STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. **2006B040**

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

FRANK SAREK,

Complainant,

vs.

DEPARTMENT OF CORRECTIONS,

Respondent.

Administrative Law Judge Hollyce Farrell held the hearing in this matter on February 8, 2006 at the State Personnel Board, 633 17th Street, Courtroom 2, Denver, Colorado. Counsel for the parties presented their closing arguments by telephone on February 17, 2006, in Courtroom 6. Assistant Attorney General Eric Freund represented Respondent. Respondent's advisory witness was Anthony Romero, Ph.D., the appointing authority. Complainant appeared and was represented by James R. Potter, Attorney at Law.

MATTER APPEALED

Complainant, Frank Sarek (Complainant) appeals his termination by Respondent, Department of Corrections (Respondent or DOC). Complainant seeks reinstatement, back pay, and attorney fees and costs.

For the reasons set forth below, Respondent's action is **affirmed, in part, and Complainant is awarded back pay and attorney fees.**

ISSUES

1. Whether Complainant committed the acts for which he was disciplined;

2. Whether Respondent's action was arbitrary, capricious or contrary to rule or law;

3. Whether the discipline imposed was within the range of reasonable 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 Academic Teacher at DOC's Territorial Correctional Facility (CTCF). Complainant was employed by DOC for 24 years.

2. Romero is the Director of Academic and Vocational Education at DOC. For purposes of the incident which is the subject of this appeal only, Romero was Complainant's appointing authority.

3. Complainant's supervisor was Thomas Mallary, the Programs Manager at CTCF.

4. There are no correctional officers to guard the inmates who are taking classes at CTCF; instead, the teachers watch out for one another and call for back up if it is needed. For this reason, there are many windows in the classroom area, and teachers are able to see into each other's classrooms.

August 7, 1998 Letter of Counseling

5. On July 29, 1998, Complainant's then supervisor, Patricio M. Manzanares, found Complainant sleeping in his classroom. When Manzanares confronted Complainant about his observations a few days later, Complainant explained that the he had woken up with a headache that morning and taken some Advil, which made him groggy.

6. Manzanares cautioned Complainant that sleeping while at work was unacceptable and a violation of DOC's Administrative Regulation 1450-01, Staff Code of Conduct.

7. On August 7, 1998, Complainant received a Letter of Counseling for sleeping on the job from Manzanares concerning the July 29, 1998 incident. In that Letter of Counseling, Manzares wrote, "I am formally instructing you to cease sleeping while on duty. This cannot and will not be tolerated. Further disregard of this directive may/could result in corrective/disciplinary action by CTCF Appointing Authority."

8. Complainant did not file a grievance or any other type of written response to the August 7, 1998 Letter of Counseling.

October 10, 2001 Performance Documentation Form

9. On September 27, 2001, Manzanares again observed Complainant sleeping at his desk in his classroom while a classroom full of inmate students was watching a video.

10. On October 10, 2001, Manzanares issued a Performance Documentation Form based on his observations of September 27, 2001. In that Performance Documentation Form, Mananzares again advised Complainant that sleeping while at work was a violation of DOC's Staff Code of Conduct. Manzanares also wrote, "Sleeping in class while on duty is unacceptable and will not be tolerated. Normal job expectations for your profession are many, act as a role model, be professional, be a motivator and lead by example to name a few. Sleeping during class reflects not only badly on you, but also on your co-workers, supervisors and all staff in general."

March 2002 Disciplinary Action

11. On March 6, 2002, an employee at CTCF, Marti Nadeau, was walking down the hall in front of Complainant's classroom with another DOC employee from DOC headquarters. Both Nadeau and the other individual noticed Complainant sleeping at his desk while six or seven inmates were watching a video in the classroom.

12. As result of that incident, Complainant had a meeting with the then warden of the facility, Juanita Novak, pursuant to Board Rule R-6-10 (now Rule 6-10B). During the meeting, Complainant told Novak he had medical problems, but denied that he was sleeping while on duty.

13. After the meeting, Novak concluded that Complainant was, indeed, sleeping while on duty in violation of DOC's Staff Code of Conduct. Novak imposed a disciplinary action of $300.00 on Complainant. Complainant did not appeal that disciplinary action. Complainant also received a "Needs Improvement" rating in the area of "Accountability/Organizational Commitment" on his Performance Evaluation because of the March 6, 2002 incident. Complainant did not appeal his evaluation.

