STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. **2011B001**

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

ROBERTA M. CRUZ,

Complainant,

vs.

DEPARTMENT OF HUMAN SERVICES, DIVISION OF YOUTH CORRECTIONS, LOOKOUT MOUNTAIN YOUTH SERVICES CENTER,

Respondent.

Administrative Law Judge (ALJ) Denise DeForest held a commencement hearing in this matter on October 27, 2010, and an evidentiary hearing on January 13 and March 10, 2011, at the State Personnel Board, 633 - 17th Street, Courtroom 6, Denver, Colorado. The record was closed by the ALJ on the last day of hearing. Assistant Attorney General Micah Payton represented Respondent. Respondent's advisory witness was Kristen Withrow, Respondent's Assistant Director and Complainant's Appointing Authority. Complainant appeared and was represented by Rachel Ellis, Esq.

MATTER APPEALED

Complainant, Roberta Cruz (Complainant) appeals her temporary pay reduction imposed by the Department of Human Services, Division of Youth Corrections, Lookout Mountain Youth Services Center (Respondent). Complainant seeks reversal of the disciplinary action and an award of attorney fees and costs.

For the reasons set forth below, Respondent's disciplinary 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 the discipline imposed was within the reasonable range of alternatives available to the appointing authority; and

4. Whether attorney fees are warranted.

FINDINGS OF FACT

Introduction and Background:

1. Complainant is certified as a Correctional Safety and Security Officer I (CSSO-I). By November of 2010, Complainant had worked for Colorado Department of Human Services, Division of Youth Corrections for a total of 20 years, with most of that time at Respondent's facility.

2. Lookout Mountain Youth Services Center (Lookout Mountain) serves approximately 160 juvenile residents who have been committed to the facility from the juvenile justice system. Nearly three-quarters of the youth population at Lookout Mountain have mental health issues in addition to conduct issues. Approximately half of the youth at the facility have substance abuse issues, and almost half of the population has developmental disabilities that require special education services.

3. As a CSSO-I, Complainant was expected to provide security and support for the residents in one of the residential facilities at Lookout Mountain. Complainant's specific job duties required that she control movement of youth in the unit or agency, control youth behavior in individual or group settings, and maintain constant visual observation of youth in custody.

4. The Cyprus Unit at Lookout Mountain houses 24 youth. It is an acute mental health unit. The youth assigned to Cyprus Unit have developmental disability and conduct issues that have resulted in them not doing well on other, larger units.

5. Cyprus Unit has two pods, A Pod and B Pod. Each pod houses 12 youth.

6. B Pod has three levels. The top floor has bedrooms and a bathroom off a central hallway. A set of stairs connects the upper level with a middle level that holds tables, chairs, and couches. The lower level of the pod has two bathrooms and some bedrooms which connect to a central area that is designated as the Quiet Living Area (QLA). The lower level is connected to the middle level with a short set of steps. Staff can maintain a visual line of sight of any youth in the QLA from most, although not all, locations within the middle level of B Pod.

May 15, 2010 Incident:

7. Complainant was the CSSO-I assigned to Cyprus Unit B Pod from 3 – 5 PM on May 15, 2010. Two other Cyprus Unit staff members were assigned to rove between A Pod and B Pod during those hours. Another Cyprus Unit CSSO-I staff member was

assigned to the A Pod, and the fifth Cyprus Unit staff member worked at the control center located between the pods.

8. During the afternoon of May 15, 2010, most of the residents of Cyprus Unit B Pod had decided to attend a movie which was held outside of Cyprus Unit. After these residents left the pod with some of the Cyprus Unit staff, there were five residents remaining in B Pod for the afternoon: RR, BC, DR, JH and KH.

9. Youth RR did not attend the movie because he was on a Special Management Program (SMP). SMP designations are used to create restrictive plans for youth who exhibit consistent patterns of aggressive behaviors, sexually aggressive behaviors, or mental health issues. RR is a low functioning youth with problems controlling his temper. RR was on a SMP because he had recently assaulted staff.

10. RR's SMP program required him to stay seated in a hard chair at a table located at the back window of the QLA area of B Pod. He was not to interact with the other youth. As is true for all Lookout Mountain youth who are on special programs because they pose a special level of risk, RR was wearing a Texas orange shirt to visually indicate his high risk status.

