

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

BETTY SHEA,

Complainant,

vs.

**DEPARTMENT OF HUMAN SERVICES, DIVISION OF YOUTH CORRECTIONS,
SPRING CREEK YOUTH SERVICES CENTER,**

Respondent.

THIS MATTER came on for hearing on December 6, 2004, at the State Personnel Board before Administrative Law Judge Hollyce Farrell. Chester H. Morgan II represented Complainant. Assistant Attorney General Christopher J. Baumann and Assistant Attorney General Richard Dindinger represented Respondent.

MATTER APPEALED

Complainant, Betty Shea (Complainant or Shea) appeals her \$500 pay reduction, a disciplinary action taken by Respondent, Department of Human Services, Division of Youth Corrections, Spring Creek Youth Services Center (Respondent or DYC). Complainant seeks the dismissal of her disciplinary action, the removal of the disciplinary action from her file, and attorney fees and costs.

For the reasons set forth below, Respondent's action is **affirmed**.

ISSUES

1. Whether Complainant committed the acts for which she was disciplined;
2. Whether Respondent's disciplinary action against Complainant was arbitrary, capricious or contrary to rule or law;
3. Whether Complainant's discipline was within the reasonable range of alternatives;
4. Whether attorney fees are warranted.

FINDINGS OF FACT

General Background

1. Complainant is employed at NYC as a Correctional Youth Security Officer. Her employment with NYC began on July 1, 1999.
2. NYC has internal policies and procedures. New NYC employees are required to attend a training program within 60 days of being hired. All of the employees are trained on most of NYC's policies and procedures.
3. During the training on policies and procedures, employees are required to repeat the policies back to the trainers, review the meaning of the words contained in the policies, and take examinations so that NYC is assured that each employee understands its policies and procedures.
4. Complainant received her training on the policies and procedures in August of 1999. Complainant received approximately 45 minutes of training on NYC policy 3.20 and approximately 45 minutes of training on NYC policy 9.17.
5. Complainant took a test following her training on the policies and procedures and missed no questions. The test included questions on NYC policies 3.20 and 9.17.
6. Each facility has a copy of the policies and procedures, which is available for NYC employees to review.

NYC Policy 3.20

7. NYC policy 3.20 provides, in pertinent part:

There shall be no personal/social or financial/business relations between staff members of the Division of Youth Corrections and resident juveniles, or family members of juveniles, who are or, within the past year, have been in the custody of the Division of Youth Corrections

II. DEFINITIONS:

- B. Family Member of a Resident Juvenile: Any person related to a resident or client by blood or by marriage. This may include, but is not limited to, a spouse, child, stepchild, adoptive child, foster child, parent, stepparent, adoptive parent, foster parent, brother, sister, niece, nephew or cousin . . .

III. PROCEDURES:

- A. Any relationship between an employee of the Division of Youth Corrections and a juvenile or family member of a juvenile, which may be viewed as a potential conflict of interest or as a compromise of a professional relationship, shall be prohibited. This includes juveniles who are currently or within the past year have been in the custody of the Division of Youth Corrections.
- B. Prohibited behaviors or relationships between employees and juveniles or the families of juveniles currently or recently in the custody of the Division of Youth Corrections include, but are not limited to:
 - 1. Business dealings on either a profit or non-profit basis.
 - 2. Fraternalization of other social situations after working hours or away from work sites.
 - 3. The granting of favors or services to a juvenile which, in the view of other staff and/or juveniles is preferential in nature. This includes bringing gifts; performing personal errands within or outside the agency; extending extra privileges; or extending significantly more counseling time to one individual than to other juveniles.
- 8. Within NYC, “juvenile” mean an individual under the age of 21 years because NYC retains jurisdictions over its clients or residents until they reach the age of 21 years. This definition is common knowledge to NYC employees.
- 9. Within NYC, “custody” includes the time a NYC client is on parole; it is not limited to the time the client is confined to a NYC facility. NYC employees receive training that parole is included in the term “custody.” This definition is common knowledge to NYC employees.
- 10. The purpose of NYC policy 3.20 is to avoid any perception of 1) a potential conflict of interest on the part of the staff member, or 2) a compromise of the professional relationship between a NYC staff member and clients.

