**STATE PERSONNEL BOARD, STATE OF COLORADO**
Case No. **2009B094**

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**INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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**ROZANNE TRUJILLO,**

Complainant,

vs.

**DEPARTMENT OF CORRECTIONS,**

Respondent.

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Administrative Law Judge Mary S. McClatchey held the hearing in this matter on October 5, 2010, at the State Personnel Board, 633 17th Street, Courtroom 6, Denver, Colorado. Assistant Attorney General Michael Scott represented Respondent. Respondent's advisory witness was Susan J. Jones, Warden of Centennial Correctional Facility (Centennial), and Complainant's Appointing Authority. Complainant represented herself.

## MATTER APPEALED

Complainant, Rozanne Trujillo (Complainant), appeals her disciplinary termination of employment by Respondent, Colorado Department of Corrections (DOC or Respondent). Complainant seeks rescission of the disciplinary action, reinstatement, back pay, and corresponding benefits.

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

## ISSUES

1. Whether Complainant committed the acts for which she was disciplined;

2. Whether Respondent's action was arbitrary, capricious or contrary to rule or law;

3. Whether Respondent discriminated against Complainant on the basis of disability; and

4. Whether the discipline imposed was within the range of reasonable alternatives.

## FINDINGS OF FACT

General Background

1. Complainant was a certified employee who worked as a Correctional Officer (CO) I at Centennial from April 2006 until her termination. Complainant held previous positions at DOC as follows: Administrative Assistant II from 1999 to 2000, and Administrative Assistant III from 2000 to 2003, when she was laid off. In addition, from January through December 2005 she worked as an Administrative Assistant II at the Colorado Department of Agriculture.

2. Complainant received an overall performance rating of Satisfactory on her first evaluation, for the period 2006-2007.

3. During the next performance period, in March 2008, Complainant received a corrective action for failing to disclose a relationship with a former inmate. Therefore, while her overall performance rating for 2007-2008 was Satisfactory, she received a Level I rating in Accountability/Organizational Commitment.

4. Centennial is a maximum-security facility that houses some mentally ill inmates.

5. The primary responsibility of CO's is to maintain the safety and security of all staff, inmates, and other individuals inside the prison at all times. Each CO is required to be constantly aware of the inmates' activities, location, and any potential threat situations. When a situation arises, the officer can then call for backup.

6. The Control Center is a raised area above a locked, secure door into the inmates' living units. Because the view to the area below is blocked in part by the console, the CO assigned to the Control Center must periodically stand up to view the entire area below. The Control Center CO is responsible for verifying that those requesting access through the door are authorized to have such access.

July 2008 Performance Documentation Form

7. On July 7, 2008, Complainant was assigned to the B-unit Control Center during the day shift. At approximately 8:30 a.m., Sgt. Kenneth Meyer approached with another officer, escorting an inmate through the door. Sgt. Meyer signaled to Complainant to close the door by placing his fist above his head. The door did not close, and Sgt. Meyer repeated the signal. Nothing happened again.

8. Sgt. Meyer then walked over to the rail between him and the Control Center console and looked at Complainant. She was asleep. He then called her name, she woke up, and she closed the door.

9. Soon thereafter, Sgt. Meyer spoke with Complainant. She apologized for not paying attention. Sgt. Meyer gave her two choices: explain to Lt. Gaunt that she had fallen asleep while on duty, or Sgt. Meyer would have to report her.

10. Complainant explained to Lt. Gaunt what had occurred.

11. On July 15, 2008, Lt. Gaunt issued a Performance Documentation Form (PDF) to Complainant for sleeping on duty. He noted, "This creates an unsafe work environment for the staff that works with you. Even though you did admit to sleeping on the job and accepted responsibility for your actions, this type of behavior is totally unacceptable and can not be tolerated. (sic) You are to be seated at roll call at 0545 hours and ready to perform all duties required in an alert manner through your entire tour of duty. Any further problems in this area could result in corrective/disciplinary action."

12. Complainant received an interim, six-month review in October 2008, of overall Level II, with a Level I in Accountability/Organizational Commitment, due to the PDF for sleeping on duty.

