

STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. 2010B049(C)

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

DAVID ROMERO,

Complainant,

vs.

REGENTS OF THE UNIVERSITY OF COLORADO, UNIVERSITY OF COLORADO AT BOULDER, HOUSING AND DINING SERVICES,

Respondent.

Administrative Law Judge Hollyce Farrell held the hearing in this matter on May 25, May 26, August 3, August 4, and August 16, 2010, at the State Personnel Board, 633 17th Street, Courtroom 6, Denver, Colorado. Complainant appeared and was represented by Patricia Bellac, Esquire. Special Assistant Attorney General Elvira Strehle-Henson represented Respondent. Respondent's advisory witness was Steve Hecht, Projects Manager.

MATTER APPEALED

Complainant, David Romero (Complainant or Romero) appeals his termination by Respondent, Regents of the University of Colorado, University of Colorado at Boulder, Housing and Dining Services (Respondent or CU). Complainant also appeals a corrective action he received as a result of his April 2009 Performance Evaluation. Complainant seeks reversal of the corrective and disciplinary actions, reinstatement, back pay, benefits, and attorney fees and costs.

For the reasons set forth below, Respondent's actions are **affirmed**.

ISSUES

1. Whether Complainant committed the acts for which he was disciplined;
2. Whether Respondent's actions were 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;

4. Whether attorney fees are warranted.

FINDINGS OF FACT

General Background

1. Complainant became a state employee in March of 1987 when he began working as a Pipe Trades Plumber for Colorado State University. In 1999, he transferred to CU and held the position of Pipe Trades Plumber for one year. Complainant is a skilled master plumber.
2. One of Complainant's prior supervisors, Larry Finch, recognized his potential, and encouraged Complainant to apply for a Project Manager position. In 2000, CU promoted Complainant to the position of Project Manager.
3. A Project Manager is responsible for the design and construction of projects to meet a client's needs. A Project Manager is responsible for putting projects out to bid, managing contractors during construction, and closing out projects when they are complete. He or she also oversees the budget and the schedule for a project, and resolves problems as they arise during the project. Essentially, a Project Manager acts as a liaison between CU, the architects, the engineers and the contractors.
4. Many of Complainant's co-workers, clients, and contractors found him easy to work with and extremely knowledgeable. He was willing to help co-workers, and on least one occasion, he provided his cell phone number to a co-worker while he was on vacation in the event that the co-worker had questions regarding a project.
5. Complainant was an effective Project Manager who finished his projects on time and within budget. He always timely and correctly turned in his paperwork to CU's Finance Department.
6. Complainant had a reputation with his co-workers as a Project Manager who knew the rules and policies and followed them.
7. Because of his knowledge as both a Project Manager and a master plumber, Complainant was often an effective problem solver who frequently saved CU money on projects.
8. Hecht, the Projects Group Manager, became Complainant's supervisor in 2005. Complainant's prior supervisors rated Complainant as a Peak Performer on more than one occasion. He was also rated in different years as "Outstanding" or "Above Standard."
9. Hecht was the first supervisor who had oversight over Complainant. Complainant's prior supervisors had counseled him on deficiencies with his interpersonal skills and his communication skills.

10. In Complainant's 2002-2003 planning and evaluation, his supervisor wrote, "In attempts to seek clarity, Dave seems critical and accusatory. This diminishes his effectiveness."
11. On his 2003-2004 form, his supervisor wrote, "Dave could continue to increase his effectiveness by softening his communication style, particularly his written emails." Once Hecht became Complainant's supervisor, he noted many positive things about Complainant's skills, but always noted that Complainant needed to improve his interpersonal skills.
12. Complainant had basically the same Position Description Questionnaire as another Project Manager, Dave Olson.

August 24, 2005 Corrective Action with Addendum Added on March 22, 2006

13. On August 24, 2005, Complainant received a corrective action from Curtis Huetson, his Appointing Authority and the Director of Housing Facilities Services, regarding several negative or hostile interactions with other Housing and Dining Staff, his supervisors and contractors. Huetson issued an Addendum to that corrective action on March 22, 2006. This corrective action and Addendum addressed several instances where others reported Complainant to be demeaning, rude or hostile in interactions with them. The corrective action and Addendum mandated the following:
 - a. You will maintain professional interactions between yourself and co-workers in Housing and in other departments at the University, as well as between yourself and contractors. The importance of proper and constructive interpersonal communications has been discussed with you in coaching sessions (6/2/05) and at the one-on-one with your supervisor (8-10-05). This is also an important part of your Performance Plan Core Competencies 1 and 2. Core Competency 1 measures Communication with measurement factors of "maintaining smooth working relations with others and is understanding on [sic] the feelings and needs of co-workers and others.: You are expected to review and abide by these as well as other core competencies in your PPP.
 - b. You will maintain a positive and professional demeanor in meetings at all times. You will offer solutions and alternatives as appropriate and accept responsibility for work that falls under your position.
 - c. You must recognize that Mr. Hecht is your supervisor, and as a result follow his direction and treat him with civility and respect, and to willingly take direction from him.

- d. You will provide all pertinent project information in a cooperative and timely manner to your supervisor and to others with a need to know.
 - e. You will take responsibility and ownership of project issues, problems and their solutions. This will include providing recommendations for solutions to your supervisor and playing an active roll in the facilitation with other campus departments and outside entities on your projects.
14. The corrective action further stated, "Failure to comply with the above may result in further corrective and/or disciplinary action, up to and including termination."
15. Complainant declined to sign the corrective action or the addendum to it, and grieved it.

August 11, 2006 Disciplinary Pay Reduction

16. On August 11, 2006, Complainant received a disciplinary action of a pay reduction for a period of twelve months. In that disciplinary action, Huetson noted, "Since the corrective action, initially issued to you on August 24, 2005, and amended on March 22, 2006, you have continued to display unprofessional, uncivil and disrespectful behavior towards co-workers and in your interactions with your supervisor and you have failed to perform your duties competently by failing to complete your assignments in a timely manner and by not accepting responsibility for project and work place issues and their solutions."
17. The language regarding Complainant's expectations included in the August 24, 2005/March 22, 2006 corrective action was included in the disciplinary action letter. The letter further stated, "Additionally, failure to comply with the previously defined corrective actions above, to behave in a professional and collegial manner with others, including your supervisor, and to competently perform your duties may result in further corrective or disciplinary action, up to and including termination." Complainant acknowledged receipt of the August 11, 2006 disciplinary action letter.
18. Complainant filed an appeal of the disciplinary action with the State Personnel Board.

