

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

JOHN MARES,

Complainant,

vs.

FORT LEWIS COLLEGE,

Respondent.

Administrative Law Judge Hollyce Farrell held the hearing in this matter on April 4 and 5, 2007, at the State Personnel Board, 633 17th Street, Courtroom 6, Denver, Colorado. Assistant Attorney General Vincent E. Morscher represented Respondent. Respondent's advisory witness was Karen Aldrich, the Human Resources Director at Fort Lewis College. Complainant appeared and was represented by Teresa Zoltanski, Attorney at Law.

MATTER APPEALED

Complainant, John Mares (Complainant) appeals his disciplinary demotion by Respondent, Fort Lewis College (Respondent or Fort Lewis). Complainant seeks the rescission of his disciplinary demotion, back pay, benefits, 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 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 Custodian III at Fort Lewis. Complainant has been employed at Fort Lewis since 1994.
2. Complainant was hired as a Custodian I, but was promoted to the Custodian III, or housekeeping supervisor, position in 1997. The Custodian III position had previously been one of Lead Custodian. When the person occupying the Lead Custodian position left in 1997, Bradley Hitti, who was then the manager of Facilities, changed the position to include greater responsibility. The new responsibilities for the position included doing evaluations and participating in hiring of custodians.
3. When Complainant was hired into the Custodian III position, Hitti gave him training on the hiring process. The training included having Complainant sit in on the hiring process so he could learn to hire the most qualified candidate. Hitti also taught Complainant about the State Personnel rules on hiring classified staff members.
4. No one at Fort Lewis trained Complainant how to do criminal background checks or to inquire about a prospective employee's criminal background because that was not part of Complainant's job. Hitti himself never conducted criminal background checks on custodians he hired. In fact, it was not Fort Lewis' practice to perform background checks on any prospective employees because of the cost involved; Fort Lewis would usually only check references.
5. After Hitti left Facilities, Complainant was supervised for a period of time by Ted Gross, who is the Service Center Manager for Fort Lewis. The Service Center is a liaison between Fort Lewis' physical plant, the students and the faculty. During the time that Gross supervised Complainant, he sent him to several supervisory trainings. Some of those trainings included hiring, but not within the State Personnel system.
6. Complainant has always demonstrated a high work ethic and is highly regarded by his supervisors at Fort Lewis. He was rated as a peak performer and his evaluations were always high. Many people at Fort Lewis have high regard for Complainant.

Complainant's Supervision of Sadie Hunter

7. In 1995, Hitti hired a custodian by the name of Sadie Hunter. Although Hitti was unaware of it, Complainant was dating Hunter when she was hired.

8. When Hitti promoted Complainant, he was still unaware that Hunter was dating Complainant.
9. When Complainant was promoted in 1997, he became Hunter's supervisor, and completed her performance evaluations. He was also responsible for hiring and training staff and assigning work to his staff members. Hunter was one of Complainant's staff members.
10. Sometime in 1999, Complainant told Hitti that he and Hunter were dating. When Hitti learned this information, he took over as Hunter's supervisor and assumed the task of doing her performance evaluations. At that same time, Hitti told Complainant that he could not supervise someone he was dating because it was inappropriate and created a perception of favoritism with other employees. Complainant and other Fort Lewis employees are trained about dating other staff members, and the conflict of interest it can cause.
11. Complainant and Hunter eventually married.
12. Fort Lewis had an Affirmative Action Plan, which included a policy on nepotism, which had been effect since the mid-1990's. That policy provides, "Although employment of more than one member of a family is not prohibited by the College, each employment application must be considered independently, and no employee may participate in any manner in decisions involving a member of his or her family."
13. Complainant received training on Fort Lewis' nepotism policy when it was adopted in the mid-1990's.
14. Based on the incident with Hunter (now Sadie Mares) and his training on the nepotism policy, Complainant knew it was inappropriate for him to supervise or evaluate a family member.
15. There are other married couples and people who are working at Fort Lewis. However, no employees are supervised by a relative or spouse.
16. Complainant did not receive a corrective or disciplinary action for supervising Hunter when she was either his wife or his girlfriend. Complainant also did not receive anything negative in his performance evaluation because of the issue.