11. Youth BC was not able to attend the movie because he was on a Safety Intervention Program (SIP). SIP restrictions are disciplinary restrictions for youth who have been involved in major incidents of rule violations. A youth on a SIP is not permitted to interact with other youth, except for specially designated youth who act as role models and mentors for the youth on SIP restrictions. BC was also wearing a Texas orange shirt to visually alert staff to his high risk status.

12. Youth DR had asked to remain in his bedroom, and Complainant permitted him to do so. DR's bedroom was on the third level of B Pod. Pursuant to facility policy, Complainant locked the door to DR's bedroom so that DR had to remain in his bedroom until staff allowed him out of the room. Facility policy also required that staff perform checks on residents who were left in their rooms on at least a 30 minute basis.

13. Youths JH and KH spent the afternoon in the common area on the middle level of B Pod.

14. After the residents and staff left for the movie, Complainant was the only Cyprus Unit staff in B Pod. Complainant's direct supervisor, CSSO-II Brian Wilcox, left the unit with the residents who were attending the movie.

15. Taunya McGlochlin was a CSSO-I who, as of May 15, 2010, was assigned as an intake officer. As an intake officer, Ms. McGlochlin controlled the entrance and exits from the Lookout Mountain facility. She also worked with facility keys as part of her intake unit duties. Ms. McGlochlin had not been assigned to a residential unit in her time at

Lookout Mountain. She had asked for a transfer to Cyprus Unit, however, and had been visiting the residential unit on some days to spend an hour floating between the pods. The purpose of her time in Cyprus Unit was to allow her to meet the residents and to ask questions.

16. Complainant was aware that Ms. McGlochlin was assigned to the intake unit as of May 15, 2010, and she was not under the impression that Ms. McGlochlin had transferred to the Cyprus Unit. Complainant had not been told by any staff that Ms. McGlochlin could be expected to act as a staff member of Cyprus Unit.

17. Ms. McGlochlin was working in the intake unit on May 15, 2010. She visited Cyprus Unit for approximately an hour during the afternoon of May 15, 2010. CSSO – II Wilcox provided Ms. McGlochlin with a set of room door keys for the pods because he considered Ms. McGlochlin's training in the intake section to be sufficient to allow her to handle keys.

18. Ms. McGlochlin spent about half of her time in A Pod, and the other half of her time on the unit in B Pod. While Ms. McGlochlin was visiting the B Pod, Complainant was the only Cyprus Unit staff on duty in that pod.

19. While Ms. McGlochlin was in B Pod, JH and KH were in the middle level of the pod with Ms. McGlochlin and Complainant. Complainant moved around the middle level of B Pod, and she sat for a time at a gaming table by one of the side windows of the middle level.

20. BC was located in the lower hall, and he was to be doing assignments and not interacting with other youths. RR was located in the lower hall as well. RR was to be doing assignments while he sat at the table in the back of the QLA, and RR was also not to interact with the other youths.

21. When Complainant was sitting at the gaming table, she did not have a good view of the lower level QLA because the gaming table was located to the side of the middle level and there was a kitchen counter partially blocking the view.

22. At some point in the afternoon, RR told Complainant that BC wanted to use the bathroom. Complainant unlocked one of the two bathrooms on the lower level and allowed BC into the bathroom.

23. Facility standards require that staff maintain visual contact of youth at all times. When a youth is using the bathroom, the bathroom door is unlocked by staff for him or her, staff is to remain in the area so that staff can watch the bathroom as well as the other youth in the pod, and the bathroom door is to be locked again after the youth is finished. These requirements are in effect to make sure that no one is allowed into the bathroom without being observed and that only one youth is in the bathroom at a time.

24. After Complainant allowed BC into the lower level bathroom, Complainant went upstairs to the upper level to check on DR. At this point, Ms. McGlochlin was sitting in the middle level of B Pod with JH and KH. Complainant told Ms. McGlochlin that she was going upstairs to check on DR, and that BC was in the bathroom.

25. Complainant did not explain to Ms. McGlochlin what she needed to do to prevent problems with the bathroom usage. Ms. McGlochlin had no duties assigned to her while she visited B Pod, and she did not anticipate having any duties to perform while she was present. Ms. McGlochlin did not move her position to monitor the bathroom, or consider that she should monitor the bathroom.

