

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

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**KAMBIZ BEHNAM,**  
Complainant,

v.

**DEPARTMENT OF CORRECTIONS, FREMONT CORRECTIONAL FACILITY,**  
Respondent.

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This matter came before the Personnel Board for an evidentiary hearing on April 22-23, 2024. Complainant appeared in person without counsel. Respondent appeared by through counsel, Kerry Ferrell, Esq. and Dominick Schumacher, Esq. Siobhan Burtlow, Warden of the Fremont Correctional Facility was also present as Respondent's advisory witness. A list of the exhibits admitted into evidence and the witnesses who testified at hearing is attached as an Appendix. The record was left open for 10 days after the testimony was completed for additional redactions of the exhibits.

**MATTER APPEALED**

Complainant contests a disciplinary action. In addition, he claims that the disciplinary action was discriminatory in violation of the Colorado Anti-Discrimination Act (CADA) and/or retaliatory in violation of the State Employee Protection Act (Whistleblower Act).

Respondent argues that Complainant committed the acts for which he was disciplined, and that the discipline was not arbitrary and capricious. Respondent further argues that the discipline was not discriminatory or retaliatory.

For the reasons discussed below, the disciplinary action is **affirmed**.

**ISSUES TO BE DETERMINED**

- Did Complainant commit the acts for which he was disciplined? If so, was the discipline arbitrary and capricious or contrary to rule or law?
- Did Respondent discriminate against Complainant based on his membership in a protected class in violation of CADA?

- Did Respondent retaliate against Complainant in violation of the Whistleblower Act?

## **FINDINGS OF FACT**

### **Background**

1. Complainant is originally from Iran, and identifies as Persian. He is a U.S. Army veteran.
2. Complainant is employed by the Department of Corrections (DOC) as a State Teacher I. The DOC hired Complainant in February of 2019.
3. Complainant is a certified state employee. He works at the Fremont Correctional Facility (FCF). Warden Burtlow is his appointing authority.
4. The DOC hired Complainant primarily to teach a Computer Assisted Design (“CAD”) course, which teaches inmates how to use computer software to draft blueprints and designs. Complainant is a good teacher who genuinely cares about his students.
5. On July 29, 2022, Warden Burtlow issued a Modified Staffing Plan due to critical staffing shortages caused, in part, due to the COVID pandemic. The Modified Staffing Plan impacted all employees at the facility, including changes in employees’ job duties and/or hours.
6. As part of the Modified Staffing Plan, all educational programs were canceled. Teachers at the FCF were required to cover other positions as needed, including Custody and Control. The Modified Staffing Plan also required employees to work twelve-hour shifts.
7. Complainant told management that he was unable to work twelve-hour shifts due to family obligations. Warden Burtlow gave him a grace period to make alternate arrangements, but beginning in December of 2022, Complainant was required to work twelve-hour shifts.
8. In December, Complainant failed to complete his assigned shifts on multiple dates. As a result, Complainant received a written Corrective Action on January 23, 2023.

### **Whistleblower Disclosures**

9. On January 6, 2023, Complainant submitted a letter to Moses Stancil reiterating that he was unable to work twelve-hour shifts. Complainant expressed his frustration over being required to work in Custody and Control, rather than teaching. Complainant also stated that “my budget gets

snatched continuously by facility last time I ran a complain [sic] the facility retaliated by allowing the budget to be used on other things.” He further stated that “[e]very year I had 4000 dollars of budget but I have not being [sic] allowed to use it correctly while other computer teacher and others get to use their [sic] however they want.”

