies were the result of a simple oversight or a one-time mistake. He found what he viewed as additional discrepancies in March. There were no weekends on complainant's timesheets for January or February.
24. Complainant, as do all employees, had a user card by which he gained access to the agency, and an access code for computer usage.
25. On June 29, Kingsolver called a meeting with complainant and his supervisor Holly Moore, and Mary Sanchez, to discuss the timesheets. Complainant stated that he might have made a mistake.
26. On July 3, a meeting was held with complainant, Danika Kirby, Mary Sanchez, and Bill Schlaufman to further discuss the timesheets.
27. Kingsolver reached the following factual determinations:
  - a) Saturday, March 4 – Complainant's timesheet showed that he worked four hours. The security report showed that complainant did not access the agency or the accounting department, and there was no access to the Unipac loan servicing system. Complainant did not have an explanation for this day being on his timesheet.
  - b) Saturday, March 18 – Complainant's timesheet showed that he worked six hours, but the security report indicated there was no access to the accounting department or the Unipac system. Complainant stated that he accessed the Internet on that day. His job duties did not require him to access the Internet.

- c) Saturday, April 15 – Complainant’s timesheet showed eight hours worked. There was no access to the Unipac system.
- d) Saturday, April 29 – The April timesheet showed no hours worked on that day. The revised May timesheet showed four hours worked. The Unipac system was accessed for two minutes and then automatically disconnected after 30 minutes of inactivity. Complainant stated that he turns the Internet on when he comes in on weekends.
- e) Saturday, May 6 – Complainant’s timesheet showed that he worked from 9:00 a.m. to 2:30 p.m. The security report indicated that he did not access the accounting area until 10:19 a.m. The Unipac system was accessed at 11:04 a.m. and automatically disconnected at 11:39 a.m. after 30 minutes of inactivity. Complainant stated that he might not have come in until 10:19 but that he worked on Sunday, May 7, and did not report that time on his timesheet. The security report indicated that complainant accessed the accounting area at 1:39 p.m. on May 7, but there was no access to the Unipac system.
- f) Saturday, May 13 – Complainant’s timesheet showed that he worked six hours, 8:00 a.m. to 2:00 p.m. There was no access to the accounting area. Complainant stated that he actually worked on Sunday, May 14. The security report indicated that the accounting area was accessed at 1:48 p.m.; there was no access to the Unipac system.
- g) Saturday, May 20 – Complainant’s timesheet showed that he worked three hours. He accessed the accounting department several times during the day, but there was no access to the Unipac system.
- h) Saturday, May 27 – Complainant’s timesheet showed that he worked six hours, 10:00 a.m. to 4:00 p.m. There was no access to the agency or the accounting area on that day. Complainant stated

that he actually worked on May 20, not May 27. His timesheet showed that he worked three hours on May 20, 10:00 a.m. to 1:00 p.m.

- i) Saturday, June 3 – Complainant’s timesheet showed that he worked 3.5 hours, 12:30 p.m. to 4:00 p.m. The security report indicated that there were two accesses to the accounting area, at 12:36 p.m. and 12:41 p.m. There was no access to the Unipac system.
- j) Sunday, June 18 – Complainant’s timesheet showed that he worked five and one-half hours, 12:45 p.m. to 6:15 p.m. The security report indicated one access, at 12:52 p.m. There was no access to the Unipac system.
- k) Although complainant had claimed that there were times when he followed another employee in and consequently did not use his own user card to gain access (“tailgating”) to the agency, there was no access to accounting by anyone.
- l) Via an undated memo from Payroll Supervisor Connie Butler to Kingsolver, Butler advised Kingsolver that she was working in the office on June 18 when complainant entered the office at approximately 12:45 p.m., spent an hour using the printer to print out listings of condos in the metro area, and left for the day. Butler also stated that she had been watching the timesheets of several employees due to timesheet errors, and complainant had missed several days in several months without turning in leave slips, but posting time on weekends instead.