2006 Disciplinary Termination, Appeal and Reinstatement

19. In October of 2006, Huetson held a meeting with Complainant pursuant to Board Rule 6-10. The topics of the meeting were: 1) a trench was dug on one of Complainant's projects had caused significant damage to the root ball of a large tree on CU's campus; and 2) construction on one of Complainant's projections began without the completion of the proper paperwork.

20. Complainant was terminated after that meeting, and filed an appeal. A hearing was held at the State Personnel Board. Both the 2006 disciplinary pay reduction and the termination were addressed at the hearing.
21. The Board affirmed the disciplinary pay reduction.
22. The Board overturned Complainant's termination and determined that a corrective action would be appropriate for the incidents. Complainant returned to work on April 4, 2008.
23. The tree that was the subject of Complainant's 2006 termination is still living.

April 2, 2008 Corrective Action

24. Upon his return, Complainant received a corrective action dated April 2, 2008, regarding the incident with the tree and not obtaining an authorization to proceed on a project before beginning construction on a project. This is the corrective action the Board had stated was an appropriate substitute for the termination.
25. The April 2, 2008 corrective action stated, "It is imperative that you perform effectively as a project manager by interacting with coworkers, colleagues and management in only a professional, respectful, problem-solving manner. You must offer specific recommendations, and facilitate the timely completion of projects in an efficient manner. You must follow each directive outlined in this and the previous corrective action and disciplinary action for the remainder of your career in Housing and Dining Services. Failure to comply with the above may result in further corrective and/or disciplinary action, up to and including termination."
26. Complainant refused to sign the corrective action and grieved it.

Hecht Removed as Complainant's Supervisor

27. Prior to Complainant's 2006 termination, he was involved in a work-related discussion with Hecht. During the discussion, Hecht lost his temper and expressed inappropriate anger towards Complainant. Hecht realized the impropriety of his behavior and reported the incident to Huetsen. At that time, Huetsen removed Complainant from Hecht's supervision, and began directly supervising Complainant himself.
28. As a result of the incident in which Hecht was removed as Complainant's supervisor, Complainant reported the incident to CU's Office of Labor Relations and to CU's police department. No criminal charges were filed against Hecht.

Complainant's Return to Work

29. To Complainant's surprise, Hecht, not Huetson, was his supervisor when he returned to work in 2008.
30. When Hecht learned that Complainant would be returning to work, he assigned some of the other Project Managers' projects to Complainant. Hecht told the unit's staff that Complainant would be returning, and that they were to treat him with respect and consideration.
31. Upon Complainant's return, Hecht held a meeting of the unit staff, including Complainant, to discuss transitioning some projects to Complainant. Complainant was not given a heavier workload than the other Project Managers.
32. During Complainant's absence, the unit had undergone a space revision and Complainant's old work space was not available. As such, Complainant was temporarily assigned to work in a different building and did not have a file cabinet. In about a month, he was placed in the same work area as the other Project Managers and was given a file cabinet.
33. Before Complainant's 2006 termination, he rode a bicycle that belonged to Respondent around campus. When he returned, Heidi Roge, another Project Manager, had taken over the bike, and it was no longer available to him. However, there were two cars available to the unit, and Complainant sometimes had access to one of those vehicles.
34. When Complainant returned, Hecht gave Complainant the unit's project management notebook, and told him to take a week or ten days to go through it, and ask Hecht if he had any questions. Hecht was surprised that Complainant had as many questions as he did.
35. Hecht also asked Heidi Roge to provide Complainant with training in the budget sheet requirement and the Excel program. Project Managers are required to receive 40 hours of training each year, and 20 of it must be on the Excel program.
36. Upon Complainant's return, Hecht presented Complainant with his performance plan, and gave him the opportunity to have input on it. Hecht also spoke to CU's Office of Labor Relations to ensure that Complainant's performance plan was appropriate. Complainant disagreed with his performance plan, but it was virtually the same as at least one other Project Manager's plan.
37. Complainant did not believe that Hecht utilized performance planning adequately. He felt that he was never given an opportunity to participate in his performance plans or his evaluations once Hecht became his supervisor.

38. When Complainant first returned to work after being reinstated, Hecht told him, "Come to see me if you have any problems." When Complainant did go in with a question, Hecht cut him off, and told him to send an email scheduling an appointment. When that happened, Complainant thought to himself, "Steve, I don't really need to talk to you. I will figure it out on my own."
39. Complainant and Hecht met for a mid-year coaching session on September 18, 2008, and Hecht told Complainant that his performance was satisfactory.

Complainant's April 2009 Evaluation

40. On Complainant's evaluation of April 2009, Hecht gave Complainant a performance rating of 199.7 which was "Below Expectations." Complainant disagreed with the evaluation and disputed it.
41. Huetson changed the evaluation to 204.7, which was within the "Meets Expectations" range.
42. Hecht did not consider all of the positive aspects of Complainant's work in evaluating him.
43. When Complainant grieved his April 2009 evaluation, the grievance was sent to a panel, which upheld the final evaluation score.

