

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

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PAM CRESS,

Complainant,

vs.

DEPARTMENT OF HUMAN SERVICES, OFFICE OF PERFORMANCE  
IMPROVEMENT, EMPLOYMENT AFFAIRS DIVISION,

Respondent.

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Administrative Law Judge Hollyce Farrell held the hearing in this matter on January 12 and 13, 2005, at the State Personnel Board, 1120 Lincoln, Suite 1420, Denver, Colorado. Assistant Attorney General Joseph Haughain represented Respondent. Respondent's advisory witness was Sabrina Hicks, the appointing authority. Complainant appeared and was represented by Richard C. Kaufman.

**MATTER APPEALED**

Complainant, Pam Cress (Complainant or Cress) appeals her termination by Respondent, Department of Human Services, Office of Performance Improvement, Employment Affairs Division (Respondent or DHS). Complainant seeks reinstatement and discipline less serious than termination if allegations of misconduct were proven at hearing.

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 action was 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 attorney fees are warranted.

## **FINDINGS OF FACT**

### **General Background**

1. Complainant was a certified employee, who prior to this matter, held the position of General Professional IV. Complainant worked as the Employee Civil Rights Director for Respondent.
2. Complainant became the Employee Civil Rights Director in November of 2003. Prior to assuming that position, Complainant managed background investigations for DHS.
3. Complainant first became a state employee in the early 1990's. She left state service for approximately six months and became a state employee again in 1996, and remained so employed until the time of her termination.
4. Complainant had no prior disciplinary or corrective actions until her disciplinary termination.
5. Sabrina Hicks was the Employment Affairs Division Director for DHS at all times relevant to this appeal. Hicks was Complainant's supervisor and appointing authority from 2001 or 2002 until the time of Complainant's termination.

### **State Car Incident**

6. Complainant, who works and lives in Pueblo, took a state car to Colorado Springs to attend a training seminar on April 21, 2004.
7. When Complainant returned to Pueblo she decided she would return the state car after she had dinner that evening.
8. During the course of the evening, Complainant drove the state car to take her dog, Peyton, to the Petsmart store in Pueblo. The dog had previously taken an obedience class at Petsmart, and Complainant was taking him into the store to practice some of the behaviors learned in the class.
9. When Complainant opened the door of the state car, the dog jumped out of the car and attacked another dog outside of Petsmart. Complainant's dog injured the other dog's eye.
10. While still outside the store, the owners of the other dog told Complainant that everything was okay and left. Complainant then went into Petsmart.
11. While she was still in Petsmart, the owners of the other dog came in, found Complainant, and told her that their dog was bleeding. Complainant purchased

antiseptic for the dog, bought the owners a \$30 Petsmart gift certificate, and offered to pay for any veterinarian bills the dog may incur as a result of the attack.

12. Complainant felt afraid for her safety and afraid of being sued when the owners of the dog who had been attacked by Complainant's dog returned to the store. Complainant felt that the demeanor of the dog's owners had changed from the first encounter outside the store. Complainant felt that the owners were more "reserved" after they came back and found her in the store.
13. The owners of the dog asked Complainant for her address and telephone number. Complainant told them that she was from out of town, and would not give them her name or any other personal information. Complainant took the owners' telephone number and told them that she would call them the next day around 5:00 p.m.
14. Following the incident at Petsmart, Complainant returned the state car.
15. The owners of the dog who had been attacked took down the license plate number of the state car after Complainant gave them no contact information.
16. The owners reported the incident to Pueblo Animal Services, and gave Pueblo Animal Services the license number of the state car Complainant was driving.
17. When officers at Pueblo Animal Services ran the license plate number, they determined that the car was listed to the Colorado Mental Health Institute at Pueblo.
18. An officer from Pueblo Animal Services contacted the Department of Public Safety at the Colorado Mental Institute at Pueblo (CMHIP) and determined that the state car had been checked out to Complainant.
19. On April 22, 2004, Officer Zina Lopez from Pueblo Animal Services interviewed Complainant at the Public Safety Office at CMHIP. Two officers from CMHIP's Department of Public Safety, Major James Mason and Lieutenant Danielle DeLeon, were present during the interview.
20. Complainant admitted that she had been involved in the incident at the Petsmart store and also admitted that she was using a state car to transport her animal to Petsmart.
21. During the interview, Lopez informed Complainant that she would be issuing a citation to Complainant. Lopez told Complainant she would go to Complainant's home around 6:00 p.m. to gather additional information and to give her the citation.

