

ORDER OF THE STATE PERSONNEL BOARD

RONALD SALAZAR,

Complainant,

vs.

DEPARTMENT OF REVENUE, MOTOR CARRIER SERVICE DIVISION,

Respondent.

This matter is before the Colorado State Personnel Board ("Board") at its regularly scheduled public session held on November 17, 2009. 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. Complainant's Brief in Support of Appeal of the Initial Decision of the Administrative Law Judge;
3. Complainant's Request for Oral Argument in Support of Appeal of the Initial Decision of the Administrative Law Judge;
4. Department of Revenue's ("DOR") Answer Brief;
5. Complainant's Reply Brief in Support of Appeal of the Initial Decision of the Administrative Law Judge.

Based upon the Board's review and consideration,

IT IS HEREBY ORDERED that Complainant's Request for Oral Argument in Support of Appeal of the Initial Decision of the Administrative Law Judge is denied.

IT IS FURTHER ORDERED that the findings of fact of the Administrative Law Judge are adopted, but there is reasonable basis in the law to modify Conclusion of Law 2 ("Respondent's action was not arbitrary, capricious, or contrary to rule or law") and to reverse Conclusion of Law 3 ("The discipline imposed was within the range of reasonable alternatives") based on substantial evidence in the record. Conclusion of Law 2 is modified to state that Respondent's action was not arbitrary and capricious with respect to imposing discipline, but Respondent's action was arbitrary and capricious with respect to the level of discipline imposed, which was termination. Conclusion of Law 3 should now state, "The discipline imposed was not within the range of reasonable alternatives."

Pursuant to Board Rules 6-2 and 6-9, the following factors support the modification of Conclusion of Law 2, the reversal of Conclusion of Law 3 and modifying the discipline imposed: (1) Complainant is a 22-year employee (Finding of Fact 1); (2) in reaching the decision to terminate Complainant's employment, the appointing authority considered a corrective action from 10 years ago which was not for the same behavior (Finding of Fact 58); (3) discipline was meted out to Complainant's supervisor for miscommunication of policy to his unit (Finding of Fact 64); (4) Complainant's conduct was not flagrant or willful; and (5) there was no progressive discipline utilized in correcting Complainant's behavior. It is therefore ordered that Complainant's termination is **reversed** and Respondent is authorized to impose up to a corrective action in place of termination.

IT IS FURTHER ORDERED THAT Complainant is awarded back pay from the date of termination to the date of reinstatement to his position.

Dated this 23rd day of
November, 2009.



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 23rd day of November, 2009, I electronically served true copies of the foregoing **ORDER OF THE STATE PERSONNEL BOARD**, addressed as follows:

Berenbaum & Weinshienk, P.C.
Michael J. Belo, Esq.



Michael Scott



Andrea C. Woods