March 2009 Incident Report

13. On March 19, 2009, an inmate warned Sergeant Carol Brown that correctional staff in the Control Center were sleeping on duty. Sgt. Brown started to pay more attention to the staff assigned to the Control Center.

14. On March 21, 2009, Complainant was working at the Control Center. At 6:45 a.m., Sgt. Brown and another CO, Gary Crawford, approached the Control Center and looked up at Complainant, who was asleep in her chair with her chin resting on her chest. Sgt. Brown waited a few minutes to see if Complainant moved. Complainant did not move; she remained asleep.

15. Officer Crawford knocked on the door. Complainant raised her head with her eyes closed, then dropped her head again onto her chest, remaining asleep.

16. Officer Crawford knocked a second time and Complainant woke up. Complainant opened the door to allow them through. Later in the shift, when Sgt. Brown was leaving the unit, Complainant apologized to her for keeping them waiting previously. Sgt. Brown stated that it appeared that Complainant had been sleeping. Complainant responded that she was not aware of that, but she wanted to apologize.

17. On March 21, 2009, Sgt. Brown filled out an Incident Report, providing details on the above incident.

18. A copy of the Incident Report was sent to Warden Susan Jones, per general practice. After the Warden reviewed the report, she reviewed Complainant's

performance history, including the July 2008 PDF and the March 2008 corrective action which the Warden herself had issued. Therefore, she decided that a predisciplinary meeting was appropriate.

Predisciplinary Meeting

19. On April 13, 2009, Warden Jones sent Complainant a letter noticing a predisciplinary meeting pursuant to State Personnel Board Rule 6-10. The letter referenced Complainant having slept while on duty as the subject of the meeting.

20. Complainant attended the predisciplinary meeting on April 14, 2009 without a representative. Associate Warden Robert Allen attended as the Warden's representative. At the meeting, Complainant admitted that she had fallen asleep while on duty at least three times. The first time was on graveyard shift, when Lt. Meddelin spoke to her about it. The second time was in July 2008. The third time was on March 21, 2009.

21. Complainant advised Warden Jones that she had been diagnosed by a physician with a sleeping disorder, and presented documents from her physician from 2002 and 2003, confirming the disorder.

22. Warden Jones asked Complainant if she had discussed her medical condition and requested an accommodation under the Americans with Disabilities Act (ADA) with her supervisor or anyone else at DOC. Complainant responded that she had not. She informed the Warden that she had made an appointment with a sleep specialist on April 23, 2009 to discuss the issue. Complainant advised Warden Jones that driving and sunshine trigger her sleeping disorder the most; therefore, she carpooled to work and rarely drove.

23. Warden Jones asked Complainant what other schedule might accommodate her sleeping disorder. Complainant stated that graveyard shift is the worst shift for staying awake.

24. At the meeting, Complainant acknowledged to the Warden that when she falls asleep in the Control Center, it puts other staff at risk.

25. Warden Jones asked if there was any additional information she should consider prior to making a decision. Complainant indicated she did not want to transfer to a desk job, because that environment makes it more difficult to stay awake.

26. Complainant also requested that the Warden talk to eight other correctional officer staff with whom she had worked.

27. Following the meeting, Warden Jones spoke with all eight of the staff members mentioned by Complainant. They informed the Warden that there were more than two or three instances of Complainant having fallen asleep while on duty.

28. Warden Jones again reviewed Complainant's personnel file, and found that her performance reviews were in the satisfactory range. In addition, the Warden reviewed Complainant's July 15, 2008 PDF for falling asleep on post; an August 3, 2008 PDF for failing to call in sick in accordance with DOC policy; and the March 2008 corrective action.

29. Warden Jones determined that Complainant had shown a pattern of failing over time to take responsibility for her sleep disorder's adverse effect on her performance as a correctional officer. She believed that Complainant's conduct of falling asleep on post was a serious threat to the safety and security of fellow staff and the facility. The Warden concluded that Complainant's continued employment in a correctional setting would pose a threat to the safety and security of the other officers and the inmates.

30. Warden Jones was impressed by the length of Complainant's employment with the state, and sought to retain Complainant as an employee of DOC. She therefore determined that demotion to a non-correctional position was appropriate.