July 6, 2009 Corrective Action

44. In July 6, 2009, Complainant received a corrective action based on his April 2009 evaluation. Although Complainant's overall evaluation was within the "Meets Expectations" range, Huetson determined that for the period April 1, 2008, through March 31, 2009, Complainant's performance was below expectations in several areas.
45. Complainant was rated "Below Expectations" in two goals related to the use of budget spreadsheet and information from TMA (a data base used to determine how much money has been charged to a project). Complainant had not made this information available to Hecht when needed to ensure budget figures were aligned with the Finance department and to aggressively seek out resolution and understanding. Complainant was also rated below expectations in the core competencies of communication, interpersonal skills and job knowledge.
46. These were areas where Complainant had already received coaching, and Huetson felt that corrective action was appropriate to delineate what the expectations of Complainant were.
47. The issues noted in the July 6, 2009, corrective action included: 1) not being able to utilize what was taught to him in numerous training sessions (referring to the budget

sheets and software) and failure to meet Hecht's expectations regarding use of the budget spreadsheet; 2) failure to provide budget information; 3) demonstrating a poor level of communication with his supervisor about his projects and, at times, expressing himself in a less than courteous manner with fellow workers, supervisor and outside contractors; 4) having interpersonal skills that were below expectations. The corrective action specifically stated, "While there are times when he is friendly and easy to work with, there are others where he is difficult to work with, being loud, aggressive in manner and disrespectful"; and 5) having difficulty with how to best resolve issues as they arise around his projects. He was required to continue to improve interpersonal relationships with his supervisor, fellow staff members and customers.

48. The July 6, 2009 corrective action contained the following language, "Failure to improve your performance in each of these areas may, or other unsatisfactory performance in the other areas, may result in further corrective and/or disciplinary action, up to and including termination."
49. Only two people out 73 employees who received "Meets Expectations" evaluations received corrective actions based on their evaluations.
50. Complainant grieved that corrective action and alleged discrimination based on national origin and retaliation.

Joycare Project

51. Joycare is a daycare facility which was housed in the First Christian Church in Boulder at all times relevant to this appeal. Because the church was for sale, and was under contract, Joycare began looking for a new facility in 2006. John Alderson is the president of Joycare.
52. In looking at different potential sites for Joycare around Boulder, Alderson considered a site at CU known as Smiley Court, and asked if he could see it. A representative from CU told Alderson that Smiley Court would be too expensive renovate.
53. In 2008, Alderson revisited Smiley Court as a possibility for Joycare and began talking to people at CU about it in 2009. At that time, CU expressed an interest because it needed a daycare facility for the children of its faculty and staff.
54. In March of 2009, Alderson did a walk-through at Smiley Court with Brian Walton, CU's Maintenance Supervisor, to see what would be needed to be done so the facility could meet Joycare's needs. When Walton realized that Alderson's requests included structural changes, the project was referred to the Project Management Unit and assigned to Complainant.

55. Alderson created the drawings of the proposed structural changes, and his drawings were used for estimating the costs of renovating the facility. Alderson also wrote the scope of work, and it was agreed that Joycare, not CU, would pay for the renovations.
56. To save on costs, Alderson and others associated with Joycare agreed to volunteer their time to do portions of the project like painting and plumbing. Because Joycare was responsible for the payment of the renovations, they were very interested in knowing the costs of the project.
57. During the first week of May, Alderson met with Complainant and representatives from Whitestone Construction Services, Inc., who was providing a bid on the renovation project. During the meeting, Whitestone's costs were discussed. Thereafter, Whitestone representatives did a walk-through and provided a bid to Complainant. At Alderson's request, Complainant gave a copy of the bid to Alderson to discuss with the Joycare Board. Complainant felt it was appropriate to give Alderson a copy of the bid because Joycare, not CU, would be paying for the renovations. Huetsen had already provided a cost estimate to Alderson, so Joycare had the information it needed.
58. The bid provided by Whitestone was over \$25,000. CU requires competitive bids on any project that is over \$25,000, and bids are not to be shared outside of CU.
59. Craig Schuck, the Manager for Maintenance and Grounds Operations for CU's Housing and Dining Services, learned that Complainant provided the Whitestone bid to Alderson. Schuck informed Complainant by email that it was inappropriate to provide a client with a direct quote from a contractor because the bid is CU's property.
60. Schuck explained that it was inappropriate to provide such information because his unit was still doing scope of work investigations, and was in the middle of negotiations. As such, the bids of outside contractors were proprietary and confidential.
61. After Complainant received the email, he went to Schuck's office, unannounced, to discuss the email. Complainant told Schuck that he was correct in sending the direct quote to Alderson and that Schuck was "wrong." Complainant's demeanor was demanding and confrontational, and his voice kept rising. Schuck was confused by Complainant's behavior because he felt it is common sense to not share bid information with a customer.
62. Schuck told Complainant that he needed to go to a meeting and walked out of his office. Complainant continued to follow him, and was shouting. At some point, Schuck became angry and also raised his voice. Schuck's entire office was disrupted.

63. Complainant followed Schuck through the office, down the stairs, and outside. The two continued to argue about whether it was appropriate for Complainant to share bid information with Alderson. The argument continued in a professional manner on the sidewalk until Complainant said, "I guess we will just have to agree to disagree."
64. Schuck was so concerned about Complainant's behavior that he reported it to Hecht and to Huetson.
65. Schuck did not begin working at the University until 2008, and did not have any knowledge about Complainant until he began working with him.

Stearns East Roof Leak and Mold Abatement

66. A contractor, Excel Environmental, Inc. (Excel) was hired to do asbestos abatement and demolition of certain bathrooms in the east tower of a residence hall known as Stearns (hereinafter Stearns East). After Excel's work was complete, another contractor, Rhinotrax, was scheduled to begin reconstruction of the bathrooms. Complainant was the Project Manager for the project.
67. While working on that project in May of 2009, Excel's crew members discovered water leaking into the building and mold which had damaged the dry wall and the plaster.
68. On May 29, 2009, Linda Froemke, the Project Manager for Excel, contacted Complainant and Timothy Lockhart of CU's Environmental Health and Safety Department (EHS). EHS exists to protect CU's faculty, staff and students from getting sick as a result of their work environment.
69. Froemke informed Lockhart and Complainant that her crew had found water damage in Stearns East and that there was potential for mold growth in two areas of the building known as the 50 and 60 stacks. To properly clean mold, all porous materials would have to be removed and the rest of the area would have to be cleaned.
70. Froemke and Lockhart walked through Stearns East on May 29, 2009, to evaluate the situation. That same day, Lockhart sent Complainant an email stating that after a brief inspection of the roof, he was not able to determine the source of the leak. Lockhart further wrote that it would be necessary to remove the porous materials and clean the remainder with a 10% bleach solution to properly remove the mold. Finally, Lockhart informed Complainant that he would be at a conference most of the following week, and gave Complainant the names of individuals at EHS who could answer any questions he might have.
71. On June 2, 2009, Brandon Boger of EHS wrote an email to Complainant and others (including Hecht and Huetson). Boger stated that Excel had finished the asbestos abatement at Stearns East, and had set up a temporary catch-basin to capture rain

water as it leaked into the building. While it was clear from Boger's email that the leak had not been fixed, it was not clear whether the mold had been abated or not.