DYC Policy 9.17

- 11. NYC policy 9.17 provides, in pertinent part:

Whenever there is reason to suspect that a juvenile may have been abused, all mandated professionals shall make a report to the local county Department of Social Services or local law enforcement agency immediately after the suspected abuse is alleged or first discovered. Effective January 1, 2004, if the alleged perpetrator of the abuse is a third person, and the alleged victim is over the age of ten (10) the local law enforcement agency shall be notified, who shall have the responsibility for the coordination and investigation of all reports. Failure to comply with these reporting requirements may result in corrective or disciplinary action and/or criminal prosecution, and/or the staff member(s) who failed to report the alleged abuse may be held liable for damage proximately caused thereby. Each Division of Youth Corrections' facility/program shall maintain current child abuse reporting procedures, which clearly specifies to whom or where and how the reports are to be made.

IV. DEFINITIONS:

- A. Abuse or Child Abuse or Neglect: An act or omission in one of the following categories, which threatens the health or welfare of a child:

.....

Any case in which a child is in need of services because the child's parents, legal guardians, or custodian fails to take the same actions to provide adequate food, clothing, shelter, medical care, or supervision that a prudent parent would take.

- B. Mandated Professional: A person working in a professional capacity or occupying a position which has been mandated by law to immediately report all suspected incidents of child abuse. For reporting purposes, persons working for the Division of Youth Corrections positions where direct services are provided to clients considered to be "mandated professional" in the state of Colorado. This includes doctors, psychologists, nurses, administrators, security service officers, youth counselors, teachers and all others directly serving and/or supervising residents.

V. PROCEDURES:

Reporting Procedures:

Each Division of Youth Corrections' facility or program shall have child abuse reporting procedures included in the facility's emergency manual and shall train all direct care staff on the procedures . . .

12. Complainant is a "Mandated Professional" pursuant to policy 9.17, and required to report all incidents of child abuse or neglect, whether founded or suspected, to Social Services.
13. Spring Creek Youth Services Center's employees are required to report all incidents of child abuse or neglect, or suspected child abuse or neglect, within one hour of the employee having the knowledge or suspicion of child abuse or neglect.

Complainant's January 2003 Corrective Action

14. On January 22, 2003, Leo Navarro, who was then the Deputy Director at Spring Creek Youth Services Center, issued Complainant a corrective action based on Complainant's violation of DYC policy 3.20. The letter cited Complainant for having contact with a former Spring Creek resident, V.V. At that time, V.V. was under the age of 18, and was still living in a DYC facility.
15. In his January 22, 2003, corrective action to Complainant, Navarro provided the following: "You are required to come into compliance with any and all DYC policies surrounding staff/juvenile relationships. You are required to set a meeting with Kim Diestelkamp, your supervisor, to review policy 3.20. You will then make a presentation to your peers at the next pod meeting. The Corrective action will include a requirement that your PMAP include an individual performance objective to address your efforts in maintaining appropriate staff/juvenile relationship. The policy review and presentation must be completed and confirmation received within 30 days. Please provide the confirmation to Spring Creek administration."
16. As instructed, Complainant sent Navarro an e-mail confirming that she had completed the requirements of the corrective action.
17. The corrective action letter warned Complainant that failure to comply with the corrective action could result in further corrective/disciplinary action up to and including termination.
18. After Complainant received her corrective action, she had notice of the meaning of DYC policy 3.20's contents, definitions and requirements.
19. Complainant did not grieve the corrective action.