10. Associate Warden Borja is Complainant’s second level supervisor and is responsible for the education program’s budget. According to Associate Warden Borja, the FCF receives a budget for the program, which may be used for any educational purchase. While the individual teachers are provided a budget for their class, they must submit a requisition form for any requested materials, which may be approved or denied depending on its necessity and benefit to students. It is common to reallocate funds between classes, especially towards the end of the fiscal year.
11. Complainant received a performance evaluation for the rating period from April 1, 2022 to July 31, 2023. His overall rating was a Level II or Needs Improvement. Warden Burtlow reviewed Complainant’s performance evaluation and signed it on August 29, 2023. Complainant disagreed with the evaluation on August 30, 2023. He made voluminous comments including a statement that FCF management had “conducted activities on my teaching budgets, leave request, as well as many other activities that puts my performances in wrong conditions.”

#### Annual Leave Procedures

12. Employees of the FCF sign up for annual leave in March or April for the following fiscal year. Annual leave requests for specific dates are approved within work units based on seniority. This is to ensure the facility has adequate staffing.
13. Leave not requested and approved through the yearly sign-up process may be requested using AR Form 100-37C, State of Colorado Leave/Absence Request and Authorization. Pursuant to Administrative Regulation (AR) 100-37, all employees must request annual leave “far enough in advance not to interfere with the efficient business operations of the work unit.” AR 100-37 further provides that employees who must miss work due to a court date must notify their supervisor within 24 hours of receiving notice of the court date.
14. Warden Burtlow reviews unplanned leave requests to determine their impact on the business operations of the facility and on other employees. She has the ultimate authority to grant or deny leave requests. No leave is authorized until approved.

15. The FCF's work schedule for each month is published approximately two weeks in advance.
16. Warden Burtlow prefers that unplanned leave requests be submitted before the monthly work schedule is published but will work with employees with specific needs on a case-by-case basis.
17. For the month of August of 2023, Complainant was scheduled to work Monday through Thursday from 7:00 a.m. to 7:00 p.m.

#### Events of August 8, 2023

18. On August 8, 2023, Complainant was assigned to work a Custody and Control post.
19. During this shift, Complainant stated that he was leaving at 3:00 p.m. to attend his son's school meeting.
20. While discussing this issue with Programs Captain Michael Sherwood and Associate Warden Carleen Borja, Complainant became visibly upset. He stated that he had never agreed to a post in Custody and Control, and that it was not his job. Complainant also stated that he needed to be off work from August 9, 2023 to August 21, 2023. Associate Warden Borja advised Complainant that he would have to submit the leave form and obtain approval. She also advised him that, without further justification, his leave request would be denied because it was not made far enough in advance to avoid affecting the business operations of the facility and other employees. In response, Complainant stated that he did not care.
21. Also on August 8, 2023, Complainant emailed an AR Form 100-37C to Associate Warden Borja who forwarded it to Warden Burtlow. The form requested 70 hours of annual leave beginning August 9, 2023. Warden Burtlow sent Complainant an email stating this leave request was denied because it was not requested far enough in advance so as not to impact facility operations and the schedules of other employees.
22. Later that day, Complainant met with Warden Burtlow and informed her that he needed the requested annual leave for his son's court dates and for military obligations. Warden Burtlow told Complainant that he needed to submit documentation indicating the specific dates and times of these obligations. Warden Burtlow also told Complainant that his leave request would be denied without such documentation.
23. Complainant was permitted to leave early on August 8, 2023.