72. On June 8, 2009, Complainant wrote Boger asking for a report on the roof repairs and the mold issue, as someone else at CU was responsible for having a roofing contractor fix the leak and for the mold abatement. Complainant's primary concern was having the area cleared so Rhinotrax could come into Stearns East to start the reconstruction of the bathrooms.
73. Lockhart had scheduled a walk-through of Stearns East on June 9, 2009, but Complainant was unable to attend it due to other work obligations. The purpose of the walk-through was to develop a timeline and general scope of work for the leak and mold abatement work. Complainant asked that he be informed of the timeline and scope of work so he could determine how his bathroom reconstruction project would be impacted.
74. On June 11, 2009, Complainant asked Lockhart again for a report regarding the mold and the roof leak issue. Lockhart responded by saying there would be another walk-through with Froemke the next day and all of Complainant's questions could be answered then. Complainant wrote back stating that he still wanted a report from EHS for his project needs.
75. After June 11, 2009, Lockhart told Complainant that the mold had been cleaned, but that EHS did not issue a certificate for mold clearance as it did for asbestos clearance. Complainant continued to ask for a certificate or report even after it was explained to him that customarily protocol did not require one. Complainant insisted that the mold had not been cleaned, and in support of his position, sent Lockhart a picture of a shower which had been taken in February of 2009 before the clean up had been done.
76. Lockhart became frustrated because he felt like Complainant did not understand what needed to be done, and that the project was taking too long. Derrick Watson, Lockhart's supervisor, sent an email to Huetson on June 17, 2009, expressing his frustration with Complainant and the delay of the project. Huetson emailed Complainant, instructing him to meet with Hecht to address the issue. Complainant did not follow that instruction.
77. On June 18, 2009, Watson scheduled a meeting with Boger, Lockhart's supervisor, Hecht and Complainant during the third week in June. The purpose of the meeting was to clear up any confusion regarding the mold abatement issue.
78. It was determined that the mold had been cleaned but Complainant was still asking for assurances in writing that everything was clear and the contractors could start on the reconstruction of the bathrooms.

79. Lockhart eventually called Bob Podell of Rhinotrax to assure him that there was no existing danger of mold exposure. Podell was concerned about getting a clearance for air and mold before Rhinotrax started work on the project.
80. Although the project may have been delayed based on Complainant's insistence that he get a report from EHS on the clearance of mold, the delay was not significant. On June 11, 2009, Lockhart informed Complainant that Froemke could answer Complainant's questions about the roof leak and mold abatement on June 12, 2009. It does not appear that anyone told Complainant before June 12 that the leak had been fixed and the mold had been cleaned.
81. Lockhart did not know Complainant before working with him on the Stearns East project.

"Communication Breakdown" Email

82. In addition to communicating with EHS about the mold abatement issue, Complainant wrote emails to others regarding the issue. For example, he wrote an email on June 16, 2009, to an individual at CU's Residence Life department that "there was a communication breakdown from EHS and Maintenance" regarding Complainant's request for updates and scope of work regarding the mold and leak issues. Complainant copied a number of people on that email, including Schuck and Hecht.
83. There was a communication breakdown as no one informed Complainant about the mold clearance until June 12, 2009 when Lockhart told him..
84. When Schuck received the email, he wrote to Complainant, in part, "Please explain the 'communication breakdown' from EHS and Maintenance . . . I am also curious why you might choose to put your own organization of Facilities in a bad light in the customers' eyes?" Complainant responded that he would like to meet Schuck for a cup of coffee to discuss the issue.
85. Schuck responded by asking for a written document explaining exactly what the communication breakdown between EHS and Maintenance was so that those teams could address any potential problems. Schuck further stated that he viewed his comments about putting Facilities in a bad light as performance related and could only be appropriately discussed in an environment where Complainant's immediate supervisor was present.
86. Complainant felt that Schuck was threatening him by stating that he would meet only with Complainant and his immediate supervisor.
87. Complainant wrote back to Schuck stating, in part, "I must ask you to stop this harassment and your comments are disrespectful to me as a person of color. I need you to understand and respect my diversity and views even if you do not agree with

them. I have given you the benefit until now.” Complainant’s response of accusing Schuck of harassment escalated the situation into a conflict. Complainant never did provide a direct answer as to what the communication breakdown was.

Email Requesting Information

88. On June 12, 2009, Complainant sent an email to Froemke asking her a number of questions about the roof leak and repair on Stearns East. Complainant was trying to determine the status of the leak and abatement so Rhinotrax could begin the bathroom reconstruction.
89. Complainant copied Schuck and others on the June 12, 2009 email to Froemke. Schuck wrote to Complainant that he did not think the questions were appropriate for Froemke as she was a contractor, and not a decision maker on the project. Moreover, she is not an employee of CU.
90. Schuck told Complainant that he could have gotten the information he needed by going to EHS for clearance information or Risk Management (for insurance coverage questions). Complainant also could have directed his questions to Don Seely, the Central Zone supervisor who worked for Schuck because the South Zone supervisor was on vacation. Seely had made numerous trips to Stearns and was well aware of the leak and mold damage.
91. Although Froemke had no problems working with Complainant and did not feel that he ever asked her inappropriate questions, Complainant’s questions could have been directed to the appropriate people within CU.

Key Incident

92. Contractors working on construction projects at CU frequently are given card keys, or access cards, for the particular project on which they are working. The keys are issued by CU’s Housing Department Office of Technology (OIT), which manages access service for Housing and Dining. Jeff Spivey is the Integrated Security Manager for that office.
93. The card keys are electronically coded and have expiration dates, so it is not necessary for contractors to return them.
94. In August of 2009, Linda Froemke, the contractor with Excel, had finished a project, and wanted to turn in her access cards to Complainant. Complainant told her that she would need to get a receipt for the access cards from Spivey so he could pay Excel’s final bill for the project.
95. Although there is a process for turning in metal keys and getting a receipt for them, there is no such process for access cards. The receipts for metal keys are provided by the lock shop and not by Spivey’s office.