22. When Complainant learned that the owners of the attacked dog had filed a complaint, she became very upset and told Officer Lopez that she was not going to pay the veterinarian bill for the surgery the dog required.
23. Complainant did call the dog's owners at approximately 5:00 p.m., as she promised she would. Unknown to Complainant, Officer Lopez was at the owners' home when she called. Officer Lopez told the owners that they did not have to talk to Complainant. The owners informed Complainant that their dog had surgery and they did not want to talk to her any further, and hung up the telephone.
24. Officer Lopez issued Complainant a citation for having a vicious dog and a dog at large.
25. After the earlier interview concluded with Lopez at CHMIP, Major Mason told Complainant that there would be a CMHIP Public Safety Report regarding the Petsmart incident because a state vehicle was involved. Complainant asked Mason who would receive a copy of the report; he told her the report would go to Complainant's appointing authority.
26. Mason asked Complainant who her appointing authority was and who her supervisor was. Complainant was untruthful and told Mason that Steven Rodosevich was her appointing authority and supervisor.
27. Complainant testified that Mason asked who her division director was, not her appointing authority. Complainant's testimony on this issue is not credible.
28. Complainant affirmatively told Mason that she did not want the report to go to either Hicks or the DHS's Executive Director, Marva Livingston Hammons.
29. Complainant felt that her relationship with Hicks was not "comfortable."
30. Mason later approached the Chief of Police at CMHIP, Lee Smith, and asked him if he knew who Complainant's appointing authority was because Mason was not certain if it was Hicks or Rodosevich.
31. Smith knew Hicks professionally and called her to confirm the identity of Complainant's appointing authority. Hicks informed Smith that she was Complainant's appointing authority. Smith then gave Hicks a verbal report of the events, and told her he would send her a written report.
32. After her conversation with Smith, Hicks immediately called Complainant. Complainant admitted that she had been involved in the incident, and admitted that she had told the citizens involved that she was from "out of town."

33. Complainant reasoned that she did not think it was dishonest to say she was from “out of town” because she was born in Denver, not Pueblo.
34. When she learned that Smith had called Hicks, Complainant went to the Department of Public Safety office and was very upset.
35. Complainant met with Smith and expressed that she was very unhappy that Hicks had been called. Smith told Complainant that had she been honest with the dog owners in the first place, the matter probably never would have come to DHS’s attention. Smith accused Complainant of being untruthful. Complainant admitted she had not been “forthcoming” by failing to give the dog owners her contact information.
36. The State of Colorado, Division of Central Services, State Fleet Management Program has issued a vehicle operator’s manual that applies to State vehicles. That manual contains the following language: “**1. USE OF STATE VEHICLE:** State vehicles are to be used for official State business only and may not be used for personal errands, including transporting family members or pets.”
37. The vehicle operator’s manual also contains the following language: “**J. HOW THE PUBLIC SEES STATE VEHICLE DRIVERS.** SFM [State Fleet Management] receives citizen complaints regarding State vehicles being driven improperly. These complaints may result in a disciplinary action to the driver by his or her agency. State drivers should also be concerned about the reflection of State employees and State vehicles as perceived by the public. Because drivers represent the State of Colorado, it is extremely important that they present a good image. Bad feedback to our leaders may result in vehicle resources being more stringently applied. State vehicles are highly visible and represent a valuable resource.”
38. When Hicks received the report from the CHMIP Department of Public Safety, she was concerned that Complainant had been using a state vehicle to transport her pet. Hicks was also concerned that Complainant refused to give her name and contact information to two citizens, forcing the citizens to track Complainant down through a state vehicle. Hicks was concerned that Complainant was untruthful with to the citizens. Hicks was concerned about the citizens’ view of Complainant as a state employee. Further, Hicks was concerned that Complainant was dishonest with Major Mason about the identity of her appointing authority.
39. Hicks had previous discussions with Complainant about the image Complainant and other DHS employees presented to the public.
40. As an employee in DHS’s Employee Civil Rights office, it was essential that Complainant project an image of trust and accountability to every group within

DHS and to people outside the agency. Complainant held a high level position that required trust and a reputation for integrity.