Incident Reported in June 2004

20. On June 29, 2004, Chenelle Crouch, who lives with Complainant and is also a DYC employee, contacted Sarah Holladay, a Client Manager at DYC's Southern Region Office, regarding a concern she and Complainant had about a former client, S.H. and S.H.'s baby.
21. Crouch explained to Holladay that she and Complainant had been babysitting for S.H.'s baby who was eight months old or younger at all time relevant to this appeal. S.H. was living with another former resident, V.V. Complainant and Crouch would either pick up the baby from S.H.'s and V.V.'s home, or S.H. and V.V. would bring the baby to the home of Complainant and Crouch. S.H. would leave the baby with Complainant and Crouch for periods as long as one week
22. V.V. is the same individual with whom Complainant had contact when she received her January 2003 corrective action.
23. S.H. completed her parole on December 24, 2003. V.V. completed her parole on April 23, 2004.
24. S.H. and V.V. were both over the age of 18 during the time period when Complainant was babysitting for S.H.'s baby and having contact with S.H. and V.V.
25. Neither S.H. nor V.V. had been off parole for more than one year during the time period when Complainant was babysitting S.H.'s baby and having contact with S.H. and V.V.
26. Neither S.H. nor V.V. had been out of DYC custody for more than one year during the time period when Complainant was babysitting for S.H.'s baby and having contact with S.H. and V.V.
27. Because S.H. and V.V. were over the age of 18, and completed parole, they would not return to the DYC system if they committed future law violations.
28. Crouch told Holladay that she and Complainant were worried about S.H.'s baby. Crouch told Holladay that she had taken the baby to the doctor because S.H. was not taking him. Crouch said that she and Complainant were also worried that S.H. was not providing formula or diapers for the baby. Crouch told Holladay that S.H. gave the baby watered down milk instead of formula, and the baby did not react well to receiving the watered down milk.
29. Complainant also spoke with Holladay on June 29, 2004. Complainant told Holladay that she and Crouch would keep S.H.'s baby for periods of time to get him "stable" by giving him care.

30. Crouch and Complainant wanted Holladay to call Social Services to report their concerns about their suspected neglect of S.H.'s baby. Complainant told Holladay that she and Crouch did not want to make the report to Social Services because they were worried about retaliation from S.H. and V.V.
31. Holladay reported her conversations with Complainant and Crouch to Anne Freeman, who also works at NYC's Southern Region Office.
32. Freeman instructed Holladay to report the content of conversation with Crouch and Freeman. Holladay sent a memorandum to Jema Hill, Complainant's and Crouch's appointing authority, and James Rogers, then the Southern Regional Director for NYC. Freeman also called Hill to tell her what Holladay had reported to her.
33. Holladay's testimony regarding her conversations with Complainant and Crouch was credible.
34. Hill called Complainant at home on June 29, 2004, to discuss the allegations. Complainant told Hill that she and Crouch had been babysitting S.H.'s baby for about two and one half months. Complainant also told Hill that she and Crouch had been buying food for the baby and taking him to the doctor.
35. Hill put Complainant and Crouch on administrative leave while she conducted an investigation regarding the allegations.

R-6-10 Meeting

36. Hill scheduled an R-6-10 meeting with Complainant. The meeting was held on July 14, 2004.
37. Pursuant to State Personnel Board Rule R-6-10, "When considering discipline, the appointing authority must meet with the certified employee to present information about the reason for potential discipline, disclose the source of that information, and give the employee an opportunity to respond. The purpose of the meeting is to exchange information before making a final decision."
38. Complainant's meeting was one of the first R-6-10 meetings that Hill had conducted.
39. Present at Complainant's R-6-10 meeting was Complainant, Hill, Diestelkamp and Jim Nylund, a human resources representative from NYC's Southern District Office.
40. Nylund opened the meeting by reading aloud Hill's letter noticing the R-6-10 meeting. That letter provides, in part, the following: "I have gathered information regarding your behavior, which indicates the possible need to administer disciplinary action. The information indicates that you may have violated NYC Policy 3.20, regarding your relationship with former Spring Creek residents and NYC Policy 9.17, regarding your failure to report suspected Child Abuse/Neglect."

