

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

SHANEEQUA JONES,

Complainant,

vs.

DEPARTMENT OF CORRECTIONS, DENVER WOMEN'S CORRECTIONAL
FACILITY,

Respondent.

Administrative Law Judge Hollyce Farrell held the hearing in this matter on August 19 and 20, 2008, at the State Personnel Board, 633 17th Street, Courtroom 6, Denver, Colorado. Assistant Attorney Joseph Haughain represented Respondent. Respondent's advisory witness was Mark Broaddus, the Warden at Denver Women's Correctional Facility, and Complainant's Appointing Authority. Complainant appeared and was represented by Joe Rogers, Esq.

MATTER APPEALED

Complainant, Shaneequa Jones (Complainant), appeals her disciplinary termination. Complainant seeks reinstatement, back pay and benefits, and attorney fees and costs. Respondent, Department of Corrections, Denver Women's Correctional Facility (Respondent or DOC) seeks to have Complainant's termination affirmed.

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 Complainant's discipline was within the range of reasonable alternatives.
4. Whether Complainant is entitled to attorney fees and costs.

FINDINGS OF FACT

General Background

1. Complainant was a certified Correctional Officer I, employed by Respondent.
2. Complainant began her employment with Respondent in 2004. She worked at the Denver Women's Correctional Facility until her date of termination. Complainant's performance evaluations showed that Complainant was a "Level II" employee. A Level II employee is one "who reliably performs the job assigned."
3. Complainant's Appointing Authority was Mark Broaddus, the warden at the Denver Women's Correctional Facility.

Performance Documentation Forms

4. On November 3, 2006, Complainant received a Performance Documentation Form, which indicated that Complainant had been late for work on July 15, 2006, August 15, 2006 and September 28, 2006.
5. Complainant received Performance Documentation Form on January 11, 2007, which indicated that Complainant was late for work on November 2, 2006, November 12, 2006 and December 24, 2006.
6. On February 14, 2007, Complainant received a Performance Documentation Form which indicated that she had abandoned her post without authorization and left the facility. The Performance Documentation Form provided that Complainant explained that she had a last minute emergency out of state, but refused to state what the emergency was. The Form also indicated that Complainant's failure to complete her shift and conduct jeopardized the safety of and operation of the facility.
7. Complainant received a Performance Documentation Form on August 15, 2007, which indicated that she had failed to meet her assigned work schedule on that day.
8. On October 11, 2007, Complainant received a Performance Documentation Form which stated that she failed to meet her assigned work schedule on May 4, 2007, September 4, 2007 and October 2, 2007.
9. Complainant received a Performance Documentation Form on March 27, 2008, for sleeping while on duty as a member of the Crisis Negotiation Team on March 18, 2008. As a result, Complainant was removed as a member of the Crisis Negotiation Team.

10. Complainant did not grieve any of the above listed Performance Documentation Forms.

January 24, 2007 Corrective action

11. Complainant received a Corrective Action on January 31, 2007, for being late to work on a number of dates. Some of those dates were also addressed in the Performance Documentation Forms. Complainant did not grieve her Corrective Action.

Events of April 10, 2008

12. Complainant and her sister, Andrea Clark, went to a nightclub, Club Mixx, to play pool and listen to music on the evening of April 9, 2008. After several hours, they decided to leave at about 1:45 a.m. on April 10, 2008. When they decided to leave, there was no disturbance inside the club.

13. Clark left the club before Complainant did. When she got outside, she noticed several girls talking loudly outside the door of the club. Clark continued walking and then stood by Complainant's car to make a telephone call. Clark was standing between Complainant's car and another parked car on the driver's side of Complainant's car.

14. Unknown to Clark, the disturbance outside the club had escalated, and several police officers had responded to the scene. There were a number of people fighting, and the police officers had been told that there were as many as five people injured. When the officers arrived, the parking lot was full of people and the security guards from the club were spraying mace into the crowd to disperse it. The situation was chaotic.

15. There were many people in the parking lot when the police officers arrived. One police officer, Patrick McGinty, saw a woman, Shenell Phillips, chasing another woman and swinging a boot at her.

16. As Phillips got to the area where Clark was standing, between Complainant's car and the other car, McGinty forcefully knocked her down. Clark was startled and surprised with the force with which Phillips was taken down, and yelled out loudly, "Damn!"

17. By this time, another police officer, Jeffrey Longnecker, arrived to provide backup to McGinty because Phillips was not cooperating. When he heard Clark yell, "Damn!" Longnecker told her, "Shut the hell up," and pushed Clark out of the way. Longnecker pushed Clark with enough force that she dropped her cell phone and slammed into Complainant's car. Phillips was on the ground about three feet from where Clark was standing.