96. In compliance with Complainant's instructions, Froemke went to Spivey to get a receipt for the access cards. Spivey explained to her that there was no such process for access cards. Froemke became upset because she said Complainant would withhold payment unless she got a receipt for the access cards.
97. Spivey called Complainant to explain that there was no receipt that he could provide for the access cards. Complainant raised his voice and was hostile to Spivey. He told Spivey that he didn't know his own job, and would call Spivey's supervisor. Spivey explained that while there was such a process for metal keys, there was not a receipt process for the access cards.
98. Froemke also asked Spivey to give her access cards for another contractor. Spivey explained that he could not do that because it was against policy. During the telephone conversation with Complainant, this issue was also discussed. Complainant said that the cards had already been issued to the other contractor, but were not working.
99. By looking at the computer, Spivey could not see any reason why the access cards were not working, and told Complainant that issuing keys would not fix the problem. Complainant continued to raise his voice and told Spivey that it was not his job to figure out why the cards were not working. Complainant's tone of voice was hostile.
100. Spivey became angry during the conversation, and also raised his voice. When he realized that he was not going to be able to resolve the issues with Complainant, he told Complainant he was going to hang up, and did. Spivey did send Complainant an email acknowledging that Froemke had turned in the access cards.
101. After the incident, Spivey called Hecht and complained about Complainant's inappropriate conduct during the telephone call.

Hecht's Treatment of Complainant

102. Complainant and Hecht have a history of conflict. However, when Complainant returned to work in April of 2008, Hecht made an effort to treat Complainant with consideration and respect for about four months.
103. After about four months, Hecht lost patience with Complainant and often treated him with impatience.
104. Hecht was also abrupt with an architect Complainant hired for the Stearns bathroom project on the phone when he called the architect on the phone and asked him questions that the architect could not readily answer.
105. Complainant was embarrassed by the way Hecht treated the architect, and later called him and apologized for Hecht's behavior.

106. Because of the way Hecht treated Complainant, some of Complainant's co-workers felt uncomfortable spending time with Complainant because they felt that they might begin also receiving unfavorable treatment.
107. Hecht would often start asking Complainant questions as soon as Complainant got to work before Complainant even got his coat off in the morning, and put a great deal of pressure on Complainant.
108. Hecht's treatment of Complainant was not based on Complainant's race or retaliation for Complainant's previous appeals or grievances. Complainant and Hecht have a personality clash, and Hecht lost patience with Complainant after Complainant began exhibiting behaviors similar to those before he was terminated in 2006.
109. Complainant is the only Hispanic employee that Hecht supervised. He once asked Complainant to be on a hiring committee, and said, "We need more people of your kind." Hecht meant individuals with Complainant's knowledge and background, but Complainant thought Hecht meant Hispanics.
110. On November 17, 2008, Complainant sent Hecht an email asking for the process on seeing a doctor for a worker's compensation claim. Hecht told Complainant that he would get him the necessary forms and let Complainant know.
111. Complainant followed up with an email stating that his worker's compensation claim was based on work related stress "due to the harassment and retaliation" he had received in the previous week. Complainant was referring to the way Hecht had treated him.
112. Hecht did know why Complainant felt harassed or retaliated against, and did not ask him.
113. Complainant sought the advice of CU's Operational Manager of Custodial Services, Darrin Gist, about the problems he was having with Hecht. Complainant sought Gist's advice because Gist was a manager and his wife worked in Human Resources. Gist advised Complainant to follow the dictates of his progressive discipline.
114. Although Gist initially provided advice to Complainant, he later became uncomfortable with those conversations because Complainant would get confrontational, raise his voice, and say that he was not "going to kiss their ass." Gist noticed that Complainant became agitated when discussing his personnel situation.

Hecht's Request for Budget Sheet

115. On or around July 28, 2009, Hecht left some of Complainant's submitted budget sheets in Complainant's chair, seeking clarification.
116. When Complainant found them, he felt that Hecht was badgering him, and sent an email that stated, in part, "The budget sheet is always referred to as a tool I use; I just realized that you think it should also be used as a hammer to demean your staff."
117. Hecht was taken aback by Complainant's response, and reported the issue to Huetson.

Rule 6-10 Meeting

118. On August 18, 2009, Huetson held a meeting with Complainant pursuant to Board Rule 6-10 to discuss complaints he had received about Complainant's behavior and performance. Complainant attended the meeting with his attorney.
119. One issue discussed was Schuck's complaint that Complainant provided Alderson with a bid from a contractor for the Joycare project, and Complainant's reaction when Schuck told him that he should not have done so. Huetson noted Schuck's complaint that Complainant came to his office, and raised his voice, telling Schuck that he was "wrong" about the bid issue, disrupting Schuck's office staff. They further discussed Schuck's complaint that Complainant followed him out of his office, down the stairs and across the parking lot. Complainant did not follow Schuck to his car, but did follow him to the sidewalk outside the building.
120. In response to this complaint, Complainant stated that he was never told not to provide the bid information to Alderson, and asked that Huetson talk to a witness who saw him and Schuck outside of the building. Huetson did contact the witness who stated that both Schuck and Complainant were "emphatically" trying to make a point to the other.
121. Huetson raised Schuck's concern that Complainant was sending emails asking questions of people who were not the appropriate source of information. In response to that complaint, Complainant said he wasn't sure what Schuck was talking about. However, Huetson was concerned that instead of determining who the correct source of information is, Complainant sent the email to several people resulting in wasted time and confusion. Huetson was also concerned that instead of responding in a cooperative manner, Complainant reacted negatively, and not conducive to solving the issue.
122. The issue of Complainant referencing a "communication breakdown" between EHS and Maintenance was also addressed during the Board Rule 6-10 meeting.