41. DHS employees, including Cress, work with the CHMIP Department of Public Safety investigators and officers on investigations. It is essential that the officers and the DHS employees be able to trust one another and be able to rely on each other for providing accurate information.
42. After Complainant's actions following the dog bite incident, Complainant's trustworthiness was seriously compromised for DHS.

### **PMAPs**

43. While Hicks was waiting to receive the incident report from CHMIP, she began to finalize the Performance Management and Pay forms (PMAPs) that Complainant was required to complete for each of her staff members. The PMAPs needed to be completed by May 30, 2004.
44. A PMAP is a 15-page form, with a face sheet, used by DHS to evaluate employees and to establish a performance plans for them. The PMAP communicates to employees what their job expectations are and provides them with an evaluation of their work. The form reviews the core competencies areas on which employees will be evaluated.
45. Supervisors are required to complete a PMAP for each member of his or her staff. Then, the supervisor should go through each employee's PMAP with the employee, and ask the employee if he or she wants to add or delete anything to the plan. Once that process is complete, the supervisor and the employee each sign the face sheet. By signing the face sheet, the employee acknowledges that he or she has been provided with a copy of the performance plan and has been given an interim evaluation/progress review. The employees can also indicate whether they agree or disagree with their evaluations.
46. It is important to DHS that PMAPs be completed for each employee because State Personnel Board Rule R-6-3 mandates, "Appointing authorities and designated raters are responsible for communicating the department's performance pay program and the performance expectations and standards, including an individual written performance plan, and for evaluating performance in a timely manner in accordance with rule and procedure."
47. PMAPs are also important because they demonstrate that employees understand their job expectations.
48. Complainant received training on completing PMAPs.

49. Complainant completed her own PMAP for the cycle period May 1, 2003, through April 30, 2004. One of Complainant's evaluation criteria included, "Keeps employees goals and objectives current in PMAP system." The measurement process for that criteria was, "Complete PMAP evaluations at year end."
50. Complainant knew how to complete the PMAP form.
51. Complainant was responsible for completing PMAPs for 7.5 employees.
52. When Hicks began working on the PMAPs Complainant was to have completed, she discovered that only two of Complainant's 7.5 employees had PMAPs. Another supervisor had completed the PMAPs for those two employees before they came under Complainant's supervision.
53. For the remaining 5.5 employees, Complainant only had face sheets. Complainant had also asked employees to send her, or give her, their goals and objectives. Complainant never used the goals and objectives to complete a PMAP form for any of her employees.
54. Complainant did not complete the PMAPs.
55. Hicks scheduled a meeting with Complainant pursuant to State Personnel Board Rule R-6-10 to discuss the issues related to Complainant's use of the state vehicle and Complainant's failure to complete PMAPs for employees. The meeting was scheduled to take place on May 20, 2004.
56. On May 17, 2004, Complainant went on FMLA. Accordingly, the May 20, 2004 R-6-10 meeting was postponed.

### **CCRD Response**

57. Because Complainant was out on FMLA, Hicks and two other employees went to Complainant's office to get her files to take them to Denver to be distributed to other staff members. Hicks wanted to assure that Complainant's workload was covered during her absence.
58. While in Complainant's office, Hicks saw a certified mail receipt to the Colorado Civil Rights Division (CCRD).
59. Hicks was concerned when she saw the receipt because she knew that DHS had two outstanding responses due to CCRD, but she had not approved either one of them for mailing.