18. After Longnecker pushed Clark, she yelled and cursed at him loudly. She asked Longnecker why he had pushed her, but he didn't respond. Longnecker, instead, was focused on providing back-up to McGinty.
19. When Complainant left the club, a fight had broken out near the entrance of the club, and bottles had been thrown. Complainant waited by the owner of the club until the fight was over, and then went over to a man who was bleeding, and offered to provide assistance, which the man declined.
20. Complainant then walked out of the club, and saw police officers and the club security officers. She also noticed that her sister was standing near her car, about 100 feet away from the club's entrance. Complainant heard her sister yelling and cursing.
21. As Complainant walked towards her car, she saw Phillips on the ground with her hands behind her back, handcuffed. Phillips was between Complainant's car and another vehicle. Longnecker was also standing between the two cars. Complainant's sister was still yelling, and Complainant approached Longnecker, and yelled in his face, "Why are you near my car? Why is my sister screaming?"
22. Longnecker told Complainant to "get back" at least two times, but Complainant did not heed his requests. Instead, she continued to yell at Longnecker, and told him that she was a correctional officer and did not have to get back. Complainant was standing very close to Longnecker's face while she was screaming loudly. Because Complainant would not back up, as she was requested to do, Longnecker pushed her back, forcefully, and said, "Back the fuck up," or words to that effect. Longnecker also told Complainant that because she was a correctional officer, she should know how to act given the circumstances in the club parking lot.
23. After Longnecker pushed Complainant back, Complainant continued to yell at him. Two other officers, Joseph Duran and Patricia Perea, observed the interaction between Complainant and Longnecker, including Complainant's failure to obey Longnecker's orders to get back. Both Duran and Perea perceived that Complainant was creating an officer safety issue by continuing to approach Longnecker, and distracting him in his line of duty.
24. Perea also ordered Complainant to get back from Longnecker several times, but Complainant ignored her requests as well. Both Duran and Perea grabbed Complainant, each of them grabbing one of Complainant's arms. Complainant struggled, and was attempting to throw Duran and Perea off balance. Duran informed Complainant that she was under arrest for failure to obey a lawful order and obstructing a police officer.

25. Duran and Perea were attempting to place Complainant in handcuffs, and Complainant continued to struggle with them, pulling her arms forward. In resisting, Complainant grabbed and scratched Perea's arm, causing Perea to bleed. On the day of hearing, Perea still had scars from Complainant scratching her. Eventually, Longnecker came to assist Perea and Duran in handcuffing Complainant. Because of Complainant's aggressive resistance, it took all three officers to place her in handcuffs.
26. During the time they were trying to handcuff Complainant, Duran ordered Complainant several times to stop resisting arrest. Although Complainant replied that she was not resisting, she continued to struggle with the officers and pull her arms forward while yelling that she had not done anything.
27. After Complainant was in handcuffs, Perea told her that she was going to escort her to Duran's patrol car. Complainant was argumentative with Perea. Perea had Complainant in a rear wrist lock as she escorted her to Duran's car. Complainant told Perea, "Your rear wrist lock isn't doing shit to me," or words similar to that.
28. During the ride to the jail, Complainant continued to yell and was uncooperative. Because of her disruptive behavior, Duran called ahead to have someone open the sally port so he could bring Complainant directly into the jail. When they arrived, some of the police officers at the jail were laughing at Complainant's statements that she was a correctional officer.
29. Longnecker met Complainant at the police station, and talked to her after she had calmed down at about 2:30 a.m. Complainant apologized for her behavior, and told Longnecker that she was worried about her job. Longnecker told Complainant that his sergeant would call DOC, and let them know what had happened.

Complainant's telephone calls to DOC

30. The graveyard shift commander, Captain Robert Harrison, received a call from the Aurora Police Department informing him that Complainant had been arrested for interfering with a police officer and resisting arrest.
31. Complainant was scheduled to be at work at 5:45 a.m. on April 10, 2008. About 4:45 a.m., Complainant's mother called DOC, and spoke with Harrison. She told Harrison that Complainant had a personal emergency, and would not be into work that day. Complainant's mother did not say that Complainant had been arrested.
32. Complainant called DOC and spoke to Harrison at the time roll call was taking place, and told him that she would not be into work. Complainant did not tell Harrison that she had been arrested.

