

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

ALICE HINES,

Complainant,

vs.

DEPARTMENT OF CORRECTIONS, STERLING CORRECTIONAL FACILITY,

Respondent.

Administrative Law Judge Mary S. McClatchey held the hearing in this matter on October 5, 2005, at the State Personnel Board, 633 17th Street, Suite 1320, Denver, Colorado. Complainant represented herself. Christopher Puckett, Assistant Attorney General, represented Respondent.

MATTER APPEALED

In this consolidated action, Complainant Alice Hines (“Complainant” or “Hines”) appeals her disciplinary demotion and her disciplinary termination of employment by Respondent Department of Corrections (“DOC” or “Respondent”). Complainant alleges that in demoting her, Respondent discriminated against her on the basis of race and retaliated against her for having filed a race discrimination claim in her appeal of a previous abolition of her position. She further alleges that in terminating her, Respondent discriminated against her on the basis of race, sex, disability, and created a hostile work environment.

For the reasons set forth below, the disciplinary actions are **affirmed**.

ISSUES

1. Whether Complainant committed the acts for which she was disciplined;
2. Whether Respondent’s actions were arbitrary, capricious or contrary to rule or law;
3. Whether the discipline imposed was within the reasonable range of alternatives available to the appointing authority;

4. Whether Respondent discriminated against Complainant on the basis of race, sex, and disability, and whether Respondent retaliated against her for filing a race discrimination claim;
5. Whether Complainant is entitled to an award of attorney fees and costs.

FINDINGS OF FACT

1. Complainant has been an employee of DOC since 1993. In 1999, she was promoted to Case Manager ("CM") I.
2. Complainant received Commendable performance evaluation for the period 2001-2002.

Complainant's History of Sick Leave Abuse

3. DOC Administrative Regulation ("AR") 1450-30, Use of Accumulated Sick Leave, Section IV. B.4., requires at least two hours advance notice directly to the supervisor in the event sick leave is requested, so that alternate coverage can be arranged.
4. DOC AR 1450-01, Staff Code of Conduct, Section IV.EE., states, "Staff are required to report to work at the time scheduled, unless prior arrangements are made with their supervisor. Staff who are too ill to work will provide the supervisor with as much notice as possible, not less than two hours prior to their scheduled shift."
5. On August 26, 2002, Respondent issued a Confirming Memorandum to Complainant concerning her use of sick leave.
6. On April 15, 2003, Complainant called in sick at 7:35 a.m., twenty-five minutes before her 8:00 a.m. shift was to begin. At 8:50 a.m., Complainant called John Haehn, Case Manager (CM) II, and indicated that she had a nose bleed that she was unable to control. She did not report for work.
7. On April 16, 2003, Complainant called in at 8:40 a.m., forty minutes after her 8:00 a.m. shift was to begin. She stated to her supervisor, John Clarkson, CM III, that her house was disorganized and that she needed another day off. Clarkson directed her to come in. Ms. Hines also spoke to Ms. Soares, who told her that she needed to come in and to bring a doctor's slip for her absence. Despite instructions to come in from Mr. Clarkson and Ms. Soares, Complainant did not report for work.
8. On April 17, 2003, although scheduled to begin work at 8:00 a.m., Complainant did not call work until 12:57 p.m. when she spoke to Mr. Haehn from the police station. She informed Mr. Haehn that her conversation with Ms. Soares on April 16 had upset her and that she had started to drink again. She told Mr. Haehn that after she began to drink, she drove to a doctor's appointment, and was referred to DTOX in Greeley via the Sterling

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Police Department. A police report indicated that she had been on a drinking binge for four days.

9. Complainant repeatedly called off sick in conjunction with days off and failed to notify her supervisor as required. In addition, she gave conflicting reasons for needing time off.

May 2003 Disciplinary/Corrective Action

10. Respondent held a pre-disciplinary meeting with Complainant concerning her recent sick leave abuse. At that meeting, she provided a different reason for having been absent on April 15, 2003.

