

STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. 2010B067

ORDER OF THE STATE PERSONNEL BOARD

DALE McCAULEY,

Complainant,

vs.

**UNIVERSITY OF COLORADO DENVER, UNIVERSITY OF COLORADO DENVER
POLICE DEPARTMENT,**

Respondent.

This matter is before the Colorado State Personnel Board ("Board") at its regularly scheduled public session held on September 21, 2010. 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. UC Denver's Opening Brief;
3. Complainant's Answer Brief;
4. UC Denver's Reply Brief.

Based upon the Board's review, the Board took the following action in considering the Initial Decision of the Administrative Law Judge:

A motion was made to uphold the Initial Decision in its entirety, including Findings of Fact and Conclusions of Law. 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 Findings of Fact and Conclusion of Law 1, but to reverse Conclusion of Law 2 ("Respondent's action was arbitrary, capricious or contrary to rule or law") and hold that it was not arbitrary and capricious or contrary to rule or law to discipline Complainant, and to reverse Conclusion of Law 3 ("the discipline imposed was not within the range of reasonable alternatives") and hold that the discipline imposed was within the range of reasonable alternatives. This motion also failed because of a split vote, with two Board members voting for the motion and two Board members voting in opposition 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, no more than two of the four Board members voted to overturn or modify the decision of the appointing authority. Therefore, the decision of the appointing authority stands and Complainant's disciplinary pay reduction stands.

Dated this 23rd day of
September, 2010.


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:

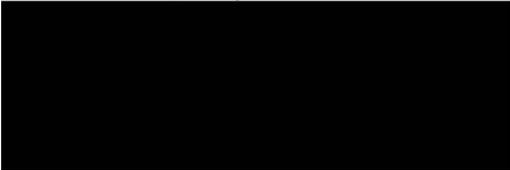
1. To abide by this decision of the State Personnel Board; or
2. To appeal this decision to the Colorado Court of Appeals within 45 days pursuant to Section 24-4-106(11), C.R.S., as provided in Section 24-50-125.4(3), C.R.S.

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 **September, 2010**, I electronically served true copies of the foregoing **ORDER OF THE STATE PERSONNEL BOARD**, addressed as follows:

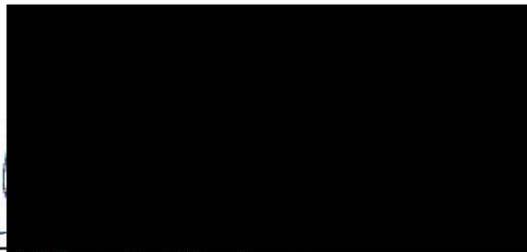
Reid Elkus, Esq.



Dale M. Cawley



Christopher J. Puckett, Esq.



AC
Andrea C. Woods