33. Harrison completed a report for the day shift commander regarding the call he received regarding Complainant's arrest.

34. At about 10:00 p.m. on April 10, Complainant called DOC and spoke to Captain Ramona Avant, the housing supervisor for the Denver Complex. Complainant told Avant that she was taking stress leave on April 11, but did not mention her arrest. Complainant was very distraught concerning her arrest.

Investigation of Complainant's arrest and Board Rule 6-10 Meeting

35. When Complainant's Appointing Authority, Warden Mark Broaddus, reported to work on April 10, he was told of Complainant's arrest. He asked Robert Thiede, an investigator with the Office of the Inspector General, to investigate the situation, and to gather the police reports concerning the incident from the Aurora Police Department.

36. Also on April 10, 2008, Broaddus asked his administrative assistant to draft a letter placing Complainant on paid administrative leave until the matter could be investigated. Complainant did not come into work on April 11, 2008, so someone at DOC called her, and informed her that she was on administrative leave pending the outcome of the investigation.

37. The investigator from the Office of the Inspector General reviewed the police reports, an incident report completed by Captain Harrison and an incident report completed by Captain Avant. The investigator summarized the reports, and attached the police reports, as well as the reports from Harrison and Avant.

38. On April 28, 2008, Broaddus held a pre-disciplinary meeting with Complainant pursuant to Board Rule 6-10. Complainant attended the meeting with her attorney, and Broaddus attended with his representative, Associate Warden Scott Hall.

39. Complainant admitted that she did not tell Harrison or Avant that she had been arrested when she called in for her April 10 and April 11 shifts because she was very shaken up and emotionally disturbed over the incident.

40. Broaddus also told Complainant and her attorney that he had read the police reports, confirmed that Complainant and her attorney had a copy of the arrest report, and stated that he wanted to ask questions related to the arrest.

41. Complainant's attorney spoke on her behalf regarding the arrest, and the events leading up to it, because of Complainant's pending criminal charges. Complainant's attorney told Broaddus that Complainant came out of the club and saw her sister crying and in a frantic state, and that Phillips was already on the ground in handcuffs.

42. Complainant's counsel further told Broaddus that Complainant's sister told her that Longnecker had hit her, and Complainant approached Longnecker and said, "Officer, I'm a correctional officer. Can you tell me what's going on?" According to Complainant's counsel, Longnecker turned around, without saying a word, and hit Complainant in the throat and said, "Back the fuck up off me, bitch." Complainant's counsel stated that Complainant was only trying to get information, but Longnecker continued to hit her breast at least four times.
43. Complainant's attorney told Broaddus that Complainant identified herself as a correctional officer to let the officer know that she was not there to create a problem. Complainant's attorney stated that Complainant asked Longnecker for his name and badge number, but he wouldn't give it to her, and told her she could get that information in his report.
44. According to counsel for Complainant, two officers grabbed Complainant, who was taken by surprise, and said, "What's going on? I'm just trying to find out what's happening here. This doesn't make any sense." After the officers told Complainant she was under arrest, she stated that she hadn't done anything wrong. Complainant's counsel denied that Complainant ever yelled at the officers or resisted arrest.

Complainant's disciplinary termination

45. In addition to the information he gathered during the Rule 6-10 meeting, Broaddus considered the police reports filed by officers McGinty, Longnecker, Duran and Perea before making his decision to discipline Complainant. He also reviewed the report from the Inspector General investigator and Complainant's personnel file. Broaddus did not interview Complainant's sister, nor did he attempt to speak to the police officers, or anyone else at the scene of Complainant's arrest. Broaddus gave consideration to the fact that Complainant had been employed at DOC for four years, and had received satisfactory evaluations. He also considered Complainant's Performance Documentation Forms, her Corrective Action, and the fact that she had been removed from the crisis negotiation team.
46. In addition, Broaddus considered the fact that, as a Correctional Officer, Complainant should be a role model for inmates, and it was likely that the inmates at the Denver Women's Correctional Facility would learn of Complainant's arrest and her behavior at the club. If the inmates learned of Complainant's arrest, it would likely diminish their respect for her.
47. After considering all of the evidence, including the version of the facts surrounding Complainant's arrest presented by Complainant's counsel, Broaddus made the following conclusions: 1) Complainant disobeyed multiple orders from the police officers to back up; 2) Complainant argued with the police officers,

stating that she was a correctional officer, and, therefore, did not have to follow their orders; 3) Complainant resisted arrest by physically trying to pull away, which resulted in the need for three officers to restrain her; 4) Complainant's behavior increased the danger and officer safety concern for the Aurora Police Officers, who were breaking up a fight in a large crowd with people who had been drinking, some of whom were intoxicated; and 5) Complainant failed to notify her Appointing Authority of her contact with law enforcement.