11. On May 6, 2003, Respondent imposed a Disciplinary and Corrective Action against Complainant for violation of DOC sick leave and call off policies. The disciplinary action was a reduction in pay of 3% for three months; the correction action required her to attend the next Professionalism Class that is offered at the facility and to provide a 2-page essay on the reason that professionalism and the ability to tell the truth are important in a correctional setting.

12. The May 6, 2003 Disciplinary/Corrective Action contained the following findings:

- Complainant had violated DOC AR 1450-30, Use of Accumulated Sick Leave, Section IV. B.4., "If possible, a minimum of at least two hours advance notice directly to the supervisor is necessary so that alternate coverage can be arranged";

- Complainant had violated and DOC AR 1450-01, Staff Code of Conduct, Section IV.EE., "Staff are required to report to work at the time scheduled, unless prior arrangements are made with their supervisor. Staff who are too ill to work will provide the supervisor with as much notice as possible, not less than two hours prior to their scheduled shift."

- Complainant had repeatedly provided different explanations for the same day sick call-offs, in violation of AR 1450-1, IV.X., "Staff shall neither falsify any documents nor willfully depart from the truth, either in giving testimony or in connection with any official duties or official investigation."

- Complainant had repeatedly disregarded instructions from Mr. Clarkson and Ms. Soares to report to the facility for a meeting, in violation of DOC AR 1450-1, Section IV.HH., "Staff shall comply with and obey all DOC administrative regulations, procedures, operational memorandums, rules, duties, orders or procedure of the DOC. Failure to obey any lawfully issued order by a supervisor, or any disrespectful, mutinous, insolent, or abuse language or actions toward a supervisor is deemed to be insubordination."

- Complainant's use of sick leave impacted the operation of the facility in providing

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the services required of the Case Management Unit and the morale of her co-workers who were called upon to cover her duties.

13. Complainant did not appeal the May 2003 disciplinary/corrective action.
14. On June 5, 2003, Complainant's supervisor, Mr. Clarkson, sent the facility's Case Managers an email concerning call-off procedures. The email instructed them, when calling in sick, to notify their supervisor at least two hours in advance of their scheduled reporting time. They were to make the calls to the facility in the following order: first, their assigned CM III; then if the CM III could not be reached, their assigned CM II; then if the CM II could not be reached, the CM III from the opposite side of the facility; then if either CM III or their CM II cannot be reached, another CM II; then Major Ehrmann.
15. On June 6, 2003, another facility staffer sent a follow-up email to the same Case Manager group, advising them of the phone numbers to use when calling in sick.
16. Complainant received both emails.

Performance Improvement Plan and Continuing Problems

17. Complainant continued her pattern of failing to call in sick two hours ahead of the beginning of her shift and arriving late to work.
18. On July 10, 2003, Respondent placed Complainant on a Performance Improvement Plan, due to her failure to arrive at work on time and to follow the call-off policy. The Plan noted that she needed improvement in the following areas:
 - Accountability/Organizational Commitment - Complainant is directed to discontinue the practice of calling in late when not coming to work, to follow AR 1450-01, to give two hours' notice when off sick, to be careful not to exhaust her sick/annual leave, and to inform her CM III and CM II by groupwise message when she has arrived at her office by 8:20 a.m.;
 - Communication - Complainant is instructed to communicate with her supervisors in a timely manner when not reporting to work or for any other purpose;
 - Interpersonal Skills - Complainant is to be totally professional and timely in her communications with supervisors, maintain direct and open communications with peers and inmates, and demonstrate that she is a team player, thereby building morale and motivation in others.
19. During the months of June and July, Complainant followed a pattern of calling off sick for all, or a part of, a shift on Tuesdays following her days off. The dates were July 29, 2003; July 22, 2003; June 24, 2003; and July 3, 2003. During the timeframe from June 19, 2003, to August 1, 2003, Complainant was late in arriving to her office sixteen times.

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17. On July 29, 2003, Complainant attempted to call off sick by calling Beth Taper, CM II, by leaving a message on Ms. Taper's answering machine. Ms. Taper was at a meeting out of town. Complainant made no effort to contact the others listed on the June 5 and 6, 2003 emails. She never reported to work on July 29.
18. On August 12, 2003, Complainant, Warden Golder, and Associate Warden Mark Broaddus attended a pre-disciplinary meeting to discuss Complainant's possible abuse of sick leave and her failure to follow AR 1450-30 (Use of Accumulated Sick Leave).