### Complainant's Absences

24. On Wednesday, August 9, 2023, Complainant called in sick.
25. On Thursday, August 10, 2023, Complainant returned to work and submitted a second AR Form 100-37C requesting 50 hours of leave from August 14, 2023 to August 21, 2023. Complainant stated he needed the leave for his son's court dates on August 14 and August 21, 2023 and for military board preparation. Complainant did not submit any supporting documentation with this form.
26. By email dated August 11, 2023, Warden Burtlow again indicated that Complainant had not submitted the annual leave request with enough advance notice. She asked Complainant to provide her with confirming documentation regarding the court appearances and military obligation. She did not approve his leave request in this email or at any other time.
27. Complainant was not scheduled to work on August 11, 12, and 13, 2023, as these were his regular days off.
28. On Monday, August 14, 2023, Complainant failed to report to work. Assistant Warden Borja called him to determine why he was not at work. During the call, Assistant Warden Borja informed Complainant that his leave was not authorized. Complainant responded that he had turned in a leave request and he would not return to work until August 22, 2023.
29. Complainant did not report to work for his scheduled shifts from August 14, 2023 to August 21, 2023. Complainant's absence during this time was not authorized or approved.
30. Complainant returned to work on August 22, 2023. On that date, he sent Warden Burtlow an email regarding his son's legal situation. He submitted documents from the Florence Municipal Court with a receipt dated August 16, 2023, and an order granting a Motion for Deferred Sentencing dated August 21, 2023. He also attached an email from a Navy recruiter dated August 15, 2023, which appears to discuss the documents Complainant needed to submit to the Navy for his application.

### Disciplinary Action

31. On September 14, 2023, Warden Burtlow issued a letter scheduling a Rule 6-10 meeting, which took place on September 28, 2023. During the meeting, Warden Burtlow reviewed the alleged misconduct, and Complainant was given the opportunity to respond and to present mitigating factors. At the conclusion of the meeting, Complainant was given 10 days to submit additional documentation. He did not do so.

32. Warden Burtlow issued a Corrective and Disciplinary Action on October 13, 2023. She found that Complainant had violated Administrative Regulation 100-37 *Employee Scheduling, Use of Leave, Internal Movement, and Staffing Plans*, as well as the Code of Ethics. She also found that Complainant's misconduct was willful.
33. Warden Burtlow considered the nature, extent, seriousness, and effect of Complainant's performance issues or conduct. She found that Complainant's behavior demonstrated a pattern of unprofessional conduct, insubordination, and failure to adhere to a work schedule. She also found that FCF had to modify its operations in response to Complainant's unscheduled leave and his refusal to accept and maintain posts.
34. Warden Burtlow also considered the type and frequency of prior unsatisfactory performance or conduct, including three prior Confirming Memorandums and the prior Corrective Action.
35. Warden Burtlow further considered Complainant's mitigating factors, including the fact that: 1) Complainant is a single parent, 2) Complainant is trying to return to military service, and 3) Complainant was required to work outside his primary position as a teacher for over a year.
36. Warden Burtlow imposed a 5% reduction in Complainant's base pay for two months effective November and December of 2023.
37. Complainant timely appealed this disciplinary action.

## **ANALYSIS**

### **I. RESPONDENT HAS PROVEN THAT COMPLAINANT COMMITTED THE ACTS FOR WHICH HE WAS DISCIPLINED AND THAT THE DISCIPLINE WAS NOT ARBITRARY AND CAPRICIOUS**

#### **A. Complainant committed the acts for which he was disciplined.**

The Colorado Constitution guarantees that certified state employees "shall hold their respective positions during efficient service. . ." Colo. Const. Art. XII, § 13(8). A certified state employee may be disciplined for "failure to comply with standards of efficient service or competence, or for willful misconduct, willful failure or inability to perform his duties. . . ." *Id.* Respondent has the burden to prove by a preponderance of the evidence that the employee committed the conduct for which he was disciplined. *Dep't of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994).

In this case, Complainant was disciplined for taking unauthorized leave and insubordination. It is undisputed that Complainant did not work his scheduled shifts on August 14, 15, 16, 17, and 21, 2023. The issue then becomes whether Respondent has proven that this leave was, in fact, unauthorized.

Complainant did not request the leave during the annual sign up period. It was not until August 8, 2023 that he first stated he was taking leave beginning the next day. Associate Warden Borja verbally informed Complainant on August 8, 2023 that his leave would not be approved because he had not provided sufficient notice to avoid impacting the business operations of the facility. After Complainant filed his first leave request form, Warden Burtlow denied it in writing by email dated August 8, 2023, stating that she was “not able to accommodate [his] vacation request . . . due to facility scheduling.” Warden Burtlow confirmed this denial when meeting with Complainant later that day.