48. Broaddus concluded that the statements made by the four Aurora Police Department officers in their reports were more credible than Complainant's version of the events.

49. Based on his conclusions, Broaddus determined that Complainant's actions were flagrant and constituted willful misconduct and in violation of several sections of DOC's Code of Conduct, AR 1450-01. Those sections are:

III.B. Conduct Unbecoming: Includes any act or conduct either on or off duty, which negatively impacts job performance, not specifically mentioned in administrative regulations which tends to bring the DOC into disrepute or reflects discredit upon the individual as a DOC employee, contract worker, and volunteer.

IV.N. Any action on or off duty on the part of DOC employees, contract workers, and volunteers that jeopardizes the integrity or security of the Department, calls into question one's ability to perform effectively and efficiently in his/her position, or casts doubt upon the integrity of DOC employees, contract workers, and volunteers is prohibited. DOC employees, contract workers, and volunteers, is prohibited. DOC employees, contract workers, and volunteers will exercise good judgment and sound discretion.

IV.T. DOC employees, contract workers, and volunteers will not engage in acts of corruption, bribery, indecent, or disorderly conduct, nor will condone such acts by other DOC employees, contract workers, and volunteers.

IV.U. When a DOC employee, contract worker, or volunteer is the subject of an external investigation, has been arrested for, charged with, or convicted of any crime or misdemeanor (except minor traffic violations), or is required to appear as a defendant in any criminal court, he/she will immediately inform and provide a written report to his/her appointing authority, who shall inform the IG's Office.

IV.ZZ. Any act or conduct, on or off duty, which affects job performance and which tends to bring the DOC into disrepute, or reflects discredit upon the individual as a DOC employee, contract worker, or volunteer, or tends to adversely affect public safety, is expressly prohibited as conduct unbecoming, and may lead to corrective and/or disciplinary action.

50. Broaddus concluded that Complainant's actions demonstrated lack of sound judgment and an unwillingness to obey orders given by law enforcement personnel during a critical emergency situation. Complainant's aggressive response to the situation on April 10 and the poor judgment she showed gave rise to Broaddus' concern regarding Complainant's abilities in emergency situations in a correctional setting.

51. After Broaddus considered all of the information he had gathered, he determined that the appropriate disciplinary action for Complainant was termination. Broaddus terminated Complainant, effective May 9, 2008.

52. Complainant timely appealed Broaddus' decision.

DISCUSSION

I. GENERAL

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. *Department of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994). The Board may reverse 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.

Complainant was terminated for: 1) disobeying multiple orders from members of the Aurora Police Department; 2) arguing with those police officers, stating that she was a correctional officer, and, therefore, did not have to obey their orders; 3) resisting arrest by physically trying to pull away, which resulted in the need for three officers to restrain her; 4) increasing the danger and officer safety concern for the officers who responded to the scene at Club Mixx; and 5) failing to notify her Appointing Authority of her contact with law enforcement.

Respondent has proven that Complainant committed the acts for which she was disciplined. Complainant did disobey multiple orders from both Longnecker and Perea to back up from Longnecker. She also argued with Longnecker, stating that she did not have to obey his orders because she was a correctional officer. Complainant also struggled with the officers, requiring three police officers to restrain her. By her actions at the Club Mixx parking lot, Complainant increased the danger of the situation and increased the concern for officer safety. She also failed to report to Broaddus, or

anyone else at DOC, that she had been arrested.

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; 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).

Broaddus did not neglect or refuse to use reasonable care and diligence to gather all of the relevant information concerning the allegations against Complainant. He assigned an investigator from the Inspector General's Office to conduct an investigation into the information he had received about Complainant. He reviewed the report prepared by the investigator, as well as the police reports prepared by McGinty, Longnecker, Duran and Perea. Additionally, he held a meeting pursuant to Board Rule 6-10. At that meeting, Complainant admitted that she did not report her arrest to Broaddus, or anyone else at DOC, even though she spoke to both Captain Hamilton and Captain Avant. At the Rule 6-10 meeting, Complainant's attorney provided Complainant's version of the events in the club parking lot. Broaddus considered that version of events, but found the statements made by the police officers in their reports to be more credible. Broaddus also reviewed Complainant's personnel file, and considered all of the information contained in it.