August 20, 2003 Disciplinary Action

19. Warden Golder concluded that Complainant's conduct constituted willful misconduct through her continued violation of DOC policy and failure to meet her work schedule.
20. On August 20, 2003, Warden Golder sent a disciplinary action letter to Complainant demoting her to Correctional Officer II and reducing her pay by 6%. In addition, Respondent required Complainant to provide a doctor's certification related to any absence from work due to illness/injury; and to obtain supervisor approval in writing prior to absences for reasons other than illness/injury.
21. Warden Golder again determined that Complainant had failed to adhere to department policies including:
 - a. DOC AR 1450-30 (Use of Accumulated Sick Leave), IV, B.4., "If possible, a minimum of at least two hours advance notice directly to the supervisor is necessary so that alternate coverage can be arranged"; and
 - b. DOC AR 1450-01 (Staff Code of Conduct), IV.EE., "Staff are required to report to work at the time scheduled, unless prior arrangements are made with their supervisor. Staff who are too ill to work will provide the supervisor with as much notice as possible, not less than two hours prior to their scheduled shift."
22. Respondent also required Complainant to "follow through on the corrective action dated May 6, 2003," including attending the Professionalism Class and writing a 2-page essay on the reason that professionalism and the ability to tell the truth are important in a correctional setting.
23. Complainant appealed the demotion.
24. After Complainant's demotion, Respondent moved her to the swing shift, in an effort to address her tardiness issues.

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25. Just prior to time of her demotion, the only other black female Case Manager in Complainant's facility left. Therefore, after Complainant's demotion there were no black female Case Managers at the Sterling Correctional Facility.

August 22, 2003 Memorandum

26. Respondent required Complainant to send an email each morning upon arrival at her workstation. She failed to comply with this directive.
27. On August 22, 2003, Mr. Clarkson sent Complainant a Memorandum regarding Performance Requirements. It cited the fact that Complainant sent her morning check-in email message late several times, sometimes as much as 22 minutes late, without an explanation. Mr. Clarkson reminded Complainant that all CMs are to send a check-in message to their respective CM II, as well as to Clarkson, prior to 8:20 a.m.
28. The memo also cited a 4th of July Holiday issue wherein Complainant, after having been denied a request to trade the day with another employee, then asked CM II Taper for the same thing. Mr. Clarkson informed Complainant that she would have to obtain written pre-approval from him on all changes in her work schedule.

December 2, 2003 Incident

29. DOC AR 1450-36, Employee Drug Deterrence Program, Section IV(C), provides that "refusal to submit to testing is a violation of this administrative regulation and is viewed the same as a positive test." Subsection IV(C)(2), states in bold print, **"Refusal will be cause for disciplinary action, up to and including termination."**
30. On December 2, 2003, Complainant was assigned to work the afternoon shift. She failed to report to work at the assigned time, when contacted at home stated she had overslept, and reported for work late.
31. Upon reporting to work, several staff noticed that Complainant smelled of alcohol. She was given a field sobriety test, which she failed.
32. Facility personnel then drove Complainant to the Sterling Regional Medical Center, in order to give her a test for alcohol content (via urine sample).
33. Prior to arriving at the hospital, Complainant asked what would happen if she refused to submit to the urine test. She was informed that pursuant to DOC regulation, her refusal would result in the test result being deemed positive and it would subject her to disciplinary action.
34. Complainant refused to submit to the urine test.

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35. Respondent employees then drove her back to the facility to obtain her keys and dropped her off at her home.
36. On December 2, 2003, Warden Golder sent Complainant a letter noticing a pre-disciplinary meeting on December 5, 2003, for violating DOC AR 1450-36, Employee Drug Deterrence Program. He also sent her a letter indicating that on December 2, 2003, she had violated AR 1450-36 when she refused to submit to testing. He placed her on paid administrative leave until the meeting, and instructed her to be available during her normal work hours and not to contact anyone at the facility regarding the issues under investigation.

