

ORDER OF THE STATE PERSONNEL BOARD

PERRY VENARD,

Complainant,

vs.

DEPARTMENT OF CORRECTIONS,
ARKANSAS VALLEY CORRECTIONAL FACILITY,

Respondent.

The State Personnel Board (the "Board") met in public session on Tuesday, March 20, 2001. During this public session, the Board considered Complainant's Motion for New Hearing or Remand and the Taking of Supplemental Testimony ("Complainant's Motion") and Respondent's Motion in Opposition to Complainant's Request for a New Trial or Retaking of Testimony ("Respondent's Motion"). Being advised, it is found:

1. On February 28, 2001, Complainant's Motion was filed with the Board requesting that a new hearing in this matter be granted because of a failure in transcription equipment. In the alternative, Complainant requested an opportunity to provide supplemental testimony to replace the day of hearing subject to the transcription failure.
2. Respondent's Motion was filed on March 5, 2001 and argued, in part, that Colorado Appellate Rule 10(c) could be applied to address the transcription failure. Application of such a rule would allow Complainant to submit information in writing regarding the evidence in question, allow Respondent to file any objections, and allow the administrative law judge to decide any disputes and/or adopt the written submissions.
3. Complainant subsequently filed a Motion to Vacate Briefing Schedule Pending Ruling on Motion to Remand ("Complainant's 2nd Motion").

The following order is entered:

I. Complainant's Motion and Respondent's Motion

Complainant's Motion is DENIED. In reviewing this issue, the Board takes note of C.A.R. 10(c). It is noted that Complainant's Motion may have failed to

specifically identify specific statements of evidence that should be contained in the transcription. However, it is also noted that the Initial Decision of the Administrative Law Judge, and the ALJ's findings of fact and conclusions of law, were based on submitted exhibits contained within the record. The Initial Decision does not represent that the Administrative Law Judge relied upon testimony provided on the day of the transcription failure. As a result, C.A.R. 10(c) need not be utilized and no new hearing or testimony is required. The Director of the Personnel Board is to set any future briefing schedule. Respondent's Motion is thereby moot.

This order represents the affirmative vote of the following Board members: Linda Siderius, John Zakhem, and Joy Hoffman.

II. Briefing Schedule

The brief of the appealing party is due to be filed with the Board and served on the opposing party no later than **April 9, 2001**.

The brief of the opposing party is due to be filed with the Board and served on the other party within **12 calendar days** from the date of service of the appellant's brief. A reply brief may be filed within 5 days.

Briefs are to be typewritten with the text double-spaced. No brief shall exceed 10 pages in length. Only 8 x 11 inch paper shall be used. **An original and 9 copies of each brief** must be filed with the Board. See, Board Rules R-8-63 and R-8-64, 4 CCR 801.

The Board is scheduled to review this case at approximately **9:00 a.m. on May 15, 2001, at the Colorado Department of Transportation, 4201 East Arkansas Avenue, Second Floor Auditorium, Denver, Colorado 80222**. The parties need not be present at this Board meeting.

Dated this _____ day of
March, 2001.

Joy Hoffman
Board Chair

CERTIFICATE OF MAILING

This is to certify that on this _____ day of March, 2001, I placed true copies of the foregoing ORDER OF THE STATE PERSONNEL BOARD in the United States mail, postage prepaid, addressed as follows:

William S. Finger, Esquire
Frank & Finger, P.C.
P O Box 1477
Evergreen, CO 80437-1477

and in the interagency mail, addressed to:

Cristina Valencia
Assistant Attorney General
Employment Section
Department of Law
1525 Sherman Street, 5th Floor
Denver CO 80203