Hiring of Ronnie Archuleta

17. In the summer of 2006, one of Sadie Mares' sisters talked to Complainant about Sadie Mares' half-brother, Ronnie Archuleta. The sister said that Archuleta had been through a bad divorce, had been in jail, and was looking for work.

18. Sadie Mares told Archuleta that the custodians at Fort Lewis were always looking for custodial help. She and Complainant urged Archuleta to submit an application to the Human Resources office to see if he could begin working as temporary custodian.
19. The summer months are particularly busy for the custodians at Fort Lewis because the dorms and apartments are frequently in use by visitors throughout the summer. In addition to maintaining the buildings for the visitors, the custodians must also get the buildings ready for the students who are coming to school for the Fall semester.
20. Complainant spoke with Gross, who was then his supervisor, and told him that the custodians were really hurting, and could use the help of another custodian. Gross gave Complainant permission to hire Archuleta into a temporary position as a custodian. Gross knew that Complainant and Sadie Mares were married, but he did not know that Archuleta was related to Sadie Mares. Complainant did not disclose his relationship to Gross when he asked for approval to hire him.
21. Because Archuleta was a temporary employee, he could only work for six months. Archuleta reported to Complainant, who was his supervisor. Archuleta began working as a temporary employee for Fort Lewis in August of 2004, and was living at least part of the time with Complainant.
22. Archuleta was an excellent employee, who was well liked by the residence hall directors, the resident assistants and the students. Complainant was very pleased with Archuleta's work.
23. In late 2004, a permanent position for a custodian opened up at Fort Lewis.
24. When Archuleta was filling out the application for the permanent position, he disclosed to Complainant that he had a felony record, and had served time in an Oklahoma prison.
25. Archuleta told Complainant that he had been going through a bad divorce, and that his step-daughter, a minor, lay naked next to him while he was sleeping and his ex-wife took pictures, and that the step-daughter claimed he had molested her. Archuleta said he was convicted of a felony based on those facts.
26. Complainant knew that Archuleta had been convicted of a sex offense involving a minor, but believed Archuleta had been framed. Archuleta had also registered as a sex offender in the Durango area.
27. Complainant advised Archuleta that if the Human Resources office did a background check on him, and learned of the felony, he may not be hired.

28. When Fort Lewis was deciding on which applicant to hire for the permanent custodian position, Complainant told Gross that Archuleta, who was one of the top three candidates for the position, was an excellent worker and that he wanted to hire him. Complainant did not tell Gross, or anyone else at Fort Lewis, that Archuleta had a felony because he did not want to breach Archuleta's confidence.
29. Complainant decided to hire Archuleta for the permanent position, and Gross approved Archuleta's hiring. Gross notified the Human Resources office that Archuleta had been selected for the position. Because Complainant had supervised Archuleta, and was familiar with his work, Gross accepted Complainant's decision to hire Archuleta. One of the responsibilities of a Custodian III is to hire new employees.
30. Had Complainant told Gross about Archuleta's conviction for a sex offense, Gross would not have approved Archuleta's hiring. While Fort Lewis does hire some individuals with criminal backgrounds, it does not hire anyone convicted of a sex offense or a violent crime. Complainant knew that Fort Lewis did not hire violent offenders or sex offenders, but intentionally withheld the information he knew about Archuleta being a sex offender from Gross.
31. During the summer months, Fort Lewis has many minors who stay on campus in the dormitories. Seventy-five percent of those minors are high school age, junior high school age, or younger. Fort Lewis hosts minors as young as eight years old. As a custodian, Archuleta had master keys to the dormitory rooms.
32. Complainant did think about the fact that he was putting the campus at risk by hiring Archuleta, but weighed that against Archuleta's work record and the feedback he had gotten on Archuleta's work.