Complainant resubmitted his leave form on August 10, 2023, indicating he needed leave from August 14, 2023 to August 21, 2023 for his son’s court dates and to prepare for the military board. Warden Burtlow told Complainant in writing, by email dated August 11, 2023, that he needed to submit supporting documentation regarding the court and military obligations, which he did not do. While Complainant was not working on the date this email was sent, he still had the responsibility to follow up, as he knew or should have known that leave is not authorized until approved.

Complainant was a no call/no show on August 14, 2023. Associate Warden Borja called him and told him that his leave was unauthorized, and that he would be required to report to work. Nonetheless, Complainant failed to report for his scheduled shifts until August 22, 2023.

This ALJ credits Warden Burtlow and Associate Warden Borja’s testimony that Respondent’s leave from August 14, 2023 to August 22, 2023 was unauthorized. The emails from Warden Burtlow on August 8 and 11, 2023 support this testimony.

Complainant took unauthorized leave on August 14, 15, 16, 17, and 21, 2023. He knew the leave was unauthorized but failed to work his scheduled shifts. This Administrative Law Judge finds that Complainant committed the conduct for which he was disciplined.

**B. The discipline was not arbitrary, capricious or contrary to rule or law.**

If an employee commits the acts for which he was disciplined, the Administrative Law Judge must then determine “whether the appointing authority’s disciplinary action in response to that misconduct was arbitrary, capricious, or contrary to rule or law.” *Dep’t of Corrections v. Stiles*, 477 P.3d 709, 717 (Colo. 2020). See also C.R.S. § 24-50-103(6) (a disciplinary action “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”).

A disciplinary action is arbitrary and capricious if the appointing authority has: (1) neglected or refused to use reasonable diligence and care to procure the relevant evidence; (2) failed to give candid and honest consideration of the evidence; or (3) reached a conclusion that reasonable persons fairly and honestly considering the evidence must reach a contrary conclusion. *Lawley v. Dep't of Higher Education*, 36 P.3d 1239, 1252 (Colo. 2001).

Here, Warden Burtlow obtained the relevant information prior to and during the Rule 6-10 meeting. She reviewed the documentation and spoke to the appropriate witnesses. She also reviewed the applicable rules and policies, as well as Complainant's prior Corrective Action and Confirming Memorandums. Warden Burtlow used reasonable diligence and care to obtain the evidence supporting her decision to discipline Complainant.

Warden Burtlow's disciplinary letter provides a lengthy discussion of the evidence that she considered in making her decision to discipline Complainant. Warden Burtlow also testified as to how she weighed the various factors. Based on the disciplinary letter and her testimony, Warden Burtlow gave candid and honest consideration of all of the evidence.

This is not a case where a reasonable person must reach a contrary conclusion regarding the disciplinary action imposed. It is every employee's responsibility to show up to work when scheduled unless on approved leave. See Administrative Procedure 5-1. This is true of all employment but is even more important in a correctional facility, which requires minimum staffing levels to ensure the safety and security of staff and offenders. Further, Complainant's misconduct was insubordinate and willful. He knew that the leave was unauthorized but chose not to report to work, saying that he did not care. Complainant also has a history of similar behavior as documented by the prior corrective action in January of 2023. Given these factors, a reasonable person would not be compelled to reach a contrary conclusion regarding the discipline imposed.

The disciplinary action was not contrary to rule or law. Complainant was unable to point to any violation of rule or law regarding the disciplinary action. Warden Burtlow considered the appropriate factors pursuant to Board Rule 6-11, as well as Complainant's mitigating factors.

