

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

HEATH HOUSTON,

Complainant,

vs.

DEPARTMENT OF CORRECTIONS,

Respondent.

Administrative Law Judge Denise DeForest held the hearing in this matter on May 30, 2007 at the State Personnel Board, 633 - 17th Street, Courtroom 6, Denver, Colorado. The matter was commenced on the same date. The record was closed by the ALJ at the close of the hearing. Assistant Attorney General Christopher J. Puckett represented Respondent. Respondent's advisory witness was Warden Noble Wallace, the appointing authority. Complainant appeared and represented himself.

MATTER APPEALED

Complainant, Heath Houston ("Complainant") appeals his termination by Respondent, Department of Corrections ("Respondent" or "DOC"). Complainant seeks reinstatement and an award of back pay. At the conclusion of the evidentiary hearing in this matter, Respondent made an oral motion for an award of attorney fees.

For the reasons set forth below, Respondent's action is **affirmed**

PROTECTIVE ORDER

On April 16, 2007, the undersigned entered a Protective Order in this matter controlling the publication of certain information for purposes of discovery, the hearing, and post-hearing phases of the litigation, unless and until modified by the Board. The elements of that protective order still in effect at this time include:

1. Any materials in which the identity or identities of alleged sexual assault victim(s) are referenced, or any identifying information is contained, shall be redacted.
2. Only the initials of such alleged victim or victims shall be used in any submissions to the Board.

3. No photographs showing the victim are permitted without effective redaction of the likeness of the alleged victim, and no written materials with the address of the alleged victim(s), dates of birth, social security numbers or other identifying information for the alleged victim(s) (other than the initials) shall be permitted without obtaining permission prior to the submission of such materials.

In order to maintain confidentiality of the victim's identifying information, the DVD of Complainant's polygraph and post-polygraph interview on November 1, 2006, Exhibit 8, has been sealed.

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 reasonable range of alternatives available to the appointing authority;
4. Whether attorney fees are warranted.

FINDINGS OF FACT

General Background

1. Complainant was employed by Respondent as a Correctional Officer I ("COI") at the Denver Women's Correctional Facility. Complainant's appointing authority in 2006 was Warden Nobel Wallace. (Stipulated Facts) By the time of the termination of his employment, Complainant had been employed with Respondent for approximately six years and two months.

Incident

2. Complainant's twelve-year-old step-daughter, T.S., lived at Complainant's home on a periodic basis. On or about November 1, 2006, T.S. told school personnel that she had been fondled by Complainant. T.S. informed a Department of Human Services caseworker that, over the last few months, Complainant had laid down next to her, removed some of her clothing and touched her private areas.
3. T.S. also reported her allegations to officers of the Colorado Springs Police Department. T.S. told investigators that the last incident occurred during the prior week.
4. As a result of the investigation, the three children living at Complainant's house

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were removed from contact with Complainant by the Department of Human Services.

5. Complainant was interviewed by a Colorado Springs detective on November 1, 2006. During this interview, he denied inappropriate physical conduct with T.S.

Polygraph Examination and Post-Polygraph Interview:

6. Mr. Robert Armstrong was an investigative specialist with the Colorado Springs Police Department and conducted the department's polygraph tests. Mr. Anderson was called into work in time to view the detective's interview with Complainant via closed circuit TV. After this initial interview, Mr. Anderson provided a polygraph examination to Complainant. Mr. Anderson read Complainant Miranda warnings, after which Complainant consented to the examination. The polygraph examination took approximately an hour and nine minutes.
7. At the conclusion of the polygraph examination, Mr. Anderson informed Complainant that he had not passed the examination, and that the test indicated a 99 to 100% chance of deception on Complainant's part when it came to questions concerning touching T.S. Mr. Anderson then engaged Complainant in an interview which lasted approximately an hour and seven minutes.
8. During his polygraph and post-polygraph interview with Mr. Anderson, Complainant offered through two phases of admissions. Prior to the completion of the polygraph, he admitted that he pulled down T.S.' sweat pants on more than ten occasions, and he described his actions as being a joke, just as he joked with his other daughters. He told Mr. Anderson that he had stopped pulling down T.S.' pants when she was in the fifth grade because he realized that there were things you couldn't do to a girl and that you could do with a boy.
9. After he had been informed that he had failed the polygraph test, Complainant admitted that T.S. had cuddled with him while he was sleeping on the couch watching TV, and that he thought she was his wife. Complainant was crying while he talked about this incident. Mr. Anderson asked him what he was doing when he awoke, and Complainant told him that he was touching T.S.'s breasts. Mr. Anderson asked him how he was touching her breasts, and Complainant said that he was "cupping" them under her shirt. Complainant reported that this incident occurred about six months before his interview. Complainant also told Mr. Armstrong that he had realized that his hands were some place that they should not have been more than once. He said that he has cuddled a lot with T.S. and maybe his hands slipped or something.
10. Complainant also admitted that, about a month before the interview, T.S. had come out to the couch while he was watching a movie had cuddled with him. Complainant told Mr. Armstrong that he was asleep and in kind of stupor when he realized that