October 2003 Disciplinary Action

14. Complainant had another meeting pursuant to State Personnel Board Rule R-6-10 on September 29, 2003. The meeting was based on information the current warden of the facility, James E. Abbott, received regarding Complainant. Specifically, Abbott had information that: 1) there were numerous occurrences where Complainant failed to report to work at his assigned time and/or left his assigned area early, and falsified official documents by signing in and out incorrectly; and 2) an incident where an inmate used Complainant's computer, accessed official facility letterhead and forged a letter which put the safety and security of the facility at risk.

15. During the meeting, an issue arose concerning Complainant printing information regarding female offenders who were nearing their parole dates with a list of

resources available to them as part of the community reintegration preparations. Abbott was concerned because the information was considered to be extremely confidential and Complainant was providing it to his inmate clerk.

16. After the meeting and considering all of the information available to him, Abbott imposed a disciplinary action on Complainant of a 5% per month pay reduction for six months. Complainant did not appeal that disciplinary action.

May 25, 2004 Performance Documentation Form

17. On May 25, 2004, Complainant received another Performance Documentation Form based on the fact that he again falsified the facility's sign-in sheet. The sheet indicated that Complainant signed out at "1600 hours," but was seen leaving the facility's parking lot at 3:45 p.m.

August 18, 2005 Incident

18. On the morning of August 18, 2005, a librarian at the facility, Linda Hyatt, was walking through the classroom area on her way to talk to Allen Cain, the teacher in the computer classroom.

19. As Hyatt passed Complainant's classroom, Hyatt observed Complainant in position that concerned her. Complainant had his feet up on his desk, his eyes were closed, his hands were in his lap, and his head was bent to one side. Hyatt did not see anything in Complainant's lap. Hyatt was standing about two and one-half feet away from Complainant.

20. When Hyatt walked into Cain's office, she was standing and facing a window that looked into Complainant's classroom. From this position, Hyatt was able to observe Complainant. Although Complainant's body was at an angle away from Hyatt, she could see his face and eyes because his head was bent a little. Complainant was in the same position he had been in when Hyatt walked past his classroom.

21. Hyatt was in Cain's office for approximately ten minutes. Almost the entire time she was in there, she looked at Complainant. During that time, Complainant did not move and did not open his eyes.

22. At one point, Hyatt made a comment to Cain that it looked like Complainant was sleeping. Because there were inmates present, Cain did not respond, but did look at Complainant. It appeared to Cain that Complainant may have been sleeping.

23. The inmates who heard Hyatt's comment, were pointing and laughing at Complainant.

24. When Hyatt left Cain's office, she walked by Complainant's classroom on her way back to the library. As she walked by, Hyatt paused and looked in Complainant's classroom. Complainant still appeared to be sleeping. Complainant was sleeping in his classroom, while on duty, on August 18, 2005.

25. When she returned to the library, Hyatt wrote an incident report regarding her observations of Complainant, as she was required to do if she observed an unsafe situation. She took the report to the shift commander's office. Later, she went back to the shift commander's office, but was told that the shift commander had gone home ill that day.

26. When Warden Abbott received Hyatt's incident report, he asked Complainant's supervisor, Thomas Mallary, to investigate the report and report back to him. Mallary interviewed Complainant on August 29, 2005. During that interview, Mallary told Complainant that there was an accusation that he had been sleeping on duty. Mallary did not tell Complainant who made the accusation, nor did he tell him the date of the alleged sleeping. Instead, he told him he thought the incident was in late July or early August.

27. Prior to August 1, 2005, Complainant had been on a medication for high blood pressure known as Norvasc. That medication made Complainant feel drowsy and also caused him to have swelling in his legs. Because of those side effects, Complainant changed to another medication on August 1, 2005, which did not create those side effects.

28. When Mallary told Complainant that he was sleeping on duty in late July or early August, Complainant told Mallary that while he wasn't sleeping purposely, he may have been because of the Norvasc. Complainant also said that he would sometimes put his feet up on his desk to alleviate the swelling in his legs. After the meeting, Mallary wrote a memorandum to Complainant confirming the contents of their conversation. Complainant did not provide any response to Mallary's memorandum.

29. Complainant did provide Mallary with a note from his doctor which said, "This patient was on a blood pressure medication which caused some side effects. He was taken off that medication and is now on another med which has no side effects. He may work full time on his meds with no restrictions." Complainant also showed Mallary the Norvasc bottle with a label indicating that it could cause drowsiness.