28. Kingsolver concluded from his investigation that complainant had, on numerous occasions, knowingly and willfully falsified his timesheets for the purpose of being paid for time not worked.

29. As the supervisor of Holly Moore, who was complainant's direct supervisor, Kingsolver requested that Moore submit a disciplinary action request to CSLP Director Robert Fomer based on complainant's falsification of timesheets. She did so on August 9, 2000, after reading the report given to her by Kingsolver
30. Complainant was placed on administrative leave on August 7. On August 11, he was given written notice of a Rule R-6-10 meeting with the delegated appointing authority, Charles Heim, Associate Director of Legal Affairs, to address two requests for disciplinary action, which involved the issues of insubordination and falsification of time sheets, along with a packet of information pertaining to the charge of falsifying timesheets.
31. The predisciplinary meeting was rescheduled twice at complainant's request and finally held on September 7, 2000.
32. On the day prior to the meeting, September 6, Heim received via fax from complainant's attorney an August 30 letter by a registered nurse at the Anxiety and Mood Disorders Clinic of the University of Colorado Health Sciences Center. The letter stated that complainant's whistling was a habit and was not compulsive; complainant had said that he loved music and whistled, sang or hummed a few bars of a song every few minutes, but that he did not whistle inappropriately in meetings or formal situations. The letter concluded that, "Further assessment is necessary to determine the relationship, if any, between the whistling and the anxiety disorder." Via the same fax, Heim received complainant's written response to the timesheet allegations, titled "Answers to Timesheet Dates."

33. At the R-6-10 meeting, complainant asserted that he was being discriminated against. He responded to the allegations that he falsified his timesheets on certain dates essentially to the effect that he just made mistakes, and he stated that the whistling was the result of a medical condition. Heim advised him that the issue of discrimination was being dealt with in another forum, and that the meeting was only about the two disciplinary action requests.
34. Heim did not see the medical letter as making a connection between the whistling and a medical condition. He determined that the factual allegations of Holly Moore were sustainable. He concluded that complainant had deliberately violated two corrective actions and was insubordinate in refusing to cease whistling in the workplace.
35. With respect to timesheet falsification, Heim considered the year 2000 dates of March 4 and 18, April 15 and 29, May 6, 14, 20 and 27, and June 3.
36. Heim had several discussions with Kingsolver about the alleged timekeeping discrepancies. He acquired written information from Butler and Verquer of the payroll unit and spoke directly with Moore, complainant's supervisor. In addition, he gained information about computer access by talking to one of CSLP's computer experts and a representative of the company that installed and maintains CSLP's card access system and card readers.
37. Heim did not sustain the charge that complainant intentionally falsified his May 27 timesheet, giving complainant the benefit of the doubt since he stated that he actually worked on May 20, and he accessed CSLP's accounting department on that date.

38. With respect to the other timesheet allegations, Heim determined that complainant had not been in the office when he said he was, when he was there he was on the Internet and not working most of the time, yet he posted time on his timesheet as time having worked.
39. Heim concluded that disciplinary action was warranted.
40. In determining the appropriate sanction, Heim reviewed complainant's personnel file and found copies of two notices of predisciplinary meetings involving similar matters, including insubordination and failure to keep complete and accurate time records, when complainant was working for another state agency in 1995, and that complainant resigned rather than confront the charges. Although not determinative, this information was a factor in making his final decision. He also took into account the manner in which complainant made it clear to his supervisor that he did not intend to correct the whistling. Overall, Heim decided that the intentional violation of two corrective actions and willful falsification of timesheets warranted the sanction of termination of employment.
41. By way of a nine-page letter of September 19, 2000, the appointing authority terminated the employment of Omar Jah Rocwa.
42. During the year 2000, Rocwa earned \$12,055.50 working at Commercial Testing Laboratories. He earned \$29,170.03 in 2001. He left this company on June 30, 2002, because of difficulty meeting the physical demands of the job.