41. Nylund then read aloud State Personnel Rules R-6-10 and R-6-11.
42. After reading the letter and the rules, Nylund asked Complainant if she had any questions. Complainant replied, "Not right now."
43. Neither Hill, nor anyone else, provided Complainant with a copy of Holladay's report.
44. During the meeting, Hill told Complainant she was going to ask her questions related to DYC policy 3.20 and DYC policy 9.17.
45. When discussing DYC policy 3.20, and the meaning of the word "custody," Hill asked Complainant, "So was that your understanding of it being Spring Creek custody before this incident or related to the last time?" Complainant responded, "Well, I knew the last time that I had violated because the juvenile had been in the facility within a year. And so, I understood that. Then, this time, we had even looked up their release dates, uh for, the juvenile, and they had been extended over a year. And, the juvenile, was no longer a juvenile. She had turned 19. And so, being that it had been a year out of our custody, Spring Creek's custody, and she was no longer a juvenile, I thought it wasn't a violation of policy."
46. Later, during the R-6-10 meeting, while discussing policy 3.20 Hill asked Complainant, "Do you feel as though your contact with the 2 residents violated policy 3.20?" Complainant responded, "No." Hill followed up, "Based on?" Complainant responded, "Based on the fact that they were adults and they had been a year out of this facility." At another point in the meeting, Complainant said, "They were gone from the system, and they had turned 18. They were in fact now 19. They weren't even 18, and so I just felt that, combining the two—they were no longer here and they had turned of legal age, that "whoever" say that they are adults—they had done that. So, it wasn't like they were in the system and turned 18 here. Or, in the system and became an adult while they were here."
47. Hill found Complainant's statements regarding DYC policy 3.20 to lack credibility, due to the fact that Complainant had received a corrective action regarding a former breach of the policy.
48. Complainant's statements during the R-6-10 meeting that she did not understand the meaning of the terms "juvenile" and "custody" are not credible.
49. Hill later asked Complainant if she had reviewed DYC policy 9.17, and if she knew what the policy concerned. Complainant answered that she knew DYC policy 9.17 concerned the requirement to report child abuse.
50. Hill asked Complainant if she was aware of suspected child abuse or neglect concerning the chilled of one of the former residents with whom Complainant had contact.

Complainant responded, “No.” Hill found this statement to lack credibility based on the information she received from Holladay and Freeman.

51. Complainant was aware of NYC policy 9.17 and its requirements.
52. Hill then asked Complainant, “So you had no idea that one of the kids, that the child was in danger, that, or suspicions that the child might be in danger?” Complainant responded, “There was concerns that, about the parent having stable income and a stable home, and that there was the potential without a good support system, that the child could be possibly at risk. I had chosen to remove myself from the situation prior to your phone call”
53. Complainant understood the reason for the potential discipline during the meeting and was given adequate opportunity to respond and defend herself at the meeting.
54. Following the R-6-10 meeting, Hill reviewed Complainant’s personnel file (including Complainant’s previous corrective action and the training Complainant had received on the policies), reviewed the results of the investigation, and discussed the situation with others in NYC management.
55. Hill considered the information she received in the R-6-10 meeting. She also considered the purposes of the policies.
56. Hill concluded that Complainant had violated NYC policy 3.20 and NYC policy 9.17.
57. Hill appropriately and thoroughly weighed all of the information she had gathered, and issued a disciplinary action to Complainant of a \$500 pay deduction.

Policy Violations

58. Complainant willfully violated NYC policies 3.20 and 9.17, which affected her ability to perform her job.
59. Complainant’s violation of NYC policy 3.20 created a conflict of interest which caused her to violate the mandates of NYC policy 9.17.
60. Complainant’s violation of 3.20 put NYC at risk for potential problems because communications between a former resident and a NYC staff member can become known to current NYC residents and the current residents may lose respect for the staff member. Complainant’s violation of that policy also created a potential for a perception of a conflict of interest or a compromise of a professional relationship.
61. Since Complainant’s disciplinary action, NYC has added the definitions for the terms “juvenile” and “custody” to policy 3.20 for purposes of making the policy more clear. Those additions have not changed the mandates of the policy.