31. The Warden decided that placing Complainant back into an Administrative Assistant II or III position, to which she had been previously certified, would be the best way to handle Complainant's situation.

Meeting with Human Resources; Discovery of Previous Termination

32. Warden Jones contacted Rick Thompkins, the ADA Coordinator for DOC, to request a meeting to determine an appropriate administrative position for Complainant.

33. During her meeting with Mr. Thompkins, Warden Jones or Mr. Thompkins reviewed Complainant's official personnel file and discovered a termination letter. Dated December 15, 2005, the letter from Complainant's appointing authority at the Colorado Department of Agriculture (DOA) terminated her employment effective December 31, 2005. The reason for termination was Complainant's "failure to perform competently and satisfactorily specifically as outlined in the corrective action (attached) given on November 28, 2005." Complainant signed the letter, acknowledging receipt.

34. Complainant did not appeal this termination. On December 9, 2005, she did submit a letter to a supervisor challenging the corrective action.

35. Warden Jones and Mr. Thompkins were surprised to find the termination letter in Complainant's personnel file, because they knew that Complainant had not disclosed this separation from employment when she applied for her current position at Centennial.

36. Warden Jones and Mr. Thompkins looked for a document contradicting the December 15, 2005 termination letter. They could not find anything in Complainant's file. The Warden and Mr. Thompkins then reviewed the application documents Complainant had submitted to DOC for her current position, to see if she had accurately disclosed the above information.

37. They found that on January 11, 2006, Complainant signed and submitted an application for employment at DOC, listing her former position at DOA as her current position. Under the heading, "Reason for leaving," Complainant wrote, "Presently employed." The application asked, ". . did you ever leave by mutual agreement because of specific problems?" Complainant answered, "No." Complainant signed the certification on the application form which stated, "I certify that all the statements on this form are true and that I have read and understand my appeal rights. I understand that I may not be considered for jobs with the Department of Corrections and/or I may be removed from a job if it is found that information on this form is falsified."

38. On March 14, 2006, Complainant participated in an Integrity Interview with a DOC investigator, as part of the pre-employment screening process. Question #12 in the Employment History section asked, "Have you ever left any employment for any negative reasons i.e. terminations, involuntary dismissals, quit in lieu of termination, or voluntary agreement?"

39. Complainant answered, "No" to Question #12.

Second Predisciplinary Meeting

40. After Warden Jones reviewed the information above regarding Complainant's termination from DOA and her failure to disclose it to DOC during the application process in 2006, she was concerned about Complainant's apparent dishonesty. She decided she needed to notice a second predisciplinary meeting, in order to enable Complainant to explain what had occurred or clear up any misunderstanding.

41. On April 17, 2009, Complainant met with Warden Jones to address the DOA termination issue. She explained to the Warden that although the letter states she was terminated, and she did sign the letter, she understood that her separation from DOA was a "mutual parting of the ways." Complainant stated that she had spoken by telephone to her second level supervisor at DOA, who had informed her that she was not terminated, that DOA had just opted not to keep her on, so that another person could be given the position.

42. After this meeting, Warden Jones reviewed all of the documents again. She determined that Complainant had lied on her application for employment at DOC

and at the April 17 meeting, and that Complainant lacked the requisite honesty and integrity to serve as an employee of DOC.

Termination

43. On April 20, 2009, Warden Jones issued a termination letter to Complainant, concluding she had failed to perform competently and had made false statements of fact during the application process for a state position, in violation of State Personnel Board Rule 6-12. In the letter, the Warden stated that Complainant's conduct of falling asleep on post is a serious threat to the safety and security of fellow staff and the facility. She continued, "As a Correctional Officer on post in a Control Center you are responsible to be awake and alert to monitor all the activities of staff and inmates. This latest incident in conjunction with your past work history, your dishonesty both on your application and pre-employment interview and your statements during this process is in violation" of the DOC Code of Conduct.

44. The DOC Code of Conduct, Administrative Regulation 1450-1, prohibits employees from falsifying documents and willfully departing from the truth. It also requires that "DOC employees, contract workers, and volunteers are required to remain fully alert and attentive during duty hours."

45. Complainant lacked credibility at hearing. She testified that she had not been placed on a corrective action at DOA. However, the DOA corrective action was admitted into evidence and was referenced in the letter terminating Complainant's employment at DOA.