December 4, 2003 Incident

37. On December 4, 2003, Complainant drank so much alcohol in her home that she became despondent and suicidal. A friend performed a welfare check on her and found her on her bed with a 357 Magnum handgun on the bed next to her. The gun was unloaded.
38. Complainant's friend called the Sterling police, who immediately responded to the residence. The police found Complainant lying on her bed extremely intoxicated, with the unloaded handgun beside her. Complainant was very upset, and yelled at the police to get out of her house.
39. The police placed Complainant in protective custody and she was taken in an ambulance to the medical center.
40. In the emergency room, Complainant stated that the gun had not been for her. She stated that she had a meeting with Warden Golder the next day and it was for him. She stated he was about to fire her.
41. The police placed her in the Sterling jail on a hold until she became detoxicated. The police impounded her gun.
42. Upon her release from the Sterling jail, Complainant entered a drug and alcohol treatment facility in Sterling. She remained there for five days, and was diagnosed as being bipolar. She found the treatment to be very helpful, and wished she had had the financial resources to remain there longer.

Pre-disciplinary Process

43. Respondent received the police report. In addition, the DOC Investigator General office performed an investigation. Following the investigation, Nolin Renfroe, Director of Prisons for DOC, determined that given Complainant's threat against Warden Golder, Golder could not handle the disciplinary process from that point

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forward.

44. Mr. Renfroe delegated appointing authority over the matter to Joan Shoemaker, Warden of the Denver Complex, consisting of the Denver Regional Diagnostic Center and the Colorado Women's Facility.
45. On December 15, 2003, Warden Shoemaker sent Complainant a letter providing notice of a pre-disciplinary meeting regarding alleged violations of AD 1450-1, Staff Code of Conduct, and AR 1450-36, Employee Drug Deterrence Program, and indicating the possible need to administer disciplinary and/or corrective action.
46. On December 23, 2003, Complainant, Warden Shoemaker, and Lucy McClelland, from the DOC Human Resources office, attended the pre-disciplinary meeting. At the meeting, Complainant denied that she had been drinking on December 2, but admitted that she had drunk alcohol during the prior evening.
47. Complainant stated that she understood that being late for shift on December 2 gave her supervisor cause for reasonable suspicion to order the urinalysis, and that refusal to submit to urine testing, by policy, would be considered a positive test.
48. Complainant stated that if she had taken the urine test on December 2, it would have been negative. She did not explain her decision not to take the test.
49. With regard to the December 4, 2003 incident, Complainant stated she had been drinking very excessively and was "drunk as a skunk."
50. Complainant informed Warden Shoemaker that she had no memory of threatening Warden Golder, but believed the police officers' statements regarding her behavior to be credible.
51. At the meeting, Ms. Hines informed Warden Shoemaker that after her release from the Sterling jail on December 5, she had gone to a treatment center in Greeley. She explained that she had been diagnosed as being bipolar. She asked Warden Shoemaker for time to attempt to recover from her condition.
52. Complainant denied having violated DOC regulation on December 4, 2003, because she had drunk at home and had not driven.
53. At the end of the meeting, Warden Shoemaker informed Complainant that she had until January 5, 2004, to provide any additional information prior to the warden making a decision. Ms. Hines did not take advantage of this opportunity.

January 26, 2004 Decision to Terminate

54. Warden Shoemaker reviewed Complainant's personnel file, including her 2004B052(C)

performance evaluations and disciplinary and corrective action history.

