

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

SHAUN RILEY,

Complainant,

vs.

DEPARTMENT OF HUMAN SERVICES, WHEAT RIDGE REGIONAL CENTER,

Respondent.

Administrative Law Judge Hollyce Farrell held the hearing in this matter on August 2, 2010, at the State Personnel Board, 633 17th Street, Courtroom 6, Denver, Colorado. Assistant Attorney General Joseph Haughain represented Respondent. Respondent's advisory witness was Dave Johnson, a Qualified Mental Retardation Professional (QMRP), and Complainant's Appointing Authority. Complainant represented herself.

MATTER APPEALED

Complainant, Shaun Riley (Complainant) appeals her three-month disciplinary pay reduction of five percent by Respondent, Colorado Department of Human Services (CDHS), Wheat Ridge Regional Center (WRRRC or Respondent). Complainant seeks rescission of the disciplinary action, back pay, corresponding benefits, and assurance that her record reflects no charge of neglect.

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; and
3. Whether the discipline imposed was within the range of reasonable alternatives.

FINDINGS OF FACT

1. Complainant is a certified employee who works as a Client Care Aide I for Respondent at WRRRC.

August 13, 2007 Inservice Memorandum

2. On August 13, 2007, Complainant received an Inservice Memorandum, which addressed several issues including conflict resolution and the CDHS Employee Code of Conduct.
3. The Memorandum indicated that a copy of the CDHS Employee Code of Conduct was attached, and that Complainant was to read it on a regular basis to remind her of what was expected by the Department regarding her conduct towards others. The same Memorandum appears to have been sent to the coworker with whom Complainant had a conflict.

January 9, 2009 Corrective Action

4. On January 9, 2009, Complainant received a Corrective Action for failing to call the staffing pool for her work assignment on December 25, 2008. When the staffing pool called Complainant to give her her work assignment, Complainant refused to go to that area because she did not have a ride. Complainant took an unscheduled absence on a state-recognized holiday.
5. Complainant received the following Corrective Action, “. . . If you refuse to accept an assignment you will be subject to disciplinary action, including informational memos, corrective actions and ultimately termination from employment”
6. Complainant did not grieve the January 9, 2009 Corrective Action.

April 7, 2009 Corrective Action

7. On April 7, 2009, Complainant received a Corrective Action for refusing to perform several of her job duties while assigned to a CDHS house. The Corrective Action provided, in part, “You did not open the bathroom doors to let the men do their hygiene, you were talking about children in front of the men, refused to follow a behavior program that was specifically written for one of the individuals and refused to talk to him about his problems, you refused to help with the daily books, you did not engage in active treatment, instead you were reading or talking on the phone. You also refused to sign the inservice sheet that was located in the Cues and Clues book.”

8. The Corrective Action provided that Complainant's failure to correct her performance could result in further corrective and/or disciplinary action.
9. Complainant refused to sign the April 7, 2009 Corrective Action.

May 22, 2009 Corrective Action

10. On May 22, 2009, Complainant received a Corrective Action for playing cards while at work at Jade house, another WRRC house. According to the Corrective Action, Complainant became defensive and would not listen when the Residential Coordinator tried going over Complainant's job expectations with her.
11. That Corrective Action provided, "As written in the Employee Code of Conduct, it states that all employees should listen actively, demonstrate respect for all people and commit to resolve conflicts, accept responsibilities for own mistakes and ask for clarification and guidance when unsure of job duties." The Corrective Action provided that Complainant was expected to follow the CDHS Employee Code of Conduct, and that her failure to correct her performance could result in further corrective and/or disciplinary action.
12. The CDHS Employee Code of Conduct provides that all CDHS employees are expected to:
 - Treat all customers fairly.
 - Be truthful, honest and courteous to co-workers and to customers at all times.
 - Listen actively and share information in open, honest and appropriate ways.
 - Demonstrate respect for all people and their ideas, and commit to resolve conflicts.
 - Be considerate of fellow workers when performing job tasks.
 - Accept responsibility for own mistakes; ask for clarification and guidance when unsure about job duties.
 - Communicate your needs clearly to people in our organization.
 - Show support of departmental decisions through your actions.
 - Assist customers and co-workers in a positive manner and follow through on commitments to them.

- Do your job proactively; don't wait to be told; see the problem, ask for guidance if needed, solve the problem and inform others what was done.
- Propose solutions to problems.
- Complete tasks, meet deadlines, and communicate any reason for delay.
- Stay current with technical knowledge available for their skill field.
- Adapt and be flexible when change happens.
- Take the initiative about seeking communication; don't always wait for it to come to you.
- Be committed to your job and present yourself as a good role model.
- Treat others as they wish to be treated.
- Have a CARE attitude (Caring Attitudes Reap Excellence).