26. RR and BC had agreed earlier that afternoon that RR would perform oral sex on BC if they had an opportunity to do so. This discussion between RR and BC was loud enough that JH heard the agreement.

27. At some point after BC entered the bathroom and Complainant left the bathroom area, RR also entered into the lower level bathroom. RR then performed a consensual sexual act on BC.

28. Complainant performed a check on DR while he was in his upstairs bedroom. Complainant offered DR a chance to go out for recreation, and DR changed into his recreational clothing while Complainant waited for him. Complainant and DR then returned to the middle level of B Pod.

29. RR left the lower level bathroom by himself. After a delay, BC also left the bathroom. Complainant did not notice that both RR and BC were out of sight at the same time, or that both youth had emerged from the same bathroom.

30. The fact that RR and BC had engaged in sexual contact was not discovered by staff until May 24, 2010.

Juvenile Sexual Misconduct Policy:

31. Division of Youth Corrections Policy 9.19 controls Respondent's implementation of the federal Prison Rape Elimination Act of 2003, and establishes standards of conduct for juveniles and staff in DYC facilities, as well as staff actions to be followed if there is an allegation of sexual misconduct.

32. DYC Policy 9.19 defines Juvenile Sexual Misconduct as "any behavior or act of a sexual nature, either consensual or nonconsensual between juveniles." The policy established a zero tolerance for consensual juvenile sexual activity, and mandates that consensual sex between juveniles be addressed by the facilities' disciplinary processes.

33. Respondent's policy also requires that the Department of Social Services for

Jefferson County (Jefferson County DSS) be contacted in the event of an allegation of possible child abuse.

Jefferson County Investigation:

34. On May 24, 2010, Respondent reported the possibility of a youth-on-youth sexual assault to Jefferson County DSS.

35. Jefferson County DSS lead caseworker Mary Lou Juhl visited Lookout Mountain to interview the involved youths on June 1, 2010. Ms. Juhl interviewed Complainant, CSSO-I McGlochlin, and CSSO -II Brian Wilcox on June 2, 2010.

36. Complainant had just returned from vacation when she was first interviewed by Ms. Juhl. She did not learn of the incident until after her return from vacation.

37. Complainant contacted Ms. Juhl the day after her interview and told Ms. Juhl that, having thought about the date in question overnight, she had additional information she wanted to add to her interview. Ms. Juhl agreed to speak with Complainant again.

38. In her second interview on June 7, 2010, Complainant told Ms. Juhl that her supervisor, Mr. Wilcox, had not informed her that Ms. McGlochlin should not be treated as Cyprus Unit staff, and that Mr. Wilcox had given Ms. McGlochlin a set of keys. Complainant told Ms. Juhl that she was under the impression that Ms. McGlochlin could be treated as a Cyprus Unit staff member, and that she had been depending upon Ms. McGlochlin to maintain visual contact with the youth as Complainant moved around the pod conducting checks upstairs and downstairs. Complainant also disputed that Respondent's policy required staff to maintain a line of sight with the bathroom door when a resident was in the bathroom. Complainant told Ms. Juhl that staff would allow a resident into the bathroom and then leave the area.

39. In her recommendations entered on June 14, 2010, Ms. Juhl found that Complainant did not adequately supervise the lower bathroom areas of the pod, and that this lack of supervision allowed the two youths to engage in consensual sexual contact. Ms. Juhl found that there had been institutional neglect and the creation of an injurious environment through the failure to properly supervise the youths.

Administrative Suspension and Board Rule 6-10 Process:

40. Respondent's Policy 3.14 provides that any employee may be placed on administrative suspension with pay during any period of an investigation of institutional child abuse. On June 2, 2010, Complainant was placed on paid administrative leave pending the outcome of Respondent's and Jefferson County DSS's investigations. Kristen Withrow, Assistant Director of Lookout Mountain and Complainant's appointing authority, issued the decision to place Complainant on paid administrative leave.

41. On or about June 4, 2010, Ms. Withrow received an oral report from Ms. Juhl as to the progress of Ms. Juhl's investigation, and was told that Ms. Juhl was going to find that there had been institutional neglect and a lack of supervision by Complainant. When Ms. Withrow was told these results, she sent a notice to Complainant for a pre-disciplinary Rule 6-10 meeting. The Rule 6-10 meeting was initially scheduled for June 11, 2010. When Complainant's representative, Tim Markham, could not attend the meeting on June 11, the meeting was re-scheduled for June 14, 2010.