60. The protocol at DHS for a CCRD response is: 1) the employee (such as Complainant) drafts the response; 2) the employee submits the draft to Hicks for approval; and 3) the response is mailed to CCRD after Hicks approves it.
61. Complainant was aware of the protocol through team meetings and direct communications with Hicks.
62. Hicks had previously given Complainant instruction on completing CCRD responses by giving her samples of responses that had already been submitted.
63. Hicks asked a staff member to contact CCRD to determine which response had been submitted, and to see if they could get a copy of the filed response.
64. The staff member determined that Complainant submitted a response to a charge filed by an individual who claimed he was not hired for a custodial position at DHS residential facility because of discrimination based on color, creed, religion and race. The individual had been terminated previously for workplace violence and bringing a gun to work.
65. Although Hicks and Complainant exchanged e-mails regarding the Response, Hicks never approved it for mailing.
66. When Hicks reviewed the request from CCRD, she saw that CCRD had requested three pieces of information from DHS. One of those requests was, "Describe the nature of the business." Complainant's complete response to that request was, "to provide direct care services to clients eligible under the state services system."
67. Hicks determined that Complainant's response was insufficient because the nature of DHS's work was not explained. Complainant's response did not explain that the facility housed vulnerable people and that there may not be adequate staff to protect those individuals from a potentially violent employee.
68. It is very important to DHS that they send a complete response to CCRD and explain the functions and nature of DHS's business so CCRD could understand why the person making the charge wasn't hired.
69. Hicks' staff member asked the CCRD representative if DHS could withdraw the response submitted by Complainant and resubmit a different response. The representative laughed and said, "Please do."
70. Hicks was concerned that the CCRD representative laughed about the response Complainant submitted because CCRD is a compliance agency over DHS. Thus, it was important for DHS to submit quality responses to CCRD. Hicks was concerned that CCRD was mocking DHS for the response Complainant submitted.

71. Complainant had previously filed one other CCRD response and had assisted on several others.

### **Internet and E-mail**

72. While Complainant was still on FMLA, Hicks' administrative assistant put a packet of information in Hicks' box. The administrative assistant had found the packet in a box taken from Complainant's office when they collected Complainant's files.

73. Hicks determined that the packet of information contained personal e-mails sent to and from Complainant at her state e-mail address.

74. Some of the e-mails concerned a dispute Complainant was having with a vendor from E-bay. Complainant wrote in one e-mail (to another purchaser from the vendor in question) that she was in the process of filing a fraud complaint against the vendor. In another e-mail, Complainant wrote to a purchaser that she would join a class action suit against the vendor if one were brought.

75. Hicks likened those e-mails to a situation where one of Complainant's employees wrote a letter on state letterhead to influence the outcome in a custody dispute in another state.

76. Hicks was concerned about the lack of judgment Complainant displayed in using the state computer for personal use.

77. Upon receiving and reviewing the e-mails, Hicks asked DHS's IT department to investigate Complainant's Internet use.

78. The report generated by the IT department showed Complainant's Internet usage from July 1, 2003, to June 9, 2004.

79. The report indicated that Complainant had spent approximately 183 hours on the Internet from July 1, 2003, to June 9, 2004. The report also showed that almost all of Complainant's Internet use was during weekdays and during working hours.

80. Some of the time Complainant spent on the Internet was related to her work at DHS. However, Complainant spent at least half of her Internet time on shopping websites, E-bay, travel websites, and other websites that were unrelated to state business.

81. The staffing level at DHS during the time period when Complainant's Internet use was monitored was low. Moreover, DHS's workload was increasing. DHS staff members were working hard and some were suffering from burn out. Given those