While Complainant contends that the disciplinary action violated the Uniformed Service and Re-Employment Right Act (USERRA), the enforcement of USERRA is beyond the scope of the Board's jurisdiction. Even if the Board could consider USERRA in determining whether the disciplinary action was contrary to law, there is no evidence that Complainant's application to the military was a motivating factor in the discipline. The problem in this case is not that Complainant



took time off work to prepare for the Navy Board, but the fact that the time off was unauthorized. Had he followed procedure and provided advanced notice and/or documentation of the specific dates he needed to take off prior to his absence, he would not have been disciplined. This ALJ further notes that Warden Burtlow considered Complainant's application to the military to be a *mitigating* factor in determining the type of discipline imposed.

In addition to preparation for the Navy Board, Complainant argues that he needed the time off work for his son's court dates. Once again, the issue is not Complainant's need for time off, but the lack of adequate notice. Complainant's situation was not an emergency or unforeseeable. He admits he knew about the court dates at least a week in advance, but did not provide notice to his supervisor within 24 hours as required by AR 100-37. He could have approached Associate Warden Borja or Warden Burtlow earlier to try to work things out instead of unilaterally demanding and then taking the time off. He also knew he could have contacted the courts to reschedule his son's hearing dates far enough in advance to provide Respondent with sufficient notice, but chose not to for personal reasons.

Complainant also argues that he provided documentation regarding his son's court appearances and his military obligations. However, the documentation he submitted did not include specific dates and times. More importantly, he did not provide the documentation until after he returned from the unauthorized leave.

Complainant further argues that he should not have been required to work twelve hour shifts or outside of his teaching duties. This ALJ understands that Complainant was very frustrated about his working conditions, but these issues are beyond the scope of this hearing. In addition, Warden Burtlow considered this as a mitigating factor in her decision to limit the discipline to a temporary reduction in pay. Warden Burtlow understands that the last few years have been difficult for everyone, and she values Complainant's contributions as an employee. If Warden Burtlow had not been lenient, she could have imposed more severe discipline, up to and including a permanent reduction in pay, demotion, or even termination.

This ALJ is sympathetic to the demands of single parenthood, the disruptions in Complainant's work schedule caused by staffing shortages, and the challenges of working at a correctional facility. Complainant was clearly frustrated and overwhelmed by his work and personal responsibilities, feeling that everything "was coming at [him] at the same time." Nevertheless, this does not excuse him from either showing up to work as scheduled or obtaining prior authorization before taking annual leave.

## II. COMPLAINANT HAS NOT PROVEN DISCRIMINATION PURSUANT TO CADA

CADA prohibits an employer from taking any adverse action against an employee based on race, national origin, and/or ancestry. C.R.S. § 24-34-402. To establish a *prima facie* case of discrimination,

First, an employee must show that he belongs to a protected class. Second, the employee must prove that he was qualified for the job at issue. Third, the employee must show that he suffered an adverse employment decision despite his qualifications. Finally, the employee must establish that all the evidence in the record supports or permits an inference of unlawful discrimination.

*Bodaghi v. Dep't of Natural Resources*, 995 P.2d 288, 297 (Colo. 2000).

The final element of a *prima facie* case requires “evidence of circumstances from which discrimination may be reasonably inferred.” *George v. Ute Water Conservancy Dist.*, 950 P.2d 1195, 1198 (Colo. App. 1997). An asserted belief that discrimination occurred, by itself, is insufficient to establish an inference of discrimination. *Id.* at 1197.

As to the first element of a *prima facie* case, Complainant is originally from Iran and identifies as Persian. He is a member of a protected class based on origin and/or ancestry. As to the second element of a *prima facie* case, Complainant was qualified for his position. As to the third element of a *prima facie* case, Complainant received a temporary reduction in pay, which is an adverse employment action.

As to the final element of a *prima facie* case, Complainant did not present any information that supports or permits an inference of discrimination. As discussed above, the disciplinary action was based on Complainant's proven misconduct, and all of the rules regarding the disciplinary process were properly followed. Complainant did not present any evidence that other employees not in a protected class are not disciplined or are less harshly disciplined for unauthorized absences. On the contrary, Warden Burtlow testified as to the importance of enforcing the attendance policy equally across the board.