30. Mallary reviewed Complainant's personnel history and Hyatt's incident report and then prepared a report for Abbott. In that report, Mallary included past Performance Documents, Corrective Actions, Disciplinary Actions, evaluations, Letters of Counseling. Mallary included positive information, as well as the negative information. Mallary went back as far as 1998 because that was when the first incident of Complainant sleeping on duty was reported.

31. Although he was Complainant's appointing authority, Abbott forwarded Mallary's report to Romero because Abbott wanted someone who was impartial to investigate the matter and make a decision regarding potential discipline. The report included Mallary's recommendation that a stronger disciplinary action would be appropriate "to include either a loss of more pay than the previous Disciplinary Actions or a termination."

32. Romero became Complainant's appointing authority for the purposes of the August 18, 2005 allegation of sleeping while on duty.

33. Romero reviewed all of the information contained in the report and packet prepared by Mallary. He also talked to Manzanares, Abbott, Mallary, Cain, and another DOC teacher, Becky Kelly.

34. Because both Cain and Kelly could see Complainant's classroom from their own classrooms, Romero asked them if they had ever seen Complainant sleeping while at work. Both said that they had, but did not report him. Romero did not ask them if they saw Complainant sleeping on August 18, 2005. Romero also did not interview Linda Hyatt; instead, he relied on her incident report.

35. After reviewing all of the information and speaking with the above named individuals, Romero wrote a letter to Complainant asking him to appear for a meeting pursuant to Rule 6-10B. Eventually, three letters noticing the meeting were sent to Complainant because Abbott wanted Mallary to review the final letter; then, the meeting had to be rescheduled.

36. No version of the letter advised Complainant that there was an allegation that he had been sleeping while on duty on August 18, 2005.

October 19, 2005 Rule 6-10B Meeting

37. The Rule 6-10B meeting was held on October 19, 2005. Present at the meeting were Complainant, Romero and Mallary.

38. Shortly after the meeting began, Romero said, "Ok. Let's start off with you giving us some details of this particular incident—and the one we are talking about is, I think you received the information from Mr. Mallary." Complainant responded, "Yes." However, during the meeting neither Romero nor Mallary advised Complainant that the allegation which prompted the meeting was that Complainant had been sleeping while on duty on August 18, 2005. In fact, at one point during the meeting, Complainant stated, "I understand the allegation was made back in July or something. I'm not sure exactly. Major Mallary told me that." Neither Romero nor Mallary corrected Complainant's understanding that the allegation was not made in July.

39. Because Complainant believed the allegation had been made in July, he provided an explanation regarding the side effects of the Norvasc.

40. At another point during the meeting, Complainant said, "I don't know who made the allegations or exactly what day it was made or anything like that." Complainant then explained again how the Norvasc made him drowsy and made his legs swell.

41. Romero left the room to consult with DOC's Human Resources office as to whether he could disclose the source of the allegations and the day the allegations were made. Ultimately, he determined that he could not provide Complainant with that information, and said, "It's not a disclosure right now. What it is is just information gathering. At this particular time, no, but if it goes any further and you ask for, whatever you ask for, you will receive."

42. Romero issued a letter on November 14, 2005, regarding his decision to terminate Complainant. In that letter, Romero wrote [concerning the 6-10B meeting], "The meeting was to discuss the allegation of August 18, 2005 that you were asleep in the classroom with offenders present." Prior to receiving Romero's November 14 letter, he had never been told that the date of the allegation was August 18, 2005.

43. Because he did not know the date of the allegations or the source of the allegations, Complainant was not provided an opportunity to adequately respond to the allegations during the 6-10B meeting.

44. State Personnel Board Rule 6-10B provides, "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 the 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."

45. During Complainant's 610B meeting with Romero, Complainant was not provided information about the reason for potential discipline, which was sleeping at work on August 18, 2005. Moreover, Romero failed to disclose the source of the information, even though the disclosure was not prohibited by law. Because he was not given accurate information about the allegations against him, Complainant could not meaningfully respond to them.

46. In making his decision to terminate Complainant, Romero found that Complainant willfully and flagrantly violated several sections of DOC's Administrative Regulation 1450-01, Staff Code of Conduct. Those sections are:

> IV.N. Any action on or off duty on the part of DOC staff that jeopardizes the integrity or security of the department, calls into

question the staff's ability to perform effectively in his or her position, or casts doubt upon the integrity of the staff, is prohibited. Staff will exercise good judgment and sound discretion.

CC. Staff are required to remain fully alert and attentive during duty hours.

ZZ. Any act or conduct, on or off duty, which affects job performance and which affects job performance and which tends to bring the DOC into disrepute, or reflects discredit upon the individual as a correctional staff, or tends to adversely affect public safety, is expressly prohibited as a conduct unbecoming, and may lead to corrective and/or disciplinary action.