Lead Worker Position

33. After Archuleta was hired for the permanent position, Complainant continued to supervise him and evaluate him. Archuleta became a permanent employee on December 1, 2004.
34. In June of 2006, a position for a lead worker became available, and Archuleta applied for it.
35. By this time, Complainant's supervisor was Ben Austin, who was the Assistant Director for Facilities for Housing and Conferences. Julie Love, Fort Lewis' Director of Conference Services and Housing, was Austin's supervisor, and in Complainant's chain of command. Love and Austin were aware that Archuleta and Complainant were related, but had not reported that fact to Human Resources because they assumed everybody already knew.

36. Austin wanted to promote Archuleta into the lead worker position, and spoke to Love about it. Because she knew Complainant and Archuleta were related, Love wanted to consult with her supervisor, Glenna Sexton, the Vice-President for Student Affairs, and the Human Resources office about it.
37. When Love and Sexton spoke, they agreed that it was not in the best interest of the college to put Archuleta in the lead custodian position because of his relationship to Complainant and it would not work well for the whole team to have relatives both in a supervisory role.
38. Austin offered to supervise Archuleta to allow Archuleta to be promoted. However, Love did not agree to that because Austin had announced that he was taking a different position, and she did not want the person who replaced him to be responsible for supervising a custodian.
39. Complainant was not involved in the hiring for the lead custodian position because his relationship to Archuleta was known.
40. Because Archuleta, a top contender for the lead custodian position who was on the referral list, was discovered to be related to Complainant, the Human Resources office became involved in the decision of whether to hire him for the position.
41. Karen Aldrich, Fort Lewis' Human Resources director, spoke to Steven Schwartz, the Vice President for Finance and Administration about the situation. Schwartz was also Fort Lewis' Appointing Authority for classified employees. Schwartz was delegated to be the appointing authority by Fort Lewis's President, Brad Bartel. The delegation was in writing.
42. Fort Lewis College Policy 4-9 Section III(A) lists the Personnel Powers delegated to the President by the Fort Lewis College Board of Trustees. One of those powers, listed in paragraph 8 is "The power, concurrently with and in addition to existing inherent power, to impose disciplinary sanctions upon personnel for violations of established College policies, included but not limited to, the power to suspend, demote and reassign." At the end of the list of the delegated powers, the policy provides, "None of the powers set forth above shall be further delegated by the president to any person." Policy 4-9 applies to faculty and exempt staff, but not classified State employees.
43. Schwartz did not oppose Archuleta applying for the position, but said that Austin, Love and Sexton would have to approve Archuleta being hired for the position. Ultimately, they determined that Archuleta being in the lead custodian position created a potential conflict. The decision to not hire Archuleta for the position was made in late August of 2006.

Sex Offender Status Discovered

44. A short while after the decision to not hire Archuleta for the lead custodian position had been made, Fort Lewis' Chief of Police, Arnold Trujillo came to see Aldrich. He told her that the Colorado Bureau of Investigation (CBI) had done an annual audit of the Fort Lewis Police Department. While conducting the audit, personnel from CBI showed the police officers at Fort Lewis how employers can look up sex offenders on the Internet.
45. In running a search for Fort Lewis, on September 5, 2006, two names came up as sex offenders. One was a former student, and the other was Archuleta. Upon further research, Trujillo discovered that Archuleta had served time in an Oklahoma prison for the sex offense conviction. Trujillo also reported the information to Glenna Sexton.
46. When the discovery was made, Archuleta was summoned to the Human Resources office where he met with Aldrich and Austin. When Austin and Aldrich told Complainant that they had learned of his sex offender status, he said he was sorry. Archuleta was then placed on administrative leave.
47. While Archuleta was meeting with Aldrich and Austin, Love met with Complainant. Complainant did not deny knowing that Archuleta was a sex offender, and expressed concern for him, and said he felt that Archuleta had already paid for his crime. It was clear to Love that Complainant knew Archuleta was a sex offender.