Rather than providing any evidence, Complainant's discrimination claim relies solely on his subjective beliefs and conclusory statements, which is insufficient to permit an inference of unlawful discrimination. This Administrative Law Judge also credits Associate Warden Borja and Warden Burtlow's testimony that the disciplinary action was based on his actions, not his protected class. Based on the evidence in the record, Complainant has failed to establish by a preponderance of the evidence that the disciplinary action was discriminatory.

### III. COMPLAINANT HAS NOT PROVEN RETALIATION PURSUANT TO THE WHISTLEBLOWER ACT

#### A. Complainant's disclosures are not protected because they were too vague and did not constitute a matter of public concern.

The Whistleblower Act prohibits the initiation or administration of "any disciplinary action against an employee on account of the employee's disclosure of information." C.R.S. § 24-50.5-103(1).

To establish a prima facie violation of the Whistleblower Act, the employee must demonstrate that he made disclosures that are protected under the Act, and that that they were a substantial or motivating factor in the actions taken by the agency. Board Rule 8-25(D); *Ward v. Industrial Commission*, 699 P.2d 960, 968 (Colo. 1985). If Complainant makes such a showing, the burden shifts to the Respondent to prove that it would have reached the same decision even in the absence of the employee's protected conduct. *Id.*

For the first element of a whistleblower claim, an employee must show that they made a "disclosure of information," defined as "the written provision of evidence to any person, or the testimony before any committee of the general assembly, regarding any action, policy, regulation, practice, or procedure, including, but not limited to, the waste of public funds, abuse of authority, or mismanagement of any state agency." C.R.S. § 24-50.5-102(2). To warrant protection under the Whistleblower Act, the disclosure must involve a matter of public concern. *Ferrel v. Colorado Dep't of Corrections*, 179 P.3d 178, 186 (Colo. App. 2007). To constitute a matter of public concern, Complainant's motive in speaking must be to redress a broader public purpose and not just a personal grievance. *David v. City and County of Denver*, 101 F.3d 1344, 1355 (10th Cir. 1996). "[I]nternal personnel disputes and working conditions ordinarily will not be viewed as addressing matters of public concern." *David v. City and County of Denver*, 101 F.3d 1344 (10th Cir. 1996)

In this case, Complainant stated in his January 6, 2023 letter that his budget was "snatched" by the facility to be used for other things, and that he was unable to use his budget however he wanted to as other teachers were. Complainant also mentioned his teaching budget in the August 30, 2023 comments to his performance plan, but he did not provide any details or explanation as to his specific complaint. These statements are simply too vague and incoherent to be considered a disclosure.

Even if these statements were to be considered a disclosure, how the FCF allocates the money in the education budget to individual classes or teachers is not a matter of public concern. It is important to note that Complainant has never alleged malfeasance or waste regarding the funds. His only complaint was that

“his” budget was reallocated to other, legitimate educational purposes, which is an internal dispute or personal grievance, not a public concern.

**B. The disclosures were not a motivating factor in the disciplinary action.**

For the second element of a whistleblower claim, Complainant must show that the disclosures were a substantial or motivating factor in the actions taken by the agency. Temporal proximity may be sufficient to establish an inference of retaliatory motive. The Tenth Circuit has stated that a period of six weeks may support an inference of a causal connection, but a period of three months does not. *Anderson v. Coors Brewing Co.*, 181 F.3d 1171, 1179 (10th Cir. 1999). In addition, intervening events may preclude an inference of retaliation based upon temporal proximity. See *Argo v. Blue Cross & Blue Shield of Kan., Inc.*, 452 F.3d 1193, 1203 (10th Cir. 2006) (intervening events defeated any inference of retaliation based on temporal proximity).