his hand was in T.S.'s pants. Complainant initially denied that he recalled touching T.S.'s vagina. Shortly after denying that he had touched her vagina, however, Complainant admitted that there had been an incident where he touched T.S.'s vagina about a month prior to the interview.

11. Complainant explained that he told T.S. to stop cuddling with him because Complainant would forget who he was with. He told Mr. Armstrong that when he forgets who she is, he cuddles with T.S. like she is his wife. When asked what he meant by cuddling, Complainant explained that he would be "groping" her, like he groped his wife, Marlene. Complainant told Mr. Armstrong that T.S. would come lay with him and that he would kick her out as soon as he realized "what was up." When asked to clarify if this meant his hand was some place on T.S. that it should not have been, Complainant agreed.
12. Throughout these discussions, Mr. Armstrong offered a pattern of comments or responses to Complainant's statements. One repeating theme was that there were two types of people who failed polygraph tests – those who were evil and did not care who they hurt, and those who had made mistakes. He told Complainant that he thought that Complainant had made a mistake. He told also Complainant repeatedly that if he wanted to clear up his mistake he had to start by telling the truth, and that he needed to fix the problem by telling the truth. He told Complainant that if he wanted to be a man about the problem, he had to explain what happened. Mr. Armstrong also told Complainant repeatedly that officers had already spoken with T.S., and that they already knew the whole story. Each time Complainant admitted to some form of inappropriate touching, Mr. Armstrong pressed him for more by telling Complainant that he had not yet told the whole truth yet. Mr. Armstrong did not threaten or make promises to Complainant during his interview. When Complainant asked what would happen with his children, for example, Mr. Armstrong told him that it would be up to the Department of Human Services to make sure that the children were safe with him, and that the way to make sure that the children was safe with him was to get the truth out. Mr. Armstrong had a similar response when Complainant expressed his fear that he could lose his job over the allegations. Mr. Armstrong did not raise his voice, become angry, or physically accost Complainant in any way during the polygraph and post-polygraph interview process.
13. After admitting the conduct which Complainant had blamed on a mistake or being asleep or in a stupor, Complainant hung his head and in a low voice admitted that the last time that he had placed his hand up T.S.' shirt, touched her breasts or placed his hand down her pants and touched her vagina occurred about a month prior to the interview. When asked how many times these actions had occurred, Complainant agreed that he had touched T.S.'s breasts more than one time but less than ten times. He also admitted that he had placed his hand down her pants and touched her vagina more than one time but less than five times.

14. After making these specific admissions, Complainant then insisted that the event during the prior week was not as described by T.S. Complainant's version of the incident was that he had gone into T.S.' bedroom and seen that she was sleeping but not covered by a blanket. He told Mr. Armstrong that he covered her up with a blanket, he laid down on her bed and cuddled with her because she was cold, and that he did not do more than cuddle with her with his hands outside of her clothing at her waist.
15. During the end of the interview, Complainant also consistently and flatly denied a number of other details, such as that he was sexually aroused during his touching of T.S., that he had T.S. touch him, or that he approached T.S. while she was standing up.
16. Complainant told Mr. Anderson at the start of the polygraph interview that he had acid reflux disease, and it was made worse by stress. Complainant was belching throughout the interview, with the belches becoming more pronounced as the interview progressed. Complainant asked to use the restroom twice during the polygraph and post-polygraph interview process and was permitted to do so both times. Toward the end of the post-polygraph interview, Mr. Anderson asked Complainant if he wanted medical attention. Complainant declined the offer of medical attention.
17. At the conclusion of his post-polygraph interview with Mr. Anderson, Complainant confirmed again that he had touched T.S.' breasts less than ten times and her vagina less than five times.
18. Mr. Armstrong ended the interview and left the room. Complainant took out his cell phone and made a call to talk with his wife, Marlene Houston. During that conversation, Complainant told Ms. Houston that he had told Mr. Armstrong that he had touched T.S. once or twice because he thought he was laying with her, Ms. Houston.
19. Complainant has subjected his pre-teen stepdaughter T.S. to sexual contact by fondling her bare breasts and placing his hand onto her bare vagina on multiple occasions.
20. Complainant was arrested at the conclusion of his interviews and charged with a violation of C.R.S §18-3-405.3, Sexual Assault on a Child by One in a Position of Trust. This violation is a class 3 felony in Colorado.