Huetson felt that Schuck had raised a legitimate concern. When asked for information regarding the alleged "breakdown," Complainant did not provide the information, and reacted negatively by accusing Schuck of harassment. Huetson determined that Complainant escalated the situation into one of conflict instead of trying to resolve the issue or provide the requested information to Schuck.

123. After the Board Rule 6-10 meeting, Huetson contacted CU's Office of Discrimination and Harassment because Complainant alleged that Schuck was harassing him. That office contacted Complainant. Complainant indicated that he did not want to follow up with the harassment complaint.
124. During the Board Rule 6-10 meeting, Huetson raised the issue of the complaint that he had received from Derrick Watson, the Director of EHS, regarding his staff's frustration with Complainant over the mold abatement issue at Stearns East on June 17, 2009. That same day, Huetson had sent Complainant an email asking him to get with Hecht to work out the issue. Complainant had not followed that directive.
125. Huetson found that Complainant exhibited an "unwillingness to communicate specifically to seek resolution to an issue" for which Complainant was responsible regarding the Stearns East abatement process.
126. The key issue involving Jeff Spivey and Linda Froemke was also discussed at the Board Rule 6-10 meeting. When asked about his hostile and rude behavior towards Spivey, Complainant stated, "The system was not working; it is not my job to work access issues, but to get the job done."
127. Finally, Huetson raised the issue of Complainant emailing Hecht that, "The budget sheet is always referred as a tool to use; I just realized that you think it should also be used as a hammer to demean your staff." Huetson found that email to be unprofessional and insubordinate, as well as in violation of previous corrective actions Complainant received regarding performance.
128. In making his final decision, Huetson considered all of the previous corrective and disciplinary actions received by Complainant. Huetson felt that he had made it clear to Complainant that he expected professional communications with others, providing information to Hecht and moving projects forward. Huetson was concerned that Complainant never accepted responsibility for any of the issues raised in the Board Rule 6-10 meeting.
129. Huetson determined that Complainant's behavior was not correctable because of Complainant's failure to correct his behavior after several warnings and opportunities.
130. After fully considering all of the information he had, including the information provided by Complainant during the Board Rule 6-10 meeting, and consulting with CU's Labor Relations office, Huetson decided that termination was appropriate.

Huetson determined that Complainant was unwilling or unable to take ownership of the issues regarding his performance and behavior. He also considered the facts that Complainant and Hecht had an ongoing history of conflict.

131. Complainant timely appealed his termination.

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; §§ 24-50-101, *et seq.*, C.R.S.; *Department of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994). Such cause is outlined in State Personnel Board Rule 6-12, 4 CCR 801, and generally includes:

- (1) failure to 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. *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 did commit most of the acts for which he was disciplined.

Complainant demonstrated hostile and confrontational behavior with Schuck on at least two occasions. Complainant provided proprietary bid information to Alderson regarding the Joycare project. When Schuck told Complainant that he should not have provided the bid information to Alderson, Complainant went to Schuck's office and confronted him angrily, telling Schuck he was "wrong." Complainant's unprofessional behavior caused Schuck to also get angry, and the confrontation was disruptive to the employees in Schuck's office. Following Schuck out of his office was inappropriate, aggressive and potentially threatening behavior. When Complainant wrote an email to several people indicating that there was a "communication breakdown" between Maintenance and EHS, Schuck was not unreasonable in asking Complainant what the alleged breakdown was. Instead of providing the requested information, Complainant

accused Schuck of harassing him. Once again, Complainant escalated a routine business matter into one of conflict and antagonism.

Complainant also sent emails asking questions to Froemke, a contractor, and others asking questions regarding the mold abatement and leak at Stearns East; those individuals were not the proper parties to whom the questions should have been directed. Complainant was not responsible for the significant delay on the Stearns East project; he did not receive clear information that the mold had been abated until June 12, 2009. If he was responsible for any delay at all, it was insignificant. Complainant told Froemke to get a receipt for access cards when a receipt was not needed and asked her to request keys for a different contractor from Spivey. When Spivey tried to explain to Complainant that neither of those requests followed procedure, Complainant became rude and confrontational with Spivey. Finally, when Hecht sent Complainant an email regarding budget sheets, Complainant responded in an unprofessional and confrontational manner by telling Hecht that used budget sheets as a "hammer to demean" his staff.

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).

Huetson used reasonable care and diligence to gather all of the relevant information concerning the allegations against Complainant. He gave Complainant an opportunity to address all of the issues during the Board Rule 6-10 meeting. He followed up by looking at the relevant emails and speaking to the witness Complainant suggested regarding the confrontation with Schuck. Huetson also considered the fact that Complainant and Hecht had an ongoing history of conflict. However, he received complaints from other people such as Schuck, Spivey and Lockhart's supervisor, Watson. Schuck and Spivey also raised concerns about Complainant's rude and confrontational behavior that others had previously reported before Complainant was terminated in 2006. Notably, Schuck and Spivey were not employees of CU when Complainant was terminated in 2006, and did not have any history with him. Lockhart also had no history with Complainant prior to the Stearns East project. Lockhart's complaints regarding Complainant, however, appear to be based on confusion, rather than Complainant's failure to take appropriate action.

While Hecht was often rude to Complainant, the majority of the complaints against Complainant came from others. Moreover, it was Huetson who made the decision to terminate Complainant, and not Hecht. Huetson gave Complainant ample opportunity to improve his interpersonal skills over the years by issuing corrective actions to him. At least one of Complainant's supervisors prior to Hecht had indicated that Complainant needed to improve his communication skills. Despite the many opportunities to correct his communication style, Complainant continued to escalate situations by being rude and confrontational.

In his prior corrective actions and his 2006 disciplinary action of a pay reduction, Complainant was told to provide pertinent project information in a cooperative and timely manner to his supervisors and others who needed the information. Complainant did not follow the directive when he failed to give Schuck the information regarding the alleged communication breakdown between Maintenance and EHS. He did not follow the directive of treating Hecht with civility and respect when he sent the email stating that the budget sheets were a "hammer used to demean" employees; such a statement is inflammatory and disrespectful. While Complainant failed to demonstrate job knowledge by providing the bid to Alderson, sending an email asking questions of inappropriate sources, and asking for a key receipt, the most concerning aspect was Complainant's response to legitimate questions or disagreement. Complainant escalated what could have been routine problems into uncomfortable confrontations which disrupted the workplace.