Disciplinary Letter

62. Rule R-6-12 provides, in part, “A written notice of disciplinary action must be sent by certified mail or may be hand-delivered to the employee. The employee must receive the notice no later than five days following the effective date of the discipline. The notice must state the specific charge, the discipline taken, and right to appeal.”
63. Hill issued a letter of disciplinary action to Complainant on July 15, 2004.
64. Hill’s letter stated, in part, “After reviewing all of the information you provided during the R-6-10 meeting that was held on July 14, 2004, your employment history with our facility and internal investigation, I have decided to take disciplinary action. I have determined that your actions constitute willful misconduct and are a violation of NYC Policy 3.20 and NYC Policy 9.17.”
65. The disciplinary letter explained the exacerbating factors Hill considered (the January 2003 corrective action and Complainant’s admission that she was mandated to report child abuse or neglect, whether founded or suspected).
66. The letter further informed Complainant of the discipline that would be taken (\$500 pay deduction) and of her right to appeal the disciplinary action.
67. Complainant timely appealed her disciplinary action.
68. Complainant’s disciplinary letter put her on notice of the charges against her.

Crouch’s Corrective Action

69. Hill issued a corrective action, instead of a disciplinary action, to Crouch because Crouch had not previously violated NYC policy 3.20
70. Crouch grieved her corrective action. James D. Rogers, who was the Southern Regional Director for NYC, rescinded the corrective action because Crouch told Rogers she was unclear about the terms “juvenile” and “custody” contained in NYC policy 3.20.
71. Rogers did not think it was appropriate to rescind Complainant’s disciplinary action because of Complainant’s previous history with NYC policy 3.20 and Complainant’s corrective action based on violation of that policy.
72. Because of Complainant’s 2003 corrective action, Complainant had received specific explanation of NYC policy 3.20 prior to the events at issue herein.

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; § 24-50-125, C.R.S.; *Department of Institutions v. Kinchen*, 886 P.2d 700 (1994). Such cause is outlined in State Personnel Board Rule R-6-9, 4 CCR 801 and generally includes: 1) failure to perform competently; 2) willful misconduct including a violation of the State Personnel Board's rules or the rules of the agency of employment that affect the ability to perform the job; 3) willful failure 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 the acts or omissions on which the discipline was based occurred and that just cause warranted the discipline imposed. *Kinchen, supra*. The Board may reverse the agency's decision if the action is found to be 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 met its burden of proof. As the Findings of Fact illustrate, Complainant was aware of DYC's interpretation of the words "juvenile" and "custody" contained in DYC policy 3.20. In spite of that awareness, Complainant had contact with two former DYC clients, V.V. and S.H. when V.V. and S.H. had not been out of DYC custody for a period longer than one year. By having such contact, Complainant was in violation of DYC policy 3.20.

Complainant was also aware of DYC policy 9.17 which required her to report all child abuse or neglect, whether founded or suspected, to Social Services "immediately." At the Spring Creek Youth Services Center, those with a reporting requirement were to report the abuse or neglect within one hour. Complainant suspected that S.H. was neglecting her baby, but did not report her suspicions to Social Services because she was afraid of retaliation from S.H. and V.V. Instead, Complainant and Crouch wanted another employee, Sarah Holladay, to make the report. By failing to report the suspected neglect, Complainant was in violation of DYC policy 9.17.

Complainant's violations of DYC policies 3.20 and 9.17 constitute failure to perform her job competently and willful misconduct by violating DYC rules that affected Complainant's ability to perform her job.

B. Respondent's action was not arbitrary, capricious, or contrary to rule or law.

In determining whether an agency's decision is arbitrary or capricious, it must be determined 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 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 consideration of 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).

The credible evidence establishes that Hill appropriately weighed the mitigating and aggravating factors in arriving at the \$500 pay deduction disciplinary action. Complainant had already received a corrective action for violating NYC Policy 3.20, and so Complainant was aware of the policy's requirements. Complainant admitted that she had an obligation to report all child abuse and neglect or suspected child abuse and neglect, but she did not. The credible evidence demonstrates that Hill, as the appointing authority, pursued her decision thoughtfully and thoroughly reviewed all of the evidence, including the information presented by Complainant before reaching her decision. Board Rule R-6-6, 4 CCR 801.