Board Rule 6-10 Meeting and Disciplinary Action

21. Upon Complainant's arrest, Colorado Springs officers contacted Respondent about the arrest. Warden Wallace placed Complainant on administrative leave and initiated an investigation by the DOC Office of the Inspector General ("OIG"). On

November 2, 2006, Complainant informed Respondent that he had been arrested but had been released on bond.

22. The OIG collected reports on T.S.'s allegations as well as Complainant's interviews by the Colorado Springs Police Department. A report dated November 15, 2006, was prepared and provided to Warden Wallace. Warden Wallace reviewed these written reports before holding the Rule 6-10 meeting with Complainant.
23. On December 19, 2006, Warden Wallace notified Complainant by letter of his intention to hold a Rule 6-10 meeting on December 28, 2006. Complainant knew that the Rule 7-10 meeting was to discuss the incidents leading to his arrest. (Stipulated Facts) On December 28, 2006, Warden Wallace met with Complainant. Captain Sparling was present, as was Complainant's representative, Nathan Woods. By the time of the Rule 6-10 meeting, Warden Wallace had not yet determined whether he would impose corrective or disciplinary action because he had not yet heard what Complainant had to say about the arrest and underlying incident.
24. At the 6-10 meeting, Complainant told Warden Wallace that he had not inappropriately touched his stepdaughter, T.S., and that there was no written confession from him. He told the Warden that T.S. was lying and had a history of lies and needing attention. Complainant said that he was sick during the interview, that the interviewer asked the same questions over and over again, and that he could have said anything during his interviews because he was so sick and upset. Complainant also claimed that the questions asked of him were yes and no questions and that he did not make statements, such as were reported in Mr. Armstrong's report of the polygraph test and post-polygraph interview. Complainant answered several questions about his statements during the interviews by saying that he could not answer because he hadn't seen the tape of the interview yet. Many of Complainant's answers to Warden Wallace's questions were rambling and disjointed, and did not answer the relatively simple questions posed.
25. Complainant did not admit that he had had inappropriate or sexual contact with T.S. at any point in time or under any circumstance during his Rule 6-10 meeting.
26. At the Rule 6-10 meeting, Complainant spoke of the fact that he had been in law enforcement for thirteen years as a security policeman in the military and never had any problem from that work. Complainant told Warden Wallace that the only discipline he had received from DOC in the nearly six years he had been with DOC was discipline for sleeping on the job.
27. Warden Wallace issued a letter to Complainant dated January 22, 2007, in which he announced his decision to terminate Complainant's employment effective as of that date. Warden Wallace found, based upon the reports submitted by the Colorado Springs Police Department and Complainant's confession during the

interview on November 1, 2006, that "you sexually touched your step daughter." Warden Wallace found that such actions were violations of the following sections of Administrative Regulation 1450-1:

III. J. Sexual Misconduct: any behavior or act of a sexual nature, directed toward anyone by another person....

IV. N. Any action on or off duty on the part of DOC employees, contract workers, and volunteers that jeopardizes the integrity or security of the Department, calls into question one's ability to perform effectively and efficiently in his/her position, or casts doubt upon the integrity of DOC employees, contract workers, and volunteers, is prohibited. DOC employees, contract workers, and volunteers will exercise good judgment and sound discretion.

T. DOC employees, contract workers, and volunteers will not engage in acts of corruption, bribery, indecent, or disorderly conduct, nor will they condone such acts by other DOC employees, contract workers, and volunteers.

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

28. In considering his decision to terminate Complainant's employment, Warden Wallace purposely did not review Complainant's work record because he did not want to be influenced in his decision by prior behavior, whether good or bad.
29. When Complainant's employment was terminated, he was making \$3,175.00 per month. Since Complainant's termination from Respondent's employment, Complainant has worked full-time for the Air Force reserve making \$3,907.98 per month. (Stipulated Facts)

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 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.

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 did not testify at hearing and presented no other witnesses on his behalf. To the extent that he disputed factual matters, he did so through his prior statements, cross-examination, and argument.

Complainant's primary argument was that his statements concerning his inappropriate touching of T.S. should not be viewed as a confession. Complainant presented no believable basis, however, to conclude that there was any other reason Complainant would make multiple admissions of sexual contact with T.S. if such statements were not true.