55. Warden Shoemaker was particularly concerned about Complainant's refusal to take the alcohol test on December 2, 2005. The Warden believed that compliance with the alcohol policy is of paramount importance in the prison setting, because staff must be very aware of their surroundings, focused, and capable to responding to emergency situations at all times. Being under the influence of alcohol impairs one's judgment and therefore can place everyone in the prison at risk. In addition, prison staff act as role models for inmates, many of whom are in the business of changing their lives. Ms. Shoemaker determined that Complainant's failure to understand the importance of the alcohol policy undermined her ability to effectively serve DOC.
56. Warden Shoemaker considered Ms. Hines' request for time to try to recover from her bipolar condition. However, she determined that this request did not mitigate against Complainant's egregious acts in December 2003.
57. On January 26, 2004, Warden Shoemaker sent Ms. Hines a letter terminating her employment. The letter included a recitation of facts, including: Complainant's promotion to the level of CM I at SCF on April 1, 1999; Complainant's being transported to the Greeley Detoxification Center on April 17, 2003, per court order; the disciplinary action of May 6, 2003, based on abuse of sick leave and failure to follow AR 1450-30; and the disciplinary action of August 20, 2003, based on continued abuse of sick leave and failure to follow AR 1450-30.
58. The letter noted that Complainant's behavior "both on and off duty demonstrated a flagrant disregard for Department administrative regulations and you were aware of the consequences of your actions. Your off duty behavior resulted in a negative law enforcement contact . . . which reflected discredit upon you as a corrections officer and also brought disrepute to the Department in the eyes of law enforcement and the public. Correctional staff are law enforcement officers and, as such, are expected to uphold acceptable social behavior in their off duty conduct as well as to act as role models of acceptable social conduct to incarcerated offenders."
59. Warden Shoemaker determined that Complainant's actions violated AR 1450-1, which defines conduct unbecoming as "any act or conduct either on or off duty, which negatively impacts job performance, tends to bring the DOC into disrepute or reflects discredit upon the individual as a correctional staff member."
60. The Warden also cited Complainant's refusal to provide a urine sample as directed, to determine her fitness for duty, was an act of insubordination in violation of AR 1450-36.
61. The Warden summarized by stating that Complainant's unprofessional conduct therefore warranted termination.

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DISCUSSION

I. BURDEN OF PROOF

Certified state employees have a property interest in their positions and may only be disciplined for just cause. Colo. Const. Art. 12, §§ 13-15; §§ 24-50-101, *et seq.*, C.R.S.; *Department of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994). Such cause is outlined in State Personnel Board Rule R-6-9, 4 CCR 801¹ and generally includes:

- (1) failure to comply with standards of efficient service or competence;
- (2) willful misconduct including either a violation of the State Personnel Board's rules or of 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 *de novo* disciplinary proceeding, the agency has the burden to prove by preponderant evidence that the acts or omissions on which the discipline was based occurred and that just cause warranted the discipline imposed. *Department of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994). The Board may reverse Respondent's decision if the action is found arbitrary, capricious or contrary to rule or law. Section 24-50-103(6), C.R.S.

II. HEARING ISSUES

A. Complainant committed the acts for which she was disciplined.

Respondent has proven by preponderant evidence that Complainant committed the acts upon which discipline was based. In fact, the majority of testimony by Complainant at hearing corroborated Respondent's allegations. Complainant was unable to adhere to normal working hours, causing disruption in her workplace. Her pattern of violating call-off procedures and failing to report for work demonstrated a disrespect for DOC administrative regulations and the directives of her supervisors. In December 2003, Complainant willfully violated the mandatory testing requirement, knowing it would result in a positive test result and the imposition of disciplinary action.

B. The Appointing Authority's action was not arbitrary, capricious, or contrary to rule or law.

In determining whether an agency's decision is arbitrary or capricious, a court must determine whether the agency has 1) neglected or refused to use reasonable diligence and care to procure such evidence as it is by law authorized to consider in exercising the

¹ As of July 1, 2005, substantial amendments have been made to the Board Rules. However, given the time period covered by this action, the Board Rules in effect prior to July 1, 2005, have been applied and all references within this Initial Decision to the Board Rules are to the rules in effect prior to July 1, 2005.

discretion vested in it; 2) failed to give candid and honest consideration of the evidence before it on which it is authorized to act in exercising its discretion; 3) exercised its discretion in such manner after a consideration of evidence before it as clearly to indicate that its action is based on conclusions from the evidence such that reasonable men fairly and honestly considering the evidence must reach contrary conclusions. *Lawley v. Department of Higher Education*, 36 P.3d 1239, 1252 (Colo. 2001).