C. The discipline imposed was within the range of reasonable alternatives.

The credible evidence demonstrates that the appointing authority pursued his decision thoughtfully and with due regard for the circumstances of the situation as well as Complainant's individual circumstances. Board Rule 6-9, 4 CCR 801. Complainant received at least three corrective actions and one disciplinary action before Huetson made the decision to terminate him. Complainant was given ample opportunity to correct his behavior, but failed to do so satisfactorily. Huetson concluded that Complainant's behavior was not correctable because of Complainant's failure to correct his behavior after several warnings and opportunities. Under these circumstances, Huetson's conclusion was justified. Therefore, termination was within the range of reasonable alternatives.

D. Respondent did not discriminate against Complainant and the basis of National Origin/Ancestry.

Complainant has alleged that Respondent discriminated against him on the basis of his national origin or ancestry. To prove intentional discrimination under the Colorado Anti-Discrimination Act (CADA), section 24-34-402, C.R.S., an employee must establish, by a preponderance of the evidence, a *prima facie* case of discrimination. The elements of a *prima facie* case of intentional discrimination are:

- a. complainant belongs to a protected class;

- b. complainant was qualified for the position;
- c. complainant suffered an adverse employment decision despite his or her qualifications; and
- d. circumstances give rise to an inference of unlawful discrimination.

Colorado Civil Rights Commission v. Big O Tires, 940 P.2d 397 (Colo. 1997); *Dep't of Natural Resources v. Bodaghi*, 995 P.2d 288 (Colo. 2000).

Once the employee has established a *prima facie* case of intentional discrimination, he has created a presumption that the employer unlawfully discriminated against the complainant. If the employer does not rebut the presumption, the factfinder is required to rule in favor of the complainant. *Id.*

The burden next shifts to the agency to articulate a legitimate, non-discriminatory reason for the adverse employment action. The agency must provide evidence to support its legitimate purpose for the decision. If the agency offers sufficient evidence to sustain the proffered legitimate purpose, the presumption created by the *prima facie* case is rebutted and drops from the case. *Id.*

The burden then shifts back to the employee to prove that the employer's proffered reasons were in fact a pretext for discrimination. The employee can satisfy this burden of proof through evidence already in the record. Colorado law does not require, in every case, that the complainant offer additional evidence to support an inference of intentional discrimination. *Bodaghi*, 995 P.2d at 298. Complainant's *prima facie* case, combined with the factfinder's conclusion that the employer's asserted justification is false or pretextual, is sufficient to permit the trier of fact to conclude that the employer unlawfully discriminated. *Id.*

In this case, Complainant, who is Hispanic, is a member of a protected class. He was a competent Project Manager who was qualified for his position. He suffered the adverse employment action of being terminated. However, the circumstances do not give rise to an inference of discrimination. Although Complainant was a competent Project Manager, his repeated unprovoked hostile confrontations with different individuals were the primary basis for his termination. Complainant was warned over several years, by more than one supervisor that he needed to improve his interpersonal skills. Individuals who had no history with Complainant experienced this confrontational behavior from Complainant, and were concerned enough that they contacted his supervisor. Moreover, Complainant failed to provide requested information and insisted on receiving documentation which did not exist. Complainant has failed to establish a *prima facie* case of discrimination. Even if he had, Respondent has articulated a legitimate business reason for terminating Complainant. Complainant's claim of discrimination, therefore, fails.

Complainant also suffered an adverse employment action when he received the July 2009 corrective action which was based on his April 2009 performance evaluation. The circumstances surrounding that corrective action also do not give rise to an

inference of discrimination. Although Complainant's overall evaluation was within the range for "Meets Expectations," there were a number of areas where Complainant fell below expectations. These were areas where Complainant had already received coaching, and Huetson felt that corrective action was appropriate to delineate what expectations of Complainant were. The main problems were professional interactions and taking charge of projects to which he was assigned. Complainant has failed to establish a *prima facie* case of discrimination regarding his corrective action, and his claim of discrimination based on that action fails.

E. Respondent did not retaliate against Complainant.

The CADA prohibits retaliation and provides that it is a discriminatory or unfair employment practice to "discriminate against any person because such person has opposed any practice made a discriminatory or an unfair employment practice by this part 4, because he has filed a charge with the commission, or because he has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to parts 3 and 4 of this article." Section 24-34-402(1)(e)(IV), C.R.S. This language is identical to that in the retaliation provision of Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. section 2000e-3(a). Therefore, federal case law interpreting this provision is given persuasive authority by the Board. *Big O Tires, supra*.

To establish a *prima facie* case of retaliation under the Act, Complainant must establish he or she:

1. engaged in protected activity of opposing discriminatory conduct or filing a charge of discrimination;
2. was subjected to adverse employment action; and
3. a causal connection exists between the protected activity and the adverse action.

Berry v. Stevinson Chevrolet, 74 F.2d 980, 985 (10th Cir. 1996).

Complainant did engage in a protected activity. He filed a number of grievances and appeals. The last grievance he filed regarding his July 2009 corrective action alleged possible discrimination based on national origin and retaliation based on his reinstatement following his previous appeal to the Board.¹ As noted above, he was subjected to two adverse employment actions. Thus, the only remaining question is whether a causal connection exists between the protected activity and the adverse actions.

A causal connection may be demonstrated by evidence of circumstances that justify an inference of retaliatory motive, such as protected conduct closely followed by adverse action. *Love v. RE/MAX of America, Inc.*, 738 F.2d 383, 386 (10th Cir. 1984); *Anderson v. Coors Brewing Co.*, 181 F.3d 1171, 1179 (10th Cir. 1999). The inference of

¹ Although there was testimony that Complainant filed other grievances, neither party introduced those grievances into the record at hearing. Therefore, it is unknown how many of those grievances included allegations of discrimination.

retaliation generally requires a "close temporal proximity" between the protected activity and the subsequent adverse action. *Marx v. Schnuck Markets, Inc.*, 76 F.3d 324, 329 (10th Cir. 1996). For instance, the Tenth Circuit has held that a six-week period between protected activity and adverse action may, by itself, establish causation for purposes of the *prima facie* case of retaliation.