Rule 6-10 Meeting and Demotion

48. Aldrich informed Schwartz of the situation, and Schwartz scheduled two meetings pursuant to Board Rule 6-10. One was for Archuleta and one was for Complainant. Archuleta resigned before his Rule 6-10 meeting was held.
49. Although he was informed in the letter noticing the Rule 6-10 meeting that he could bring a representative, Complainant did not. Present at the meeting were Schwartz, Aldrich and Complainant.
50. During the meeting, Complainant said that he knew he had made a mistake and was sorry. Complainant also said he learned of Archuleta's conviction and the actual circumstances leading up to the conviction after Archuleta worked as a temporary employee and at the time he applied for a permanent position.
51. During the Rule 6-10 meeting, Complainant stated, "I made a mistake and I'll admit that But, even with the poor judgment that I feel that I've used, I still had two years and five months with an employee that deserved every break I could give him. . . ."

52. Later in the meeting, Complainant admitted that he knew Archuleta had a felony conviction as a sex offender when Archuleta was hired for the full-time position in December of 2004. He also admitted that he considered the danger in which minors on campus were placed by having Archuleta working at the campus, and that there were times when Archuleta worked alone.
53. Complainant stated that he knew that it was "wrong" to hire Archuleta and "definitely illegal" or "technically wrong, " and that "it was an error in judgment" on his part.
54. Complainant admitted during the meeting that the crew knew that Archuleta was his brother-in-law, but he did not report it to anyone higher up in the chain of command.
55. Complainant also admitted that he knew that there were problems regarding the supervision of family members and while he didn't consider a brother-in-law to be immediate family, he "probably" should have.
56. Following the Rule 6-10 meeting, Schwartz and Aldrich met and discussed what had been said in the meeting, and possible courses of action. Both of them were impressed that Complainant had been honest during the meeting and showed remorse. They felt it showed character on Complainant's part.
57. To assist him in making his final decision regarding Complainant, Schwartz also met with Sexton, Love, and Austin. It was important for Schwartz to meet with Love and Austin because they worked directly with Complainant, and had immense respect for him. Additionally, Schwartz met with the President to apprise him of the situation because it had the potential to put Fort Lewis in a bad light. He also wanted the President to know that there were possible legal ramifications in the event that Archuleta had acted inappropriately while working for Fort Lewis.
58. Schwartz also reviewed Complainant's personnel background with Aldrich. He discovered and considered that Complainant was an overall good performer who had one prior corrective action. Schwartz did not consider the prior corrective action in making his final decision regarding Complainant. Schwartz also considered Complainant's longevity with Fort Lewis.
59. Schwartz further considered the fact that Complainant, because of the situation with Sadie Hunter Mares, knew that it was not permissible to supervise a relative. He also considered the fact that Complainant knew Archuleta was a registered sex offender when he hired him, knew there were minors on campus, and knew that Archuleta had been convicted for a sex offense involving a child. Schwartz also considered Complainant's statements and admissions during the Rule 6-10 meeting.

60. Sexton, Love, Aldrich and Austin also met to discuss Complainant's situation. The meeting was very emotional because Sexton, Love and Austin have high regard for Complainant. The purpose of the meeting was to discuss possible options for Complainant and make a recommendation to Schwartz, who would make the final decision. Ultimately, they decided to recommend that Complainant be demoted from his supervisory position, which they did.

61. After seriously considering all of the information he had received and gathered, Schwartz decided to demote Complainant from his supervisory position of Custodian III back to a Custodian I position. When demoted, Complainant's monthly salary was decreased from \$2,946.00 per month to \$2,300.00 per month. While Schwartz had considered termination, he decided that demotion was more appropriate because Complainant had shown remorse and had been a good employee. However, Schwartz did not want Complainant to remain in a decision-making position, such as Custodian III, which could impact Fort Lewis. Complainant could not be demoted to a Custodian II position because Fort Lewis does not have any Custodian II positions. Additionally, Complainant could not be demoted to a General Laborer position because he has never been certified in the General Laborer class.