13. Complainant refused to sign the May 22, 2009 Corrective Action.

September 17, 2009 Formal Written Communication

14. On September 17, 2009, Complainant received a letter entitled, "Formal Written Communication," which discussed a number of issues regarding Complainant's performance. The issues discussed included Complainant's misuse of leave without pay, her performance improvement plan, reassignment and Complainant's work schedule.

15. The September 17, 2009 letter also addressed the issue of insubordination and the CDHS policy regarding employee representation at meetings. That portion of the letter provides, "CDHS Policy 2.24 outlines the circumstances under which a supervisor is required to grant an employee request for representation. You have recently indicated that you do not wish to speak with your supervisor without an Employee Representative In the future, refusing to meet with your supervisor regarding day-to-day business will not be tolerated."

16. On January 19, 2010, Complainant was assigned to work at 67th House, a residential facility, which housed eight developmentally disabled individuals. The supervisor at 67th House wanted to give Complainant a fresh start.

January 20, 2010 Incident

17. At 67th House, resident RM receives body checks at the beginning and the end of every shift for bruises, as it is important to know how he received any bruises.

18. On January 20, 2010, one of Complainant's coworkers, Carrie Cordova, was assigned to work with resident RM in the afternoon. Cordova noticed a big bruise on the resident on his right arm above the elbow.
19. Because Complainant had performed the resident's body check in the morning, Cordova asked Complainant about the bruise. Complainant told her that it had previously been documented, she didn't remember how he got it, and to look in his book. Cordova looked in the resident's book, and saw that Complainant had noted the bruise in a previous body check.
20. Cordova went into the resident's bedroom where Complainant was doing a body check on the resident with staff from second shift. The other staff members stated that they saw the bruise, but Complainant said she did not see it in the morning, and had not marked it in his book. Cordova did see that it had been noted in his book on previous days.
21. Cordova began to explain to Complainant about protocol for documenting bruises, which includes noting them on every shift even if they have already been noted. Complainant very rudely said, "Don't start with me." Cordova found Complainant to be unapproachable. Cordova walked out of the room and there was no argument between her and Complainant. Cordova reported the incident to the person in charge of that shift. The incident was also reported to CDHS's Quality Assurance office and, eventually, to Johnson.

Active Treatment

22. During the day, the residents of 67th House go to a different facility known as Sunada to participate in a day program.
23. During the day program, the residents should be engaged in active treatment with a staff member, such as Complainant. Active treatment requires staff members to engage residents and assist them to engage with others. Active treatment is usually done on a one-on-one basis, one staff member assigned to one resident. One-on-one assignments help to keep the residents safe.
24. Active treatment is a vital part of each resident's care. Complainant has received training on active treatment. Without active treatment, a resident can suffer regression. In addition, if WRRC does not provide active treatment it can lose both state and federal funding, and can be fined.
25. Each resident has an active treatment book that travels with the resident. The active treatment book contains the regimented activities for that individual. Included in the active treatment book is a document known as "Cues and Clues." The Cues and Clues document provides specific information for each individual resident. The Cues and Clues document, which is two or three pages long, is

drafted after team members conduct assessments on an individual to determine his likes or dislikes and meet to discuss them. The Cues and Clues provide guidelines for an individual to keep him engaged and to assist him when he is in distress. Staff members are required to read the Cues and Clues for each resident with whom they work as quickly as possible.

26. It is expected that a staff member read a resident's Cues and Clues before working with the resident; reading a resident's Cues and Clues takes only a few minutes to do.

January 21, 2010 Incident

27. A male resident from 67th House attended the day program at Sunada Learning Center from 8:00 to 1:30 p.m. each week day. Complainant was assigned to work with the resident on January 21, 2010, at the day program. He had his active treatment book with him in the backpack attached to his wheelchair, and it contained his Cues and Clues. In the Social Responses of the resident's Cues and Clues, the following information is provided, "[Resident] is most responsive to familiar staff and a calm, patient approach. He shows affections by grabbing your hand and having you rub his head or lying on your lap. [Resident] responds well when staff sing to him. It is best to avoid placing demands on him."
28. The resident also has a document known as his Individual Plan in his active treatment book. His individual plan provided that if the resident was frustrated, singing to him may calm him down. One document contained in his Individual Plan is his Service Plan, which lists activities in which he should be engaged. One of those activities is singing. The Service Plan provides, in part, "There are a certain number of songs that [Resident] enjoys and may partially sing. These include 'My Bonnie Lies over the Ocean,' 'Rock-a-Bye-Baby,' 'Jingle Bells.' Begin by singing the first couple of lines from one of the songs listed above. . . ." The resident often responds positively to singing by smiling. If he reacts negatively, the staff member is to try a different activity that may engage the resident.
29. Singing to the resident in question was necessary for his care and progress. Prior to January 21, 2010, no staff member has ever refused to sing to him.
30. On January 21, 2010, Day Program Director Cheri Warner was doing her rounds, and she walked into an area where Complainant was sitting with the resident. The resident was sitting in his wheel chair, and Complainant was not engaging in any activity with him. Warner told Complainant that she needed to look at his active treatment book, and see which activities he may enjoy. Warner then ran down a list of activities that she knew the resident enjoyed, and suggested that Complainant sing to him. Another staff member also began suggesting activities that the resident is known to enjoy.