## DISCUSSION

### I. Arguments of the Parties

Complainant contends that there should have been a corrective action regarding his timesheets prior to the imposition of disciplinary action. He asserts that respondent failed to prove that he possessed intent to falsify or motives to deceive, or that any of the factors under Rule R-6-9 were present in order to justify disciplinary action. He submits that disciplinary action was inappropriate because there was no testimony that his actual job performance was deficient, and that the appointing authority had an obligation to investigate the possibility of a medical condition. Finally, complainant argues that respondent's alleged reasons for the termination were a pretext for discrimination based on race, in that the agency wanted to get rid of him because of his allegations that the agency discriminated against minority employees in the agency's promotion and training-for-advancement practices.

Respondent argues that the termination was proper, based upon complainant's violation of two corrective actions together with evidence demonstrating that, on eight occasions, he charged time on his timesheet when he did not work. Regarding discrimination, respondent asserts that complainant did not establish a *prima facie* case of unlawful discrimination because his whistling and falsification of timesheets rendered him unqualified for the job, and that respondent set forth legitimate business reasons for the termination in any event. As to discriminatory retaliation, respondent argues that complainant failed to prove that there was a causal connection between the termination and the alleged protected activity that complainant engaged in.

### II. Discrimination

In order to prove a *prima facie* case of intentional discrimination under Colorado law, complainant must demonstrate by preponderant evidence that (1) he belongs to a protected class, that (2) he was qualified for the position, that (3) he suffered an adverse employment decision, and that (4) the circumstances give rise to an inference of unlawful discrimination. *Colorado Civil Rights Commission*

*v. Big O Tires*, 940 P.2d 397, 400 (Colo. 1997), citing *Texas Dep't of Cmty Affairs v. Burdine*, 450 U.S. 248, 253 (1981).

Respondent incorrectly argues that complainant failed to meet the element of proving that he was qualified for the job, taking into account his whistling and timesheet falsification. The allegations leading to the termination are not evidence of job disqualification; they constitute the reasons for the action taken. He had been successfully performing the duties of his position for more than one and one-half years, and his job qualifications were never disputed. He was qualified for the position.

Nevertheless, complainant did not meet the necessary standard of proving a *prima facie* case of intentional discrimination. The fourth element is missing. The circumstances of this case do not give rise to an inference of unlawful discrimination. The evidence does not show that complainant was targeted in any manner because of his race. Additionally, respondent set forth two legitimate, documented business reasons for terminating complainant's employment. The allegations were supported by substantial evidence. There was no credible evidence from which to infer that the asserted business reasons were a mere pretext for discrimination.

For complainant to establish a *prima facie* case of discriminatory retaliation by respondent, he must demonstrate by preponderant evidence that (1) he engaged in protected opposition to discrimination or participated in proceedings arising out of discrimination, that (2) adverse action by the employer occurred subsequent to the protected activity, and that (3) there exists a causal connection between complainant's activity and the adverse action. *Molla v. Colorado Serum Co.*, 929 P.2d 1, 3 (Colo. App. 1996), citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Complainant failed to establish a causal connection between his allegation of discrimination in the workplace and the termination of his employment.

It was mid-June 2000 when his supervisor began receiving complaints that complainant's whistling disrupted the performance of their job duties. Kingsolver was notified by the payroll department of a discrepancy in complainant's timesheet on June 27, which peaked his interest, having previously been informed that complainant had submitted inaccurate timesheets and did not always turn in leave requests for his time off. Complainant requested information from the human services office around June 21, 2000, and, on June 29, 2000, submitted to the CSLP director a petition alleging discrimination in agency promotion practices.

Out of this scenario, complainant alleges that Moore and Kingsolver conspired to get rid of him. Yet, there is no credible evidence of such. It is too much of a stretch to infer that the whistling complaints or the timesheet allegations were the result of complainant's discrimination-related activities.