62. In making his decision, Schwartz considered that Complainant hired Archuleta, a family member, with knowledge that Archuleta was a convicted sex offender. He also considered that Archuleta had keys to the dorm rooms, and thus access to students and minors. Schwartz concluded that Complainant had a pattern of making decisions based on personal benefit, and not for the benefit of Fort Lewis. Schwartz's primary concern was the fact that Complainant recommended that Archuleta be hired without disclosing that Archuleta was a convicted sex offender.

63. There was no information presented to Schwartz that Archuleta ever harmed anyone while working at Fort Lewis, or that Complainant gave Archuleta preferential treatment.

64. Complainant appealed his disciplinary demotion.

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 6-12, 4 CCR 801, and generally includes:

- (1) failure to perform competently;
- (2) willful misconduct or violation of these or department rules or law that affect

- the ability to perform the job;
- (3) false statements of fact during the application process for a state position;
 - (4) willful failure to perform, including failure to plan or evaluate performance in a timely manner, or inability to perform; and
 - (5) final conviction of a felony or any other offense involving moral turpitude that adversely affects the employee's ability to perform or may have an adverse effect on the department if the employment is continued.

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.

Respondent has proven by preponderant evidence that Complainant committed the acts for which he was disciplined. Complainant was demoted for recommending the hiring of his brother-in-law, a person he knew to be a convicted sex offender. Because Complainant had previously been advised that he could not supervise family members, and because he had been trained on Fort Lewis' nepotism policy, he was aware that he should not have supervised Archuleta. When Complainant recommended that Archuleta be hired, he did not tell his supervisor, Ted Gross, or anyone else in his chain of command that Archuleta was related to him. Additionally, before Archuleta was hired for a permanent position, he disclosed to Complainant that he had been convicted of a sex offense involving a minor, and had served time in prison for that conviction. Complainant did not disclose that information to anyone at Fort Lewis, and recommended that Archuleta be hired for the permanent position. Complainant was aware that Archuleta would have master keys to the dormitories, which housed minors as young as eight years old during the summer months, when he made the recommendation to hire him.

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).

As the Appointing Authority, Schwartz was charged with determining what discipline, if any, should be imposed on Complainant. Schwartz used reasonable care and diligence in gathering all of the information and evidence relevant to the situation. He held a Rule 6-10 meeting with Complainant, where Complainant was permitted to respond to all of the allegations against him. Schwartz also spoke to Complainant's direct supervisor, as well as two other people in Complainant's chain of command. Finally, Schwartz gathered information regarding Complainant's work history and his past performance at Fort Lewis. Schwartz gave candid and honest consideration to all of the evidence before he made his decision to demote Complainant. Schwartz did not make his decision lightly and conferred with those who knew Complainant's work best, prior to making his final decision.

Finally, Schwartz's conclusion that Complainant could no longer act in a supervisory capacity was reasonable because he breached Fort Lewis' trust. Complainant recommended the hiring of Archuleta, a convicted sex offender. When he made that recommendation, Complainant knew that Archuleta had been convicted of a sex offense involving a child. He also knew that, in all likelihood, Gross would hire the candidate that he recommended. Furthermore, Complainant knew that Archuleta would have master keys to at least some of the dormitories, would sometimes work alone, and that there were minors on campus. Based on these facts, it was reasonable for Schwartz to conclude that it was not in the best interest of Fort Lewis for Complainant to remain in a decision making position.

Complainant argued that it was not his responsibility, nor was he trained, to do background checks on prospective employees. That argument is not relevant because Complainant was not disciplined for failing to do a background check; he was disciplined for failing to disclose information he already knew. Complainant further argues that there is no policy requiring him to disclose information about a prospective employee. However, it is sufficient that Complainant violated generally accepted standards of performance. *Bishop v. Department of Institutions, Division of Youth Services*, 831 P.2d 506 (Colo. App.1992). Schwartz reasonably determined that Complainant's lack of judgment in hiring Archuleta constituted "failure to perform competently." Accordingly, pursuant to Board Rule 6-12, Complainant could be properly disciplined.

