

ORDER OF THE STATE PERSONNEL BOARD

BARBARA CLEMENTI,

Complainant,

vs.

DEPARTMENT OF CORRECTIONS,

Respondent.

This matter is before the Colorado State Personnel Board ("Board") at a special public session held on March 3, 2005. During this public session, the Board considered the record on appeal, including but not limited to:

1. Initial Decision of the Administrative Law Judge
2. Respondent's Brief on Appeal
3. Motion of the Department of Personnel and Administration to Participate as Amicus Curiae and Amicus Brief of Department of Personnel and Administration
4. Complainant's Opening Brief
5. Respondent's Reply to Complainant's Brief
6. Motion to Strike Defendant's Argument Concerning Guidance From the Department of Personnel and Attachment to Reply Brief
7. Respondent's Response to Complainant's Motion to Strike

Based upon the Board's review and consideration,

IT IS HEREBY ORDERED, as follows:

- 1) That the Motion of the Department of Personnel and Administration to Participate as Amicus Curiae be granted and the Amicus Brief of the Department of Personnel and Administration be accepted;
- 2) That the Motion to Strike Defendant's Argument Concerning Guidance from the Department of Personnel and Attachment to Reply Brief be granted;
- 3) That Conclusion of Law No. 1 ("Respondent's layoff of Complainant was arbitrary and capricious and contrary to rule and law") is not adopted;

4) That Conclusion of Law No. 2 ("Complainant is entitled to an award of attorney fees and costs") is not adopted;

5) That Conclusion of Law No. 3 ("Respondent is not entitled to an award of attorney fees and costs") is adopted;

6) That the following Findings of Fact which include determinations that Respondent failed to comply with applicable state law and Board rules in making its decisions with regard to Complainant are not adopted: 11, 12, 13, 14, 19, 20, 21, 22, 25, 40, 41, 43, 46, 47, 48, 49, and 50; the remaining Findings of Fact are adopted.

Dated this _____ day of
March, 2005 .

John Zakhem
Board Chair
State Personnel Board
1120 Lincoln Street, Suite 1420
Denver, Colorado 80203

NOTICE OF APPEAL

Each party has the following rights:

1. To abide by this decision of the State Personnel Board; or
2. To appeal this decision to the Colorado Court of Appeals within 45 days pursuant to Section 24-4-106(11), C.R.S. (2004), as provided in Section 24-50-125.4(3), C.R.S. (2004).

In the event the decision is appealed, the Board requests that a copy of the Notice of Appeal filed with the Court of Appeals also be filed with the State Personnel Board at: 1120 Lincoln Street, Suite 1420, Denver, CO 80203. Such will aide in the timely preparation of the record.

CERTIFICATE OF MAILING

This is to certify that on the _____ day of March, 2005, 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, Esq.
Frank & Finger, P.C.
P.O. Box 1477
Evergreen, Colorado 80437-1477

and in the interagency mail, to:

Jill M.M. Gallet
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