

ORDER OF THE STATE PERSONNEL BOARD ON REMAND

NORMA JEAN MAGGARD,

Complainant,

vs.

DEPARTMENT OF HUMAN SERVICES, COLORADO STATE VETERANS HOME AT FITZSIMONS,

Respondent.

This matter is before the Colorado State Personnel Board ("Board") at its regularly scheduled public session held on December 16, 2008. 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. Opening Brief;
3. Norma Jean Maggard's Brief in Opposition;
4. Amended Reply Brief;
5. March 21, 2007 Order of the State Personnel Board;
6. Mandate from the Court of Appeals, stating: "This case is remanded to the Board to reconsider its decision to reject conclusion 3 of the ALJ's determination, to provide reasons based on the record if it determines that termination of Maggard is warranted, and to recertify the case to us for our review if it orders termination."

Based upon the Board's review, the Board took the following action in reconsidering its March 20, 2007 decision to reject Conclusion of Law 3 of the Initial Decision of the Administrative Law Judge ("The discipline imposed was not within the range of reasonable alternatives"):

A motion was made to uphold the Initial Decision in its entirety, including Conclusion of Law 3, "the discipline imposed was not within the range of reasonable alternatives" based upon the ALJ's conclusion that Respondent's decision to discipline Complainant was not arbitrary and capricious or contrary to rule or law and therefore, the ALJ's thirty (30) day suspension was warranted. However, this motion failed because of a split vote, with two Board members voting for the motion and two Board members voting in opposition to the motion.

A second motion was made to uphold the Initial Decision on Conclusions of Law 1, 3 and 4, but to reverse Conclusion of Law 2 and hold that it was arbitrary and capricious or contrary to rule or law to discipline Complainant. This motion also failed because there was no second to the motion. The Board declined to take further action.

As § 24-50-103(6), C.R.S., mandates,

An action of the state personnel director or an appointing authority which is appealable to the board pursuant to this article or the state constitution may be reversed or modified on appeal to the board only if at least three members of the board find the action to have been arbitrary, capricious, or contrary to rule or law.

During the Board review of the Initial Decision on Remand, no more than two of the four Board members were willing to vote to overturn or modify the decision of the appointing authority. Therefore, the decision of the appointing authority stands and Complainant's termination stands. The case will be recertified to the Court of Appeals for its review of Complainant's termination.

Dated this 18th day of
December, 2008.



Rich Djokic, Board Chair
State Personnel Board
633 17th Street, Suite 1320
Denver, Colorado 80202-3604

NOTICE OF APPEAL

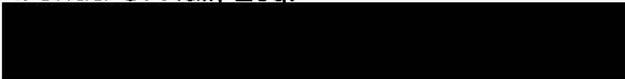
Each party has the following rights:

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., as provided in Section 24-50-125.4(3), C.R.S.

In the event the decision is appealed, pursuant to Section 24-4-106(11)(b), C.R.S., the party filing the appeal with the Court of Appeals must serve the State Personnel Board with a copy of the Notice of Appeal at: 633 17th Street, Suite 1320, Denver, Colorado 80202-3604. In addition to serving the State Personnel Board with a copy of the Notice of Appeal, the party filing the appeal with the Court of Appeals must name the State Personnel Board as a party (appellee) to the appeal. Section 24-4-106(11)(d), C.R.S.

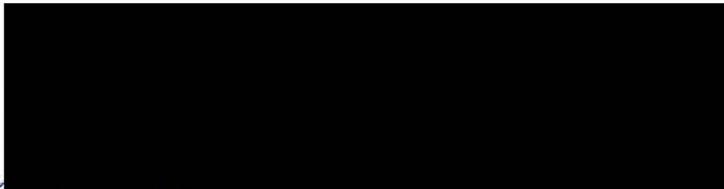
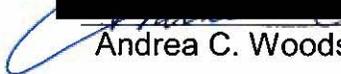
CERTIFICATE OF MAILING

This is to certify that on the 18th day of December, 2008, I placed true copies of the foregoing **ORDER OF THE STATE PERSONNEL BOARD ON REMAND**, in the United States mail, postage prepaid, addressed as follows:

Vonda G. Hall, Esq.


and in the interagency mail, to:

Joseph Haughain




Andrea C. Woods