In this case, Complainant filed a grievance of his July 2009 corrective action alleging discrimination and retaliation. On August 18, 2009, Huetson held a Board Rule 6-10 meeting with Complainant. Complainant was then terminated on October 20, 2009. Given the temporal proximity between Complainant's grievance and his termination, he has established a causal connection and a *prima facie* case of retaliation. A *prima facie* case of retaliation based on the corrective action was not established; although Complainant disputed his April 2009 performance evaluation, he did not allege discrimination in that dispute. Complainant has failed to demonstrate a causal connection between a protected activity and his corrective action.

Because Complainant has established a *prima facie* case of retaliation, the burden shifts to Respondent to articulate a legitimate, non-discriminatory reason for the adverse employment action. The agency must provide evidence to support its legitimate purpose for the decision. If the agency offers sufficient evidence to sustain the proffered legitimate purpose, the presumption created by the *prima facie* case is rebutted and drops from the case. In this case, Respondent has articulated a legitimate, non-discriminatory reason for terminating him. As stated above, Complainant has been warned repeatedly about his angry, unprofessional conduct, but has been unwilling or unable to correct that conduct. In June of 2009, several unbiased individuals complained about Complainant's conduct. Then, on July 28, 2009, Complainant wrote an insubordinate, unprofessional email to his supervisor. Based on these complaints, Huetson determined that it was necessary to have a Board Rule 6-10 meeting with Complainant.

Complainant has not demonstrated the reasons articulated by Respondent to be a pretext for retaliation under CADA. Pretext may be proven either directly by demonstrating that an unlawful motive more likely motivated the employer, or indirectly by showing that the employer's proffered explanation is unworthy of credence." *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 257 (1981); *Bullington v. United Air Lines, Inc.*, 186 F.3d 1301, 1317 (10th Cir. 1999). Pretext may be proven by demonstrating "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence." *Bullington, supra*. Pretext may be proven directly through evidence showing that an unlawful motive more than likely motivated the employment decision. *Burdine, supra*. Complainant has failed to demonstrate, directly or indirectly, that Respondent's motive for terminating him was a pretext for retaliation.

F. Attorney fees 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. § 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.

Complainant requested an award of attorney fees and costs. Because he did not prevail in this matter, there is no basis for such an award.


CONCLUSIONS OF LAW

1. Complainant committed most of the acts for which he was disciplined.
2. Respondent's actions were 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 actions are **affirmed**. Complainant's appeal is dismissed with prejudice. Attorney fees and costs are not awarded.

Dated this 30th day of September, 2010.



Hollyce Farrell
Administrative Law Judge
633 – 17th Street, Suite 1320
Denver, CO 80202
303-866-3300

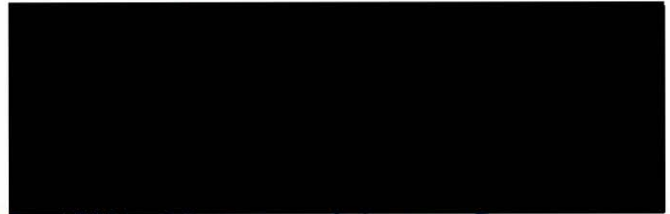
CERTIFICATE OF SERVICE


This is to certify that on the 30th day of Sept., 2010, I electronically served true copies of the foregoing **INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE and NOTICE OF APPEAL RIGHTS** addressed as follows:

Patricia Bellac, Esq.



Elvira Strehle-Henson





Andrea C. Woods

NOTICE OF APPEAL RIGHTS

EACH PARTY HAS THE FOLLOWING RIGHTS

1. To abide by the decision of the Administrative Law Judge ("ALJ").
2. To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is mailed to the parties. Section 24-4-105(15), C.R.S. Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is mailed to the parties. Section 24-4-105(14)(a)(II) and 24-50-125.4(4) C.R.S. and Board Rule 8-67, 4 CCR 801. The appeal must describe, in detail, the basis for the appeal, the specific findings of fact and/or conclusions of law that the party alleges to be improper and the remedy being sought. Board Rule 8-70, 4 CCR 801. Both the designation of record and the notice of appeal must be received by the Board no later than the applicable twenty (20) or thirty (30) calendar day deadline referred to above. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990); Sections 24-4-105(14) and (15), C.R.S.; Board Rule 8-68, 4 CCR 801.
3. The parties are hereby advised that this constitutes the Board's motion, pursuant to Section 24-4-105(14)(a)(II), C.R.S., to review this Initial Decision regardless of whether the parties file exceptions.

RECORD ON APPEAL

The cost to prepare the record on appeal in this case is \$50.00. This amount does not include the cost of a transcript, which must be paid by the party that files the appeal. That party may pay the preparation fee either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS. A party that is financially unable to pay the preparation fee may file a motion for waiver of the fee. That motion must include information showing that the party is indigent or explaining why the party is financially unable to pay the fee.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. Board Rule 8-69, 4 CCR 801. To be certified as part of the record, an original transcript must be prepared by a disinterested, recognized transcriber and filed with the Board within 59 days of the date of the designation of record. For additional information contact the State Personnel Board office at (303) 866-3300.

BRIEFS ON APPEAL

When the Certificate of Record of Hearing Proceedings is mailed to the parties, signifying the Board's certification of the record, the parties will be notified of the briefing schedule and the due dates of the opening, answer and reply briefs and other details regarding the filing of the briefs, as set forth in Board Rule 8-72, 4 CCR 801.

ORAL ARGUMENT ON APPEAL

A request for oral argument must be filed with the Board on or before the date a party's brief is due. Board Rule 8-75, 4 CCR 801. Requests for oral argument are seldom granted.

PETITION FOR RECONSIDERATION

A petition for reconsideration of the decision of the ALJ must be filed within 5 calendar days after receipt of the decision of the ALJ. The petition for reconsideration must allege an oversight or misapprehension by the ALJ. The filing of a petition for reconsideration does not extend the thirty-calendar day deadline, described above, for filing a notice of appeal of the ALJ's decision. Board Rule 8-65, 4 CCR 801.