### III. Arbitrary and Capricious

Complainant's contention that his conduct did not satisfy any of the causes for disciplinary action found in Rule R-6-9, 4 CCR 801, is without merit. Complainant's acts constitute willful misconduct. R-6-9(2). There is no requirement that willful misconduct be accompanied by deficient job performance. Conduct is "willful" when the actor is aware of what he or she is doing, that is, his actions were deliberate and not inadvertent or accidental. *Colorado Motor Vehicle Dealer Licensing Board v. Northglenn Dodge*, 972 P.2d 707 (Colo. App. 1998). Insubordination is "a willful failure or refusal to obey reasonable orders of a superior who is entitled to give such orders." *Ware v. Morgan County School District RE-3*, 719 P.2d 351 (Colo. App. 1985).

Respondent was not obligated to investigate for itself complainant's allegation that the whistling was due to an uncontrollable medical condition, as complainant maintains. His primary response to the supervisory directive was confrontational. He was afforded an opportunity to show that the whistling was unintentional, but was unable to do so. The appointing authority reasonably concluded from the information before him that complainant's actions were deliberate.

Despite his violation of two corrective actions, which would have justified discipline, complainant argues that he should have received a corrective action for falsifying his timesheets before being disciplined.

Rule R-6-2, 4 CCR 801, which incorporates the concept of progressive discipline, provides that an appointing authority may properly impose disciplinary action, up to and including immediate termination, if it is determined that an employee's conduct was "so flagrant or serious" as to justify the action taken. Though not binding precedent, the reasoning of the court of appeals with respect to the definition of "flagrant or serious" in *Gonzales v. Dep't of Corrections*, Case No. 00CA1975 (Colo. App. 2001) (NSOP), is hereby adopted and applied to the issue in this case. In *Gonzales*, the court said at 5:

To determine whether conduct was serious or flagrant we look to the ordinary meaning of those words. "Serious" means important or significant. See Webster's Third New International Dictionary 2073 (1986). "Flagrant" is defined as an act that purposefully violates normal standards or good sense. See Webster's, supra at 862.

Here, the record establishes that complainant intentionally posted hours on his timesheets that he did not work. The purpose of an employee accurately keeping track of his time worked is self-evident. He purposefully violated normal standards as well as the dictates of good sense. This contravention of protocol supports a conclusion that complainant's "willful misconduct" was serious and flagrant and justified termination of employment.

Substantial evidence supports the findings and conclusions of the appointing authority. Respondent's action was not arbitrary, capricious or contrary to rule or law. Conclusively, respondent proved by a preponderance of the evidence that

there was just cause for the discipline that was imposed, as mandated by *Dep't of Institutions v. Kinchen*, 886 P. 2d 700 (Colo. 1994).

#### IV. Attorney Fees

Section 24-50-125.5, C.R.S., provides that an award of attorney fees and costs is mandatory if it is found that the personnel action from which the proceeding arose was instituted or defended "frivolously, in bad faith, maliciously or as a means of harassment or was otherwise groundless." This record does not support any of those findings. Accordingly, this is not a proper case for a fee award. See Rule R-8-38, 4 CCR 801.

#### **CONCLUSIONS OF LAW**

1. Respondent's action was not arbitrary, capricious or contrary to rule or law.
2. The discipline imposed was within the range of available alternatives.
3. Complainant was not discriminated against on the basis of race.
4. Complainant did not fail to mitigate his damages.
5. Neither party is entitled to an award of attorney fees and costs.

#### **ORDER**

The disciplinary action is affirmed. Complainant's appeal is dismissed with prejudice.

DATED this \_\_\_\_ day  
of September, 2002, at  
Denver, Colorado.

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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 1/2 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 SERVICE**

This is to certify that on the \_\_\_\_ day of September, 2002, I placed true copies of the foregoing INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE in the United States mail, postage prepaid, addressed as follows:

W.A.M Al-Haqq  
Attorney at Law  
710 East Twenty Fifth Avenue  
Denver, CO 80205

And through the interagency mail to:

Melissa Mequi  
Assistant Attorney General  
Employment Section  
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Denver, CO 80203

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