- circumstances, it was not conceivable to Hicks that Complainant had enough free time at work to view personal Internet sites.
82. Nobody ever complained that Complainant was not completing her work.
  83. Marva Livingston Hammons had instructed DHS employees that Internet and e-mail use for anything other than state business was prohibited. Hicks had given the same instruction to those she supervised.
  84. Complainant does not dispute that she was using her state computer to access website personal to her and for receiving and sending personal e-mails.
  85. Complainant returned to work after being on FMLA in late June of 2004. When she returned, Hicks placed Complainant on paid administrative leave and rescheduled the R-6-10 meeting for July 7, 2004, which was previously scheduled for May 20, 2004.
  86. Hicks informed Complainant that during the R-6-10 meeting, they would discuss the incident surrounding the dog and the state vehicle, the PMAPs, the CCRD response, and Complainant's use of the state e-mail and Internet.
  87. Present at the July 7, 2004 R-6-10 meeting were Complainant, Hicks, Mary Young, DHS's Human Resources Manager for the Southern District, and Complainant's attorney. Chief Smith was also present for the latter portion of the meeting.
  88. Young opened the meeting by reading Personnel Board Rule R-6-10, defining "appointing authority," and reading the authority and powers of an appointing authority.
  89. Hicks asked Complainant about each of the allegations against her and gave Complainant an opportunity to respond to each allegation and provide any explanation or mitigating information.
  90. When Hicks asked Complainant about the incident with the state car, Complainant told Hicks that Complainant's conduct after the dogfight was "not relevant" and had "nothing to do" with her state employment.
  91. When Hicks asked Complainant if she had been untruthful to the owners of the other dog by telling them she was from out of town, Complainant said, "... what I said to the people is a civil matter . . . that I wasn't from here. I actually am not from here originally."
  92. During the R-6-10 meeting, Complainant never acknowledged that she did anything wrong by being dishonest with the citizens. Instead, she tried to justify her untruthfulness by saying that she wasn't from Pueblo originally.

93. Complainant never acknowledged that she was dishonest with Major Mason regarding the identity of her appointing authority.
94. Hicks gave Complainant an opportunity to provide a written response after the R-6-10 meeting.
95. Complainant hand-delivered her written response to Hicks on July 15, 2004. With respect to the issue of the use of the state vehicle, Complainant wrote, "I am truly sorry for using the state vehicle on April 21, 2004 for the purpose of transporting my dog to the Petsmart store in Pueblo. I realize that state policy prohibits the use of state vehicles for private purposes, and will not do this in the future. As far as the dog bite incident that day, I told the owner of the injured dog, the store clerk at Petsmart and the officer from the Department of Public Safety that it was my dog's fault. However, I do not believe the dog bite should be part of this personnel action. Whether I was driving a state vehicle is one issue but the dog bite incident is separate from that and unrelated to the performance of my duties for the Department."
96. Complainant's response was troubling to Hicks because Complainant failed to take responsibility for her actions following the dog bite incident and her failure to tell the truth. Hicks had serious questions regarding Complainant's integrity and Complainant's failure to be accountable for her actions. This concern was heightened by the position of trust Complainant held at DHS.
97. After carefully considering all of the information she had collected, including the information obtained during the R-6-10 meeting and Complainant's response, Hicks reached the decision to terminate Complainant.
98. Hicks considered many ranges of discipline, but chose termination because employees at any level in DHS require trustworthiness and integrity. This was especially true of Complainant who held a position that required absolute trust. Because Complainant took no responsibility for her dishonesty with the citizens and the CHMIP police officers, and could not see any relationship between her actions and her state employment, Hicks concluded that Complainant's conduct was not correctable. Hicks further concluded that Complainant could not hold any other position at DHS. Hicks' concerns regarding Complainant's judgment and trustworthiness were compounded by the other issues discussed at the R-6-10 meeting.
99. Complainant timely appealed her disciplinary action.

## DISCUSSION

### I. GENERAL

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 Rules R-6-9, 4 CCR 801 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.

#### A. Burden of Proof

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 did commit the acts for which she was disciplined.**

The undisputed evidence established that Complainant transported her dog in a state vehicle. The credible evidence established that Complainant was untruthful with the citizens who owned the dog attacked by Complainant's dog, forcing them to find Complainant by tracing the license plate on the state vehicle. The credible evidence established that Complainant was untruthful with a CHMIP officer as to the identity of her appointing authority. The undisputed evidence also established that Complainant did not complete PMAP's for her employees. Further, the credible evidence established that Complainant filed a CCRD response without getting Hicks' approval. The undisputed evidence also established that Complainant used her state computer for visiting personal websites and sending personal e-mails.