46. As of October 2010, Complainant is on new medication for her sleep disorder which has eliminated her problems in remaining awake.

Co-Worker Who Slept on Duty

41. On December 26, 2008, a white male CO at Centennial was issued a PDF for sleeping while on duty. It was his first offense.

42. Complainant timely appealed her disciplinary action.

## DISCUSSION

## I. GENERAL

### A. Burden of Proof

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 perform competently;
(2) willful misconduct or violation of these or department rules or law that affect the ability to perform the job;
(3) false statements of fact during the application process for a state position;
(4) willful failure to perform, including failure to plan or evaluate performance in a timely manner, or inability to perform; and
(5) final conviction of a felony or any other offense involving moral turpitude that adversely affects the employee's ability to perform or may have an adverse effect on the department if the employment is continued.

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 or modify 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 she was disciplined.

Respondent has proven by preponderant evidence that Complainant committed the acts for which she was disciplined. Complainant served DOC as a correctional officer, and she was expected to be alert to all potential threats at all times. She repeatedly slept on duty while on post, even after receiving a July 2008 written warning regarding the problem.

Complainant also made numerous false statements during the application process for her DOC position. First, she stated that she was presently employed at DOA in January 2006, when her employment had ended on December 31, 2005. Second, she falsely answered the question asking whether she had ever left employment "by mutual agreement because of specific problems." She informed the pre-employment investigator that she had never been terminated or resigned in lieu of termination or through voluntary agreement, knowing this was not true. Lastly, she was not truthful with Warden Jones at the second predisciplinary meeting.

### B. The Appointing Authority's action 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; or 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 Jones used reasonable diligence and care to gather all relevant information prior to making her final decision in this matter. After her first meeting with Complainant, she spoke with all eight correctional officers, as requested by Complainant. The information she obtained did not provide mitigation, however. Having learned that Complainant's pattern of sleeping on duty was worse than Complainant acknowledged, the Warden determined that she would demote Complainant instead of terminating her, in recognition of Complainant's years of service with DOC.

Once the Warden discovered the apparent discrepancy between Complainant's pre-employment disclosures and her actual employment record at DOA, the Warden began the predisciplinary process over again. After providing Complainant with a full and fair opportunity to rebut or mitigate the discrepancy, the Warden determined that Complainant had made repeated misrepresentations in the application process. Moreover, Complainant continued to misrepresent her employment record directly to the Warden during the predisciplinary meeting.

Warden Jones carefully and honestly considered all of the information she had gathered before she made her decision to discipline Complainant. And, the decision she reached after much deliberation was reasonable.

**C. Respondent did not discriminate against Complainant on the basis of disability.**

Complainant asserts that Respondent discriminated against her on the basis of disability in terminating her employment. The Colorado Anti-Discrimination Act (CADA) prohibits disability discrimination, as follows:

> "It shall be a discriminatory or unfair employment practice . . . to discharge . . . any person otherwise qualified because of disability . . . ; but, with regard to a disability, it is not a discriminatory or an unfair employment practice for an employer to act as provided in this paragraph (a) if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the person from the job, and the disability has a significant impact on the job." Section 24-34-402(1)(a), C.R.S.

The Act defines disability as, "a physical [or mental] impairment which substantially limits one or more of a person's major life activities and includes a record of such an impairment and being regarded as having such an impairment." Sections

24-34-301(2.5)(a) and (b), C.R.S.; *Pack v. Kmart Corp.*, 166 F.3d 1300 (10th Cir. 1999).

Sleeping is a major life activity. *Pack*, 166 F.3d at 1305. To determine whether an individual is substantially limited in a major life activity, "three factors should be considered: (1) the nature and severity of the impairment; (2) the duration or expected duration of the impairment; and (3) the permanent long term impact, or the expected permanent or long term impact of or resulting from the impairment. 29 C.F.R. Section 1630.2(j)(2)." *Pack*, 166 F.3d at 1306. In addition, the court is to consider any mitigating or corrective measures utilized by the individual. *Id.*

Respondent argues that because Complainant's medication completely mitigates her sleeping disorder, she is not substantially limited in the major life activity of sleeping. This argument prevails. In *Pack*, the Court found that Complainant's doctor was "able to generally control Pack's sleep problems with medication." *Id.* Therefore, her sleep problems were not "severe, long term," and had no "permanent impact." *Id.* The same is true herein. Complainant testified at hearing that after meeting with her physician, she obtained new medication which eliminated her sleep disorder. Therefore, she is not substantially limited in the major life activity of sleeping and has not met her burden of proving she is disabled.