Respondent's actions in this case were not arbitrary, capricious, or contrary to rule or law. Prior to demoting Complainant, Warden Golder gathered all relevant evidence and considered all information available to him. He utilized progressive discipline with Complainant, prior to taking the serious step of demoting her from her Case Manager position. Warden Golder was aware of Complainant's history of alcohol abuse, and he gave her several chances over a long period of time to eliminate that problem from her life. Unfortunately, Complainant was unable to take advantage of those opportunities during employment.

Prior to termination, Warden Shoemaker conducted a thorough investigation of the events of December 2003 and Complainant's entire history of employment at DOC. Warden Shoemaker gave Complainant additional time to submit additional mitigating information, but Complainant submitted none. Given the escalating seriousness and the flagrant nature of Complainant's violation of DOC regulations, Respondent's actions were reasonable under the circumstances.

C. Respondent did not discriminate against Complainant.

Complainant claims that Respondent has discriminated against her on the basis of race, sex, and disability, and that it retaliated against her for filing a previous claim of race discrimination in an appeal of an abolition of her position. At hearing, Complainant presented no evidence on the issue of race or sex discrimination, or retaliation. The only evidence concerning race was the fact that after Complainant's demotion from the CM position, there were no black female CM's at the Sterling Correctional Facility. Therefore, she has waived those claims.

Turning to the disability claim, under the Colorado Anti-Discrimination Act, an employer may not discharge or discipline an employee "otherwise qualified because of disability . . .; but, with regard to a disability, it is not a discriminatory or an unfair employment practice for an employer to [discharge or discipline] if there is no reasonable accommodation that the employer can make with regard to the disability." Section 24-34-402(1)(a), C.R.S. The Act defines a disability as a physical or mental impairment which substantially limits one or more of a person's major life activities. Section 24-34-301(2.5)(a) and (b), C.R.S.

Complainant informed Warden Shoemaker that she had been diagnosed with bipolar disorder. She provided no evidence at hearing that this diagnosis has resulted in a substantial limitation on a major life activity. Therefore, she has not established that she is

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disabled under the Act. Assuming for the sake of argument that Complainant suffers from alcoholism, the ADA does not protect alcoholics from the consequences of their behavior on the job. *Renaud v. Wyoming Dept. of Family Services*, 203 F.3d 723, 731 (10th Cir. 2000).

D. The discipline imposed was within the range of reasonable alternatives.

Demotion and termination were well within the range of reasonable alternatives available to Respondent in this case.

D. Attorney fees are not warranted in this action.

Attorney fees and costs shall be awarded if an action was instituted frivolously, in bad faith, maliciously, as a means of harassment or was otherwise groundless. § 24-50-125.5, C.R.S. and Board Rule R-8-38, 4 CCR 801. Because Complainant did not prevail in this matter, she is not entitled to an award of attorney fees and costs.

CONCLUSIONS OF LAW

1. Complainant did commit the acts for which she was disciplined;
2. Respondent's action was not arbitrary, capricious, or contrary to rule or law;
3. Respondent's action was within the range of reasonable alternatives;
4. Respondent did not discriminate against Complainant on the basis of race, sex, or disability, and did not create a hostile work environment;
5. Complainant is not entitled to an award of attorney fees and costs.

ORDER

Respondent's action is **affirmed**. Complainant's appeal is dismissed with prejudice.

Dated this 21st day of November, 2005.

Mary S. McClatchey
Administrative Law Judge
633 – 17th Street, Suite 1320
Denver, CO 80202
303-866-3300

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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 the Board does not receive a written notice of appeal 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) 866-3300.

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 8 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. Board Rule 8-73B, 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. Board Rule 8-75B, 4 CCR 801. Requests for oral argument are seldom granted.

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CERTIFICATE OF SERVICE

This is to certify that on the _____ day of November, 2005, I placed true copies of the foregoing **INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE and NOTICE OF APPEAL RIGHTS** in the United States mail, postage prepaid, addressed as follows:

Alice Hines
4568 North Wordsworth Circle N
Colorado Springs, Colorado 80203

and in the interagency mail, to:

Christopher Puckett
Assistant Attorney General
Office of the Attorney General
1525 Sherman Street, 5th Floor
Denver, Colorado 80203

Andrea C. Woods