47. Romero also considered Complainant's prior history with respect to sleeping while on duty, as well as what Romero considered to be a lack of remorse on Complainant's part in making his final decision.

48. Complainant timely appealed Romero's decision.

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 Rule 6-12B, 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) false statements of fact during the application process for a state position;
(4) willful failure or inability to perform duties assigned; and
(5) 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 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 he was disciplined.

Complainant was terminated for sleeping while on duty on August 18, 2005. Complaint was sleeping at his desk on that day. Linda Hyatt had the opportunity to observe Complainant, including his closed eyes, for over ten minutes. She concluded that he was asleep. She also pointed Complainant out to another teacher, Allen Cain. Cain also thought Complainant could have been asleep. Finally, inmates were pointing and laughing at Complainant. Complainant was sleeping at his desk on August 18, 2005.

B. The Appointing Authority's action was 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).

In this case, Romero, as the Appointing Authority, was charged with determining whether Complainant had been sleeping on August 18, 2005. Romero obtained some, but not all, of the evidence because he didn't really get information from the Complainant regarding the allegations of August 18, 2005. The evidence Romero gathered was only part of the picture. While Romero spoke to the reporting employee, Hyatt, as part of his investigation, he did rely upon her report, which he found to be credible. Romero did speak to two of the other teachers, Becky Kelly and Cain, and asked them if they had ever seen Complainant sleeping while on duty, but did not ask them if they saw Complainant sleeping while on duty on August 18, 2005. Romero also reviewed Complainant's personnel file back to 1998. While Romero did give candid and honest consideration to the evidence he <u>did</u> gather before exercising his discretion, he failed to gather <u>all</u> of the evidence. By failing to properly investigate the allegations, Romero failed to gather a substantial portion of the evidence, thereby violating the first prong set forth in *Lawley.*

DOC violated 6-10B by failing to provide Complainant with the date of the allegation and failing to disclose the source of that allegation. Rule 6-10B provides, in part, "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 the 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." By failing to give Complainant this very basic information, Complainant did not have a meaningful opportunity to respond to the allegations. He mistakenly believed that the incident took place in late July of 2005, and therefore presented information concerning the side effects of the medication he was taking at that time, Norvasc. Complainant was no longer taking Norvasc on August 18, and would have most likely presented different information had he been given the significant details of the date of the allegations and the source of the allegations. Complainant was also denied the opportunity of knowing who the witnesses were, and was not given an opportunity to question those witnesses himself.

Complainant, a certified state employee, had a property interest in his job at DOC. Thus, he is entitled to due process before he could be deprived of that property interest. The minimum procedural due process right in continued employment is a matter of federal constitutional law. *University of Southern Colorado v. The State Personnel Board,* 759 P.2d 865 at 867 (Ct. App.1998). In *Cleveland Board of Education v. Loudermill, et al.*, 470 U.S. 532, 105 S.Ct. 1487 (1985), the United States Supreme Court provided, "We have described the 'root requirement' of the Due Process Clause as being 'than an individual be given an opportunity for a hearing *before* [emphasis in original] he is deprived of any significant property interest." *Loudermill,* 470 U.S. 532 at 542. Complainant in this case was not given an opportunity for a meaningful hearing before he was terminated. The pre-termination hearing does not need to be elaborate, but "should be an initial check against the mistaken decisions, essentially a determination of whether there are reasonable grounds to serve as a basis for the discharge." *University of Southern Colorado v. The State Personnel Board*, *id.* The disciplinary meeting in this case did not provide for a check against "mistaken decision" and to determine if there were reasonable grounds to discharge Complainant. Complainant was not given the proper information to refute any mistakes and to provide information regarding the reasonableness of his termination. Complainant was not given such an opportunity until he had a post-termination hearing before the State Personnel Board. Complainant was finally afforded a full and fair hearing at the State Personnel Board. During that hearing, Respondent established that Complainant was sleeping while on duty on August 18, 2005. The hearing was Complainant's first opportunity for due process. Complainant's procedural due process rights were violated by the inadequacy of his Rule 6-10B meeting; Complainant had no opportunity to adequately respond to DOC's allegations until the evidentiary hearing held on February 8 and 17, 2006. Accordingly, Complainant is entitled to back pay from his date of termination until the time he was fully afforded his due process rights, which was the last day of his evidentiary hearing on February 17, 2006.