The record in this case demonstrates that Complainant's statements in his November 1, 2006, interview were indeed a confession. Complainant's interview was taped and the DVD recording entered into evidence. The DVD shows that Complainant was in the polygraph and post-polygraph interview on a voluntary basis. Complainant consented to the polygraph. He was not denied anything that he requested, such as a chance to use the restroom. He was not restrained or otherwise confined during the interview process. Complainant also demonstrated that he understood the importance of the interview and the allegations; he mentioned during the early portion of the interview that he was afraid he could lose his job, and later stated during that interview that he was afraid that his children would be taken from him.

Complainant slowly moved through phrases of a confession. At first, he denied the allegations vehemently and admitted only to small lapses in judgment, such as pulling down T.S.'s pants as a joke. As the questioning continued, he admitted to larger lapses in judgment but in situations that he presented as understandable mistakes, such as that the touching had occurred because T.S. was the one cuddling with him or due to a stupor

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he was in from sleeping or perhaps from his hands slipping. Complainant also clearly was aware that he was making these admissions; he, in fact, called his wife at the conclusion of the interview and told her during that conversation that he had told Mr. Armstrong of one or two physical contacts he had with T.S. because he had mistaken T.S. for her.

These statements, in their totality, paint a picture of a man who was struggling to find a way to talk about actions that did not make him proud. Complainant was undoubtedly feeling moral and psychological pressure from Mr. Armstrong's comments and questions. A guilty conscience and a fear of the consequences of his actions will indeed create considerable stress and discomfort for an individual in Complainant's situation. Such stress, however, does not provide a reason why Complainant would volunteer that he had been "groping" his step-daughter or "cupping" her breasts. Those were Complainant's descriptions of his actions and not a mere parroting of Mr. Armstrong's words. Complainant was not tricked in any manner, and Mr. Armstrong's version of what Complainant said to him was not the product of a statement being taken out of context or otherwise unfairly manipulated. Complainant may have believed that his explanation that the touching was the product of T.S.'s decision to cuddle with him or the fact that he was asleep somehow prevented his statements from being admissions of misconduct. In the final analysis, however, Complainant has repeatedly agreed that he has molested his step-daughter, and has presented no credible reason to believe that his admissions were not correct statements.

Complainant also suggested at hearing that he was shaking his head "no" during the time he is making these admissions, which was purportedly his way of denying the statements while admitting to the conduct. This explanation makes no sense. It still does not explain why Complainant would have made admissions, such as the fact that he had cupped T.S.'s breasts, if in fact he did not do so. Additionally, there is no reason to believe that Complainant would have taken such an indirect and ambiguous way of expressing disagreement. When Complainant disagreed with Mr. Armstrong's other statements, such as the statements about how the incident the previous week had been alleged, Complainant appeared to have no problem insisting to the very end of the interview that those details were not true.

Respondent has met its burden of proving by preponderant evidence that Complainant has engaged in repeated sexual contact with his pre-teen step-daughter.

B. The Appointing Authority's decision to impose discipline 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).

Warden Wallace gathered the necessary information to make a decision in this matter from the documents included with the OIG report and the Rule 6-10 meeting with Complainant. He waited to form his conclusions until after he had had a chance to speak with Complainant at the Rule 6-10 meeting. These actions support that Respondent has used reasonable diligence to procure the evidence it was authorized to consider in this case, and that Respondent gave candid and honest consideration of that evidence.

Additionally, Respondent's conclusion that Complainant's conduct violated four portions of the DOC staff code of conduct is not an unreasonable conclusion or contrary to rule or law. Complainant's inappropriate sexual contact with his pre-teen step-daughter constituted sexual misconduct, as those two words are normally understood, and thus constituted a violation of AR 1450-1, section III.J. Sexual molestation of a youngster in his care is also the type of conduct that is properly considered to be indecent and a violation of AR 1450-1, section IV.T. Sexual molestation of a child also is the type of conduct that brings DOC into disrepute in violation of AR 1450-1, section IV. ZZ. Additionally, this type of conduct could easily be the basis of a felony conviction, which poses additional problems for a DOC employee. Even if there was no criminal conviction for the conduct, the fact that Complainant has molested his step-daughter places Respondent in the untenable position of employing a correctional officer who has committed acts of a very similar nature to the criminal acts of DOC inmates. Such a problem affects the integrity and security of the institution, in violation of AR 1450-1, section IV.N.