Complainant argues that Broaddus did not use reasonable care and diligence in gathering all of the relevant information because he did not interview Complainant's sister, the police officers, or anyone else at the scene. However, Broaddus did hear Complainant's version of the facts, and read the police reports. The police officers' testimony at hearing did not vary materially from the reports they authored immediately after the incident. Further, there is no evidence of any motive by the police officers to fabricate their version of the events of April 10, 2008. Thus, Broaddus's failure to interview Complainant's sister and the officers did not impact the thoroughness of his investigation. Broaddus carefully considered all of the information he gathered, including Complainant's statements and her attorney's statements in the Rule 6-10 meeting, before deciding to impose the discipline he did.

As Broaddus noted in the May 9, 2008 Disciplinary Action letter, Complainant violated several sections of DOC's Code of Conduct, AR 1450-01. Her off duty actions called into question her ability to effectively perform her job duties as a CO I. Appellant was present during a disruptive, volatile situation. Instead of removing herself from the

situation so the police officers could perform their duties, Complainant escalated the situation by needlessly distracting one of the officers, and causing two other officers to focus their attention on her. Such behavior calls into question whether Complainant would react appropriately if a similar situation arose at DOC. Complainant failed to exercise good judgment that evening. Her behavior also tended to bring DOC into disrepute by Complainant's statements to the police officers that she did not have to obey their orders because she was a DOC officer. Complainant's conduct was not orderly that evening, and her actions could have adversely affected public safety. Finally, she failed to report her arrest to her appointing authority.

C. 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. Pursuant to Board Rule 6-2, "A certified employee shall be subject to corrective action before discipline unless the act is so flagrant or serious that immediate discipline is proper." Complainant had one prior corrective action and several performance documents which were unrelated to the conduct she displayed on April 10, 2008. The job of a correctional officer requires that one routinely exercise good judgment and self-restraint in volatile situations. Officer Longnecker's actions and words to Complainant and her sister were inappropriate, and provoked Complainant to respond in an angry aggressive manner. A correctional officer also is likely to face provocative individuals and situations, but must be able to remain calm to prevent escalating such situations. Complainant's behavior was flagrant and serious, especially given the chaotic situation in the parking lot at Club Mixx. Complainant, by her conduct, interfered with police officer safety and escalated an already tense situation. Complainant resisted arrest to the point that it was necessary to have three trained officers restrain her. Finally, Complainant used her status as a DOC officer to refuse to comply with lawful orders. Hence, it was not unreasonable for Broaddus to conclude that termination was an appropriate disciplinary action.

D. Attorney fees are not warranted in this action.

Complainant moved for attorney fees and costs. Attorney fees are warranted if an action was instituted frivolously, in bad faith, maliciously, or as a means of harassment or was otherwise groundless. § 24-50-125.5, C.R.S. and 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, 4 CCR 801. Because Complainant did not prevail, attorney fees are denied.

CONCLUSIONS OF LAW

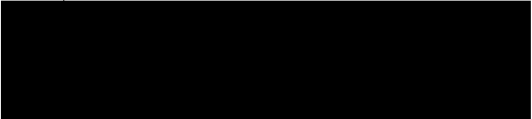
1. Complainant committed the acts for which she was disciplined.
2. Respondent's action was not arbitrary, capricious, or contrary to rule or law.

3. The discipline imposed was within the range of reasonable alternatives.
4. Attorney fees are not warranted.

ORDER

Respondent's action is **affirmed**. Attorney fees and costs are not warranted.

Dated this 2nd day of October, 2008


Hollyce Farrell
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. 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. 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

The opening brief of the appellant must be filed with the Board and mailed to the appellee within twenty calendar days after the date the Certificate of Record of Hearing Proceedings is mailed to the parties by the Board. The answer brief of the appellee must be filed with the Board and mailed to the appellant within 10 calendar days after the appellee receives the appellant's opening brief. An appellant may file a reply brief within five days. Board Rule 8-72, 4 CCR 801. An original and 8 copies of each brief must be filed with the Board. A brief cannot exceed 10 pages in length unless the Board orders otherwise. Briefs must be double-spaced and on 8 1/2 inch by 11 inch paper only. Board Rule 8-73, 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 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.

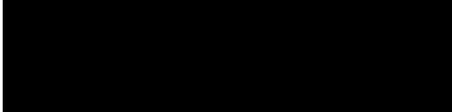
CERTIFICATE OF SERVICE


This is to certify that on the 2nd day of October, 2008, I placed 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:

Joe Rogers



Joseph Haughain





Andrea C. Woods