Because Complainant has not demonstrated that she was disabled under CADA, she is not entitled to the protection of the Act.

It is noted, nonetheless, that Warden Jones did decide to accommodate Complainant's sleeping disorder by demoting her to an administrative position. This decision was made prior to Complainant obtaining medication that effectively treated her condition. At the time the Warden made that decision, she felt that retaining Complainant in a correctional officer position would place an undue hardship on Complainant's peers, due to the security risk posed by her pattern of sleeping on duty.

Colorado Civil Rights Commission Rule 60.2(C)(3) establishes the standard for assessing undue hardship:

> In determining whether an accommodation would impose an undue hardship on an employer's operation, pursuant to paragraph (1) of this section, factors to be considered include:
>
> (a) the overall size of the employer's operation with respect to number of employees, number and type of facilities, and size of budget;
>
> (b) the type of the employer's operation, including the composition and structure of the employer's work force; and
>
> (c) the nature, cost, and funding for the accommodation needed, including, but not limited to, such sources as the Colorado state division of vocational rehabilitation, the personal resources of the

person with the disability, and private organizations which provide financial support and auxiliary aids."

In view of the type of facility Complainant worked in, a prison, and her essential role as a correctional officer in maintaining safety and security at all times, it would have been an undue hardship for Respondent to retain her in a correctional position so long as her sleeping disorder caused her to sleep on the job. Complainant never advised Warden Jones that her new medication effectively eradicated her sleeping disorder; the first time this was revealed was at trial.

Complainant has also raised a disparate treatment claim under the CADA based on her disability. She argues that Respondent issued a PDF to a white male employee who slept on duty, and therefore he was given a lighter penalty than she for the same conduct. This argument is rejected based on the evidence in the record showing that it was the first offense of the white male employee. Respondent also issued a PDF to Complainant for her first offense of sleeping on duty.

Therefore, Respondent did not discriminate against Complainant on the basis of disability.

Once the Warden learned of the falsification of application documents, the Warden had a completely separate and equally serious reason to initiate the disciplinary process.

**D. The discipline imposed was within the range of reasonable alternatives.**

The discipline imposed by Respondent was within the range of reasonable alternatives available to it. Complainant was a correctional officer whose primary duty was to assure the safety and security of all individuals in the prison. She repeatedly abdicated this duty by sleeping on duty and failing to assure that her sleep disorder was being appropriately treated. This series of events warranted that she be removed from a security position at the prison.

The issue of Complainant's dishonesty in the application process must be viewed in the context of the correctional setting. DOC conducts pre-employment integrity interviews because correctional officers must be trusted to work independently with convicted criminals on a daily basis. Correctional officers are expected to hold the inmates accountable for following prison rules and regulations; therefore, integrity is an essential quality for the officers.

Lastly, Warden Jones concluded that Complainant was untruthful to her in the second predisciplinary meeting. The Warden found this to be very problematic, because she determined that she could no longer trust Complainant in any DOC position. Under these circumstances, the range of reasonable alternatives available to the appointing authority included termination.

## CONCLUSIONS OF LAW

1. Complainant committed the acts for which she was disciplined.
2. Respondent's action was not arbitrary, capricious, or contrary to rule or law.
3. Respondent did not discriminate against Complainant on the basis of disability.
4. The discipline imposed was within the range of reasonable alternatives.

## ORDER

Respondent's action is **affirmed.** Complainant's appeal is dismissed with prejudice.

Dated this 18th day of November, 2010

[redacted]

Mary McClatchey
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 18th day of Nov., 2010, I electronically served 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:

Rozanne Trujillo

[redacted]

and in the interagency mail, to:

Michael Scott

[redacted]

[redacted]

Andrea C. Woods