Respondent's decision to impose discipline upon Complainant for his actions related to his step-daughter was not arbitrary, capricious, or otherwise contrary to rule or law.

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

The credible evidence demonstrates that the appointing authority pursued his decision thoughtfully and with due regard for the circumstances of the situation as well as Complainant's individual circumstances.

Warden Wallace testified that he did not want to confuse the issue by looking at Complainant's work history or information other than that presented by Mr. Armstrong's report. He purposely did not review any of Complaint's circumstances in determining that Complainant's employment should be terminated. This practice violates the Board's rules mandating that the appointing authority make the disciplinary decision after due regard for the complainant's individual circumstances as well as the circumstances of the situation. Board Rule 6-9, 4 CCR 801 ("The decision to take corrective or disciplinary action shall be based on the nature, extent, seriousness, and effect of the act, the error or omission, type and frequency of previous unsatisfactory behavior or acts, prior corrective or disciplinary actions, period of time since a prior offense, previous performance evaluations, and

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mitigating circumstances”).

In this case, however, the violation is a technical one without effect on the ultimate decision. Warden Wallace did not make a decision on discipline until he had had a chance to speak with Complainant at the Rule 6-10 meeting. The Rule 6-10 process, in turn, allowed Complainant to bring his limited disciplinary history to Respondent’s attention. Additionally, Complainant has not placed any fact into evidence that he contends should have been taken into account but which was not considered by the Warden. More importantly, however, the nature of the offense makes for a compelling case for termination of employment, and Complainant’s repeated denials and obfuscation in the Rule 6-10 meeting make very clear that Complainant had not yet taken the steps necessary to rehabilitate himself. Under such circumstances, Warden Wallace’s decision not to look into Complainant’s work history constitutes harmless error.

D. Attorney fees are not warranted in this action.

Attorney fees are warranted if an action or appeal was instituted frivolously, in bad faith, maliciously, or as a means of harassment or was otherwise groundless. C.R.S. § 24-50-125.5 and Board Rule 8-38, 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 was frivolous, in bad faith, malicious, harassing, or otherwise groundless. Board Rule 8-38(B)(3), 4 CCR 801.

Respondent asserts that attorney fees are warranted because Complainant chose not to testify at hearing and did not offer witnesses in his defense. Complainant presented his defense entirely through cross-examination of Respondent’s witnesses, the admitted exhibits, and opening and closing arguments. Complainant’s failure to testify or offer other witnesses is not, in itself, a reason to find that his appeal was frivolous, groundless, or otherwise worthy of sanction. Complainant was clearly attempting to cast doubt on the conclusion that he had molested his step-daughter. In that process, Complainant did not offer evidence or testimony from which the Board could conclude that he was being stubbornly litigious or disrespectful of the truth. The undersigned declines to find that Complainant pursued his constitutional right to a hearing in order to annoy, harass, abuse, be stubbornly litigious or disrespectful of the truth.

CONCLUSIONS OF LAW

1. Complainant committed the acts for which he was disciplined.
2. Respondent’s decision to take disciplinary action was not arbitrary, capricious, or contrary to rule or law.
3. The discipline imposed was within the range of reasonable alternatives.
4. Attorney’s 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 6th day of July, 2007.



Denise DeForest
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. Section 24-4-105(14)(a)(II) and 24-50-125.4(4) C.R.S. and Board Rule 8-67, 4 CCR 801. The appeal must describe, in detail, the basis for the appeal, the specific findings of fact and/or conclusions of law that the party alleges to be improper and the remedy being sought. Board Rule 8-70, 4 CCR 801. 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 referred to above. 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

When the Certificate of Record of Hearing Proceedings is mailed to the parties, signifying the Board's certification of the record, the parties will be notified of the briefing schedule and the due dates of the opening, answer and reply briefs and other details regarding the filing of the briefs, as set forth in Board Rule 8-72, 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

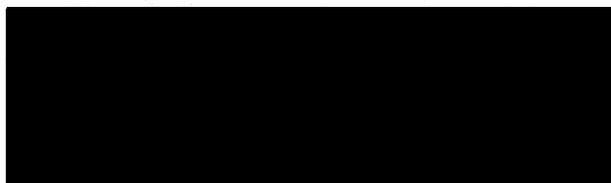
This is to certify that on the 17th day of July, 2007, I placed true copies of the foregoing **INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE and NOTICE OF APPEAL RIGHTS** in the United States mail, postage prepaid, addressed as follows:

Heath Houston



and in the interagency mail, to:

Christopher J. Puckett



Andrea C. Woods