Complainant argued that her R-6-10 meeting was insufficient. State Personnel Board Rule R-6-10, 4 CCR 801, mandates, "When considering discipline, the appointing authority must meet with the certified employee to present information about the reason for potential discipline, disclose the source of that information unless prohibited by law, and give the employee an opportunity to respond. The purpose of the meeting is to exchange information before making a final decision. . . ." The pre-disciplinary meeting "must afford the employee a reasonable chance of succeeding if he chooses to avail himself of the opportunity to defend himself." *Shumate v. State Personnel Board*, 528 P.2d 404 at 407 (Colo.App. 1974). Complainant argues that the meeting was insufficient because Hill did not provide Complainant with a copy of Holladay's memorandum and did not present Complainant with the specific allegations against her during the meeting. As noted in the Findings of Fact, the statements Complainant made in her R-6-10 meeting demonstrate that she was aware of the specific allegations against her and that she had an opportunity to respond to the allegations before Hill made her final decision. Therefore, the purposes of State Personnel Board Rule R-6-10 were satisfied. The fact that Hill did not provide Complainant with a copy of Holladay's memorandum is harmless error because Complainant was provided with a meaningful opportunity to provide mitigating information and provide an explanation for her conduct during the meeting.

Complainant also argued that her disciplinary action letter violated her due process rights. Pursuant to State Personnel Board Rule R-6-12, the disciplinary notice must state the specific charge, the discipline taken and the right to appeal. Pursuant to Article XII, Section 13(8) of the Colorado Constitution, "A person certified to any class or position in the personnel system may be dismissed, suspended or otherwise disciplined by the appointing authority upon written findings of failure to comply with standards of efficient service or competence, or for willful misconduct, willful failure or inability to perform his duties, or final conviction of a felony or any other offense which involves moral turpitude, or written charges thereof may be filed by an person with the appointing authority, which shall be promptly determined." The disciplinary action letter did advise Complainant of the reasons for the discipline taken against her ("willful misconduct" and violations of NYC policies 3.20 and 9.17) and provided the aggravating circumstances. Complainant was also advised of the discipline taken and her right to appeal.

Complainant timely appealed her disciplinary action. Thus, Respondent was in compliance with Board Rule R-6-12 and Article XII, Section 13(8) of the Colorado Constitution.

C. Attorney fees and costs are not warranted in this action

Complainant requested an award of attorney fees and costs. Because she did not prevail in this matter, there is no basis for such an award. Respondent also requested attorney fees and costs. Attorney fees are proper if an action was instituted frivolously, in bad faith, maliciously, or 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. The party seeking an award of attorney fees and costs shall bear the burden of proof as to whether the personnel action is frivolous, in bad faith, malicious, harassing, or otherwise groundless. Board Rule R-8-38(B), 4 CCR 801.

Given the above findings of fact, an award of attorney fees is not warranted. There was no evidence that would lead to the conclusion that Complainant pursued her constitutional right to a hearing in order to annoy, harass, abuse, be stubbornly litigious or disrespectful of the truth.

CONCLUSIONS OF LAW

1. Complainant committed the acts upon which discipline was based.
2. Respondent's action was not arbitrary, capricious, or contrary to rule or law.
3. The discipline imposed was within the reasonable range of alternatives.
4. Neither party is entitled to an award of attorney fees and costs.

ORDER

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

Dated this _____ day of
January, 2005

Hollyce Farrell
Administrative Law Judge
1120 Lincoln Street, Suite 1420
Denver, CO 80203
(303) 764-1427

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) 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 MAILING

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

Chester H. Morgan , II
Law Offices of Steven M. Werner, PC
301 S. Weber Street
Colorado Springs, CO 80903

and in the interagency mail, to:

Christopher J. Baumann
Assistant Attorney General
Office of the Attorney General
Employment Section
1525 Sherman St., 5th Floor
Denver, CO 80203