#### **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 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).

Complainant was disciplined for a number of issues. By far the most serious of those issues were Complainant's actions following the dogfight at Petsmart. Complainant was using a state car in violation of rules regarding use of state vehicles by transporting her pet. Then, Complainant was untruthful with the owners of the other dog by telling them she was from out of town and refusing to give them her contact information. Because of Complainant's dishonesty and withholding of information, the dog owners were forced to trace down Complainant by reporting the license plate number of a state vehicle. When Hicks confronted Complainant with the dishonesty to the citizens, Complainant did not demonstrate accountability. Instead, she tried to justify the dishonesty by saying it wasn't really a lie because she is not originally from Pueblo. Unfortunately, this is not the only time Complainant was untruthful following the incident at Petsmart. When Major Mason asked Complainant the identity of her appointing authority, Complainant was untruthful again and told him that Rodosevich was her appointing authority, and not Hicks. When Complainant submitted her written response following the R-6-10 meeting, she told Hicks that her actions following the dogfight were "separate and unrelated" to her duties at the Department. Complainant held a position of trust at DHS. It is troubling that she fails to see any connection between her dishonesty with the dog owners and the CHMIP police and her state employment. Complainant's behavior was indeed relevant because she was driving a state vehicle; she was identified as a state employee. Moreover, Complainant must maintain a trusting relationship with the CHMIP police officers. When Complainant displayed dishonesty in dealing with both the dog owners and the CHMIP police, she compromised her position of trust within DHS. Complainant's conduct following the dogfight incident was serious and flagrant.

The other issues for which Complainant was disciplined are relatively minor compared to Complainant's actions following the Petsmart incident. Even if Complainant had not committed acts of failing to complete PMAPs, using her State computer for personal use, and submitting the unapproved CCRD response, her conduct following the dogfight incident was sufficient to warrant the discipline administered by the agency. However, those incidents did reinforce Hicks' concerns regarding Complainant's trustworthiness and judgment.

Based upon the compounding of Complainant's untruthfulness following the dogfight incident and repeated pattern of not being completely forthcoming, it was not unreasonable to discipline her. Thus, DHS's action was not arbitrary, capricious or contrary to rule or law.

**C. The discipline imposed was within the range of reasonable alternatives**

The credible evidence demonstrates that Hicks did pursue her decision thoughtfully and with due regard for the circumstances of the situation as well as Complainant's individual circumstances before making her decision to terminate Complainant. Board Rule R-6-6, 4 CCR 801. Complainant's position is one that requires that others be able to completely trust her. Once she displayed dishonesty with the citizens, the CHMIP officer, and then failed to take accountability for dishonesty, the necessary trust was gone. This is especially true when combined with the other factors for which Complainant was disciplined. Hicks considered lesser forms of discipline but concluded that Complainant's behavior was not correctable because of Complainant's failure to be accountable for her conduct and lack of comprehension of the impact of her actions as a state employee.

**D. Attorney fees are not warranted in this action.**

Attorney fees are warranted 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.

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.

**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. The discipline imposed was within the range of reasonable alternatives.
4. Attorney fees are not warranted.

**ORDER**

Respondent's action is **affirmed**. Complainant's appeal is dismissed with prejudice. Attorney fees and costs are not awarded.

Dated this \_\_\_ day of \_\_\_\_\_, 2005.

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Hollyce Farrell  
Administrative Law Judge  
1120 Lincoln Street, Suite 1420  
Denver, CO 80203  
303-764-1472

**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 SERVICE**

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 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:

Richard C. Kaufman  
Friedlob Sanderson LLC  
1775 Sherman Street, Suite 2100  
Denver, CO 80203

and in the interagency mail, to:

Joseph Haughain  
Assistant Attorney General  
Employment Law Section  
1525 Sherman Street, 5<sup>th</sup> Floor  
Denver, Colorado 80203

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Andrea C. Woods