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

The level of discipline imposed by Schwartz was appropriate. Schwartz considered all alternatives when deciding to impose discipline, including termination. However, because of Complainant's excellent work history and Complainant's honesty and remorse regarding the situation, Schwartz decided that termination was too harsh.

Instead, Schwartz decided to demote Complainant so Complainant would no longer be in the position to make decisions that could impact Fort Lewis. Complainant demonstrated a serious lapse in judgment by failing to disclose Archuleta's criminal past when he recommended him for the permanent position. The Custodian I position was the only position into which Complainant could be placed because there were no Custodian II positions, and Complainant was not certified in other classes, such as the General Laborer class.

D. The Appointing Authority was properly delegated.

Complainant asserts that Schwartz was not authorized to act as the Appointing Authority in this case. He bases his argument on Fort Lewis College Policy 4-9. Section III(A) of that Policy lists the Personnel Powers delegated to the President by the Fort Lewis Board of Trustees. One of those powers, listed in paragraph 8 is "The power, concurrently with and in addition to existing inherent power, to impose disciplinary sanctions upon personnel for violations of established College policies, including, but not limited to, the power to suspend, demote and reassign." At the end of the list of delegated powers, the policy provides, "None of the powers set forth above shall be further delegated by the president to any person." Thus, Complainant argues that the President was without authority to delegate Appointing Authority status to Schwartz, or anyone else. Policy 4-9 is not applicable to this case because it applies to faculty and exempt staff, but not to classified State employees. Moreover, even if Policy 4-9 did encompass classified employees, it is overridden by Personnel Board Rule 1-8, which provides, in part, "Executive directors of principal departments and presidents of higher education (hereafter "department" and "department head") are appointing authorities for their own offices and division directors. . . .An appointing authority may delegate in writing any and all human resource functions, including the approval of further delegation beyond the initial designee." In this case, the President of Fort Lewis delegated his human resource functions to Schwartz. Schwartz is Complainant's Appointing Authority, as he is for every classified employee at Fort Lewis College.

E. 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 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.

Complainant requested an award of attorney fees and costs. Because he did not prevail in this matter, there is no basis for such an award.

CONCLUSIONS OF LAW

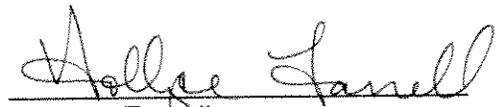
1. Complainant committed the acts for which he was disciplined.

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 15th day of May, 2007



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 8-68, 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 8-69, 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 8-72, 4 CCR 801. An original and 9 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 8-73, 4 CCR 801.

ORAL ARGUMENT ON APPEAL

A request for oral argument must be filed with the Board on or before the date a party's brief is due. Board Rule 8-75, 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 8-65, 4 CCR 801.

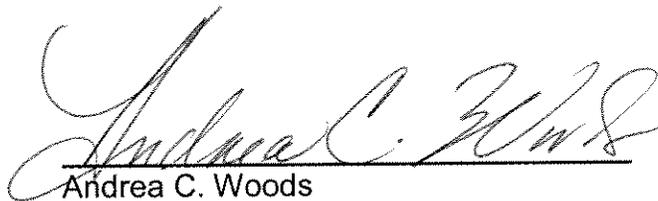
CERTIFICATE OF SERVICE

This is to certify that on the 16th day of May, 2007, 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:

Teresa Zoltanski
Colorado Federation of Public Employees
1580 Logan Street, Suite 310
Denver, CO 80203

and in the interagency mail, to:

Vincent E. Morscher
Assistant Attorney General
Employment Law Section
1525 Sherman Street, 5th Floor
Denver, Colorado 80203


Andrea C. Woods