42. Complainant attended the June 14, 2010 Rule 6-10 meeting with Mr. Markham, a representative from Colorado WINS. Ms. Withrow brought Scott Ulrich, the Youth Services Counselor III from Cyprus Unit, to the meeting as her representative. The meeting was recorded.

43. During the meeting, Complainant presented her statement that she had already presented to Ms. Juhl in Complainant's second interview with Ms. Juhl, and provided Ms. Withrow with a written copy of that statement.

Imposition of Discipline and Corrective Action:

44. Ms. Withrow believed that the imposition of a sustained charge of injurious environment and failure to supervise against one of the staff to be a very serious matter for Lookout Mountain. In the four cases of sustained charges of which Ms. Withrow was aware, three of those charges resulted in the termination of the involved staff member's employment. The fourth sustained charge was the charge involving Complainant's supervision of B Pod.

45. Ms. Withrow considered Complainant's contention that Ms. McGlochlin was the staff member who should have watched the bathroom, and that Complainant had not been told not to have Ms. McGlochlin perform any duties while on the pod. Ms. Withrow concluded, however, that Ms. McGlochlin had not transferred to become a Cyprus Unit staff member until after this incident, that she had only been visiting the unit on May 15 to observe, and that Complainant was the Cyprus Unit staff member who bore the responsibility for maintaining visual contact with the residents.

46. Ms. Withrow found that Complainant's actions of sitting at the gaming table while she had two residents sitting in the lower level meant that Complainant had no ability to see the two youths on the lower level. Ms. Withrow also found that Complainant had admitted to not supervising all four youth on the pod by positioning herself so that she could not see the bathroom while BC was using it.

47. Ms. Withrow considered Complainant's years of successful service at Lookout Mountain as mitigation of the seriousness of the issue. Ms. Withrow decided that the appropriate sanction for Complainant was not termination of her employment but a

significant temporary reduction in pay combined with a corrective action.

48. By letter dated June 25, 2010, Ms. Withrow concluded that Complainant had failed to properly supervise the youth on B Pod in violation of DYC Policy 9.13, and that this failure to properly supervise the youth resulted in two youth engaging in juvenile sexual misconduct, which was a violation of DYC Policy 9.19. Ms. Withrow imposed a disciplinary action on Complainant that included a 10% reduction on Complainant's pay for a three-month period. The total amount withheld from Complainant's pay was a total of $1,395.00.

49. Complainant was also instructed, as part of a corrective action, to review Respondent's supervision policies, and to undergo a period of 30 hours of shadowing YSC III Ulrich for additional training on head counts, bathroom use, key management, secure door uses, moving and monitoring youth on a split level, and supervision strategies to maintain sight of residents and communication with staff. Complainant was also assigned to additional training on high risk behaviors for the youth on Cyprus Unit, as well as additional training on supervision issues.

50. Complainant filed a timely appeal of the imposed discipline with the Board.

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; C.R.S. §§ 24-50-101, *et seq; Department of Institutions v. Kinchen*, 886 P.2d 700, 707 (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.

A. Burden of Proof.

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. *Kinchen*, 886 P.2d at 707-8. The Board may reverse Respondent's decision if the action is found to be arbitrary, capricious or contrary to rule or law. C.R.S. § 24-50-103(6).

II. HEARING ISSUES

A. Complainant committed the acts for which she was disciplined.

There was no dispute at hearing that two youths had engaged in a consensual sexual act while Complainant was assigned to B Pod, that Complainant did not know that the two residents were in the bathroom together, and that such conduct was prohibited under Respondent's codes of conduct for the residents.

The question raised by Complainant is whether she was the staff member who should be held accountable for the lack of supervision, given that CSSO – I McGlochlin was also in the pod at, or about, the time of the misconduct, and that Ms. McGlochlin also did not supervise the youths sufficiently to prevent or detect the misconduct. Complainant contends that she was not properly informed that Ms. McGlochlin was not present to perform staff supervision duties, and that she had assumed that Ms. McGlochlin was watching the residents while Complainant was not in a position to view the residents.