Here, Warden Burtlow denied knowing that Complainant had made any disclosures regarding the budget prior to imposing the disciplinary action. Even if she were aware of the complaints, Complainant made the initial disclosure regarding the budget in January of 2023, and the disciplinary action was not imposed until the end of October of 2023. The ten months between the disclosure and the disciplinary action does not create an inference of retaliation. In addition, Complainant’s unauthorized absence was an intervening event, which also precludes an inference of retaliation based on the January disclosure.

While the second disclosure was made on August 30, 2023, which is closer in time to the disciplinary action, Complainant has not presented any evidence that it was a factor in Warden Burtlow’s decision. As discussed above, the discipline was imposed due to Complainant’s willful misconduct in taking unauthorized leave. There is no evidence that Warden Burtlow considered Complainant’s budgetary complaints as a factor in imposing the discipline. As a result, Complainant has failed to establish by a preponderance of the evidence that the disciplinary action was retaliatory.

**CONCLUSIONS OF LAW**

Based on the above analysis, this ALJ concludes that: 1) Complainant committed the acts for which he was disciplined; 2) the discipline was not arbitrary, capricious or contrary to rule or law; 3) Respondent did not discriminate against Complainant based on his membership in a protected class; and 4) Respondent did not retaliate against Complainant due to a protected disclosure of information.

**ORDER**

The disciplinary action is affirmed, and Complainant’s Consolidated Appeal and Dispute is dismissed with prejudice.

Dated June 17, 2024 by:

/s/ [REDACTED]  
Charlotte A. Veaux  
Administrative Law Judge  
State Personnel Board  
1525 Sherman Street, 4th Floor  
Denver, CO 80203

**CERTIFICATE OF SERVICE**

This is to certify that on the 17th day of **June, 2024**, I electronically served a true and correct copy of the foregoing **INITIAL DECISION** as follows:

Kambiz Behnam  
[REDACTED]

Kerry Ferrell, Esq.  
Assistant Attorney General  
[kerry.ferrell@coag.gov](mailto:kerry.ferrell@coag.gov)

Dominick Schumacher, Esq.  
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[dominick.schumacher@coag.gov](mailto:dominick.schumacher@coag.gov)

[REDACTED]

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## APPENDIX

### Respondent's Witnesses:

Warden Siobhan Burtlow  
Associate Warden Carleen Borja  
Captain Michael Sherwood

### Respondent's Exhibits:

1, 5-20.

### Complainant's Witness:

Mr. Kambiz Benham

### Complainant's Exhibits:

A (page 1 only)  
B  
C  
D ((text only, not handwritten notes or markings),  
E  
F (page 1 only)  
K  
O (text only, not handwritten notes or markings)  
S  
U  
Y (with redactions)  
AG  
AN (text only, not handwritten notes or markings)  
AR  
AS  
BB,  
CC  
XA

Note: Complainant's Exhibits CH, AX, and AU were not admitted and were sealed for privacy and security reasons.

## 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 served to the parties. § 24-4-105(15), C.R.S. and Board Rule 8-53(A)(2).
3. 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 served to the parties. §§ 24-4-105(14)(a)(II) and 24-50-125.4(4), C.R.S. 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. 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. Univ. of S. Colo.*, 793 P.2d 657 (Colo. App. 1990) and § 24-4-105(14) and (15), C.R.S.
4. The parties are hereby advised that this constitutes the Board's motion, pursuant to § 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. Board Rule 8-53(C). 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. 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. See Board Rule 8-53(A)(5)-(7). For additional information contact the State Personnel Board office at (303) 866-3300 or email at [dpa\\_state.personnelboard@state.co.us](mailto:dpa_state.personnelboard@state.co.us).

### **BRIEFS ON APPEAL**

When the Certificate of Record of Hearing Proceedings is served 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 8-54.

**ORAL ARGUMENT ON APPEAL TO THE BOARD**

In general, no oral argument is permitted. Board Rule 8-55(C).

**MOTION FOR RECONSIDERATION**

Motions for reconsideration are discouraged. See Board Rule 8-47(K).