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

The appointing authority did not have all the information presented at hearing. However, if he had obtained that information, then the level of discipline imposed would have been reasonable. Given that the Rule 6-10B meeting was not properly conducted, the ALJ is put in the position of determining whether the level of discipline imposed was

appropriate. Hyatt observed Complainant sleeping on August 18, 2005. Cain also observed that Complainant could have been sleeping on that day. Inmates also saw Complainant sleeping. Complainant had a documented history of sleeping while on duty at DOC. Complainant's position was one that required him to be alert for his own safety and the safety of the other teachers and staff at the facility. Complainant demonstrated a repeated pattern of continuing to sleep while on duty after receiving several warnings and having an appreciation of the risks involved while sleeping. A review of Complainant's personnel file supports a finding that progressive discipline was not effective with Complainant. Given these circumstances, termination is a reasonable level of discipline.

D. Attorney fees are 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 8-38B, 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 8-38B, 4 CCR 801.

Given the above findings of fact, an award of attorney fees is warranted. Complainant was entitled to a pre-termination meeting which would allow him to have an understanding of the allegations against him. In that same meeting, he was entitled to know the source of the allegations. In this case, he had neither. The 6-10B meeting held by Romero was sorely lacking in due process requirements. Complainant did not even know which day he was allegedly sleeping until he received his termination letter. Complainant was required to file an appeal with State Personnel Board in order to receive basic information about the allegations against him and to get a fair hearing. One of the primary underpinnings of the State Personnel Board is to encourage the resolution of disputes at the lowest possible level. Full disclosure by both parties facilitates this process, provides for efficient use of state resources, and leads to administrative efficiency in the state personnel system.

Because Complainant was not afforded procedural due process until the evidentiary hearing in this case, contrary to *Loudermill, id.* and Rule 6-10B, Complainant is entitled to attorney fees.

CONCLUSIONS OF LAW

1. Complainant committed the acts for which he was disciplined.

2. Respondent's action was arbitrary, capricious, or contrary to rule or law.

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

4. Attorney fees are warranted.

ORDER

Respondent's action is **affirmed, in part**. Complainant is not entitled to reinstatement, but is entitled to full back pay and benefits from the date of his termination until the last day of his evidentiary hearing for the reasons set forth above. Attorney fees and costs are awarded to Complainant.

Dated this 3rd day of April, 2006

Hollyce Farrell
Administrative Law Judge
633 – 17th Street, Suite 1320
Denver, CO 80202
303-866-3300

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.); Board Rule 8-68B, 4 CCR 801.
3. The parties are hereby advised that this constitutes the Board's motion, pursuant to Section 24-4-105(14)(a)(II), C.R.S., to review this Initial Decision regardless of whether the parties file exceptions.

RECORD ON APPEAL

The cost to prepare the record on appeal in this case is $50.00. This amount does not include the cost of a transcript, which must be paid by the party that files the appeal. That party may pay the preparation fee 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. A party that is financially unable to pay the preparation fee may file a motion for waiver of the fee. That motion must include information showing that the party is indigent or explaining why the party is financially unable to pay the fee.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. Board Rule 8-69B, 4 CCR 801. 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 59 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 appellant may file a reply brief within five days. Board Rule 8-72B, 4 CCR 801. 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 75B, 4 CCR 801. Requests for oral argument are seldom granted.

PETITION FOR RECONSIDERATION

A petition for reconsideration of the decision of the ALJ must 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 ALJ's decision. Board Rule 8-65B, 4 CCR 801.

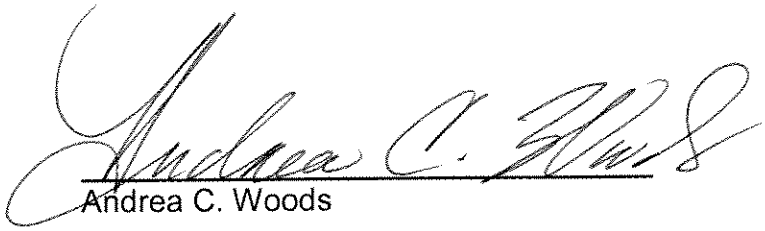
CERTIFICATE OF SERVICE

This is to certify that on the 4th day of April, 2006, 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:

James R. Potter
Attorney at Law
861 Griffin Avenue
Canon City, CO 81212

and in the interagency mail, to:

Eric Freund
Assistant Attorney General
Employment Law Section
1525 Sherman Street, 5th Floor
Denver, Colorado 80203



Andrea C. Woods