31. Complainant refused to sing to the resident, and was curt and rude in her responses to Warner. The other staff member also explained to Complainant the positive effects that singing had on the resident. The resident was not in distress.
32. Warner explained to Complainant that the resident was like a child, and she and the other staff member got out his Cues and Clues to show Complainant what activities he enjoys. Complainant told Warner that she had the wrong person if she wanted someone to sing. Complainant said, "I don't sing and I won't sing."
33. Because of Complainant's refusal to sing to the resident, Warner became concerned, and wanted to have Complainant trade resident assignments with another staff member, but that option was not available. Warner told Complainant that she would need to stay with the resident for the remainder of the day program that day. Complainant did not object, but maintained a curt and rude attitude towards Warner.
34. Warner reported the incident to Dave Johnson, the QMPR for 67th House, on January 21, 2010. Johnson is Complainant's second level supervisor.
35. Warner also reported the incident to her supervisor, Program Service Director for WRRRC, Ken Kaiser, by email on January 25, 2010.
36. Kaiser, Warner, and Johnson asked to meet with Complainant to discuss the incident. During that meeting, Kaiser asked Complainant to give her version of what happened, as he was hoping they could reach a resolution. Complainant refused to discuss the incident without a representative present.
37. Respondent CDHS Policy Number 2.24 entitled, "Representation of State Employees," provides, in part, the following:

CDHS appointing authorities, managers and supervisors shall grant the request of a state employee for representation in the following cases:

Under Board Rule 1-18 [which pertains to membership in employee organizations or unions].

Under Rule 1-27, to have an advisor present during a grievance meeting or in the performance management dispute resolution process.

Under Board Rule 8-8C, to be 'represented by any person of the employee's choice at any step(s) of the grievance process.

Under Board 6-10, to have a representative of choice at a pre-disciplinary meeting.

.....

Requests from state employees to have a representative present at work for any purpose than those stated above shall be granted or denied by the responsible appointing authority, manager or supervisor based on the business needs of the affected agency, office, division or Department.

38. The meeting with Warner, Kaiser and Johnson did not fit into any of the categories listed in CDHS Policy 2.24 regarding representation. It was a meeting to discuss and possibly resolve a day-to-day work-related issue.
39. Because Complainant refused to discuss the incident without a representative present, Kaiser placed her on administrative leave while an investigation into the allegations was completed.
40. After she was placed on administrative leave, Complainant went back to 67th House to get her car. While she was there, she spoke with Sherri Carrasco, who supervises 67th House. Complainant told Carrasco that she was expected to sing to the resident, but that she would not. Complainant stated that the only place she sang was at church. Complainant used a harsh tone of voice when telling Carrasco about the incident.
41. Complainant's refusal to sing and her harsh tone of voice made Carrasco feel that Complainant should not be working with the residents at 67th House. Carrasco explained to Complainant that the residents were like children, and Complainant responded that the residents were nothing like her children.

Predisciplinary Process

42. Because Complainant had refused to sing to the resident and refused to participate in the meeting with Warner, Kaiser and Johnson, Johnson scheduled her for a meeting pursuant to Board Rule 6-10, which was held on January 26, 2010. Complainant attended the Board Rule 6-10 meeting with a representative from Colorado WINS. Kaiser was also present.
43. During the Board Rule 6-10 meeting, Johnson asked Complainant if she had been involved in any negative interactions prior to the interaction with Warner regarding Complainant's refusal to sing. Complainant stated that she had not, and did not mention the January 20, 2010 incident with Cordova regarding the bruises on the resident.

44. During the Board Rule 6-10 meeting, Johnson asked Complainant if she recalled receiving the September 17, 2009 letter which informed her that refusal to communicate with her supervisor regarding day-to-day business operations would not be tolerated. Complainant said that she did recall receiving the letter.
45. During the Board Rule 6-10 meeting, Complainant stated that she never said she wouldn't sing and would have done so if a situation arose which required her to sing.
46. Complainant further stated that she felt harassed by Kaiser and anyone else he can get to harass her. Johnson asked Complainant why she felt this way, but