The record supports by a preponderance of the evidence that Complainant was the only Cyprus Unit staff member assigned to B Pod at the time of the incident. Complainant also understood that Ms. McGlochlin was present to observe the pod and to ask questions, and that Ms. McGlochlin's work assignment at the time of the incident was with the intake unit and not a residential unit. Complainant's mistaken assumption that she could leave the residents downstairs for a period of time was unreasonable given that Ms. McGlochlin was present only to observe. Complainant had no reasonable basis to assume that Ms. McGlochlin knew what was required of staff when residents were using the bathrooms. Ms. Withrow's conclusion that Complainant was the staff member who bore the responsibility for supervising RR and BC was a reasonable one and was supported by the preponderance of the evidence at hearing.

B. The Appointing Authority's action was not arbitrary, capricious, or contrary to rule or law.

(1) Arbitrary and capricious action analysis:

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).

In this case, Ms. Withrow gathered a reasonable amount of information about the incident and permitted Complainant to participate in providing information to her about the events in question. The evidence at hearing demonstrated that she considered the information that she had gathered, and that she reached reasonable conclusions based upon that information. Respondent's investigation and decision-making, accordingly, were neither arbitrary nor capricious.

(2) Application of Board Rule 6-2:

Board Rule 6-2, 4 CCR 801, provides that "[a] certified employee shall be subject to corrective action before discipline unless the act is so flagrant or serious that immediate discipline is proper." Respondent did not demonstrate that progressive discipline was employed in this case.

The Board's rule, of course, does not demand progressive discipline in every case. There is an exception within the rule permitting immediate discipline, including termination, for serious or flagrant actions.

The failure to provide adequate supervision of residents for a period of time long enough to permit sexual contact is a sufficiently serious breach of the CSSO-I responsibilities to warrant the imposition of immediate discipline. One of the primary functions of the CSSO–I is to provide for the safety and security of the residents and staff by maintaining continuous line of sight supervision of the residents. Complainant's failure to maintain that level of supervision is a sufficiently serious violation of the standards of performance for a CSSO–I to warrant immediate discipline.

Accordingly, Respondent has demonstrated by a preponderance of the evidence that its disciplinary decision was not contrary to rule or law.

C. A temporary pay reduction was within the range of reasonable sanctions available to the Appointing Authority.

Board Rule 6-9, 4 CCR 801, requires that an appointing authority is to weigh the facts of the incident as well as an employee's information and performance in making a decision on the level of discipline to impose. *See* Board Rule 6-9 ("The decision to take corrective or disciplinary action shall be based on the nature, extent, seriousness, and effect of the act... 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 mitigating circumstances").

The credible evidence at hearing demonstrated that the appointing authority pursued her decision thoughtfully and with due regard for the circumstances of the situation as well as Complainant's individual circumstances, as required by Board Rule 6-9. A founded report of a failure to provide proper supervision is a serious matter for

Respondent. Ms. Withrow testified that, of the four such findings that she has reviewed, three of the four employees involved were terminated from employment because of the seriousness of the issue. A temporary reduction in pay, while a significant disciplinary action, is within the range of reasonable disciplinary responses to the creation of such a fundamental security issue. The fact that Complainant was not terminated, however, was due to Complainant's long history of successful work at the facility. Ms. Withrow's testimony adequately demonstrated that she had considered Complainant's individual circumstances in reaching her decision to impose a temporary pay reduction and corrective action. The level of discipline imposed by Respondent in this case was within the range of reasonable alternatives available to Respondent.

D. An award of attorney fees and costs are not warranted in this action.

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

Complainant has not demonstrated that Respondent's personnel action was instituted in a manner warranting an award of attorney fees. The hearing demonstrated that Respondent's action was taken in good faith and with adequate evidentiary support. No attorney fees are warranted under such circumstances.

CONCLUSIONS OF LAW

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

2. Respondent's 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 fees and costs are not warranted.

ORDER

Respondent's disciplinary action is **affirmed**. No attorney fees or costs are awarded. Complainant's appeal is dismissed with prejudice.

Dated this 21st day of April, 2011.

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 electronic record on appeal in this case is $5.00. 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 21st day of April, 2011, I electronically served true copies of the foregoing **INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE and NOTICE OF APPEAL RIGHTS** as follows:

Rachel Ellis, Esq.
[redacted]

and

Micah Payton
[redacted]

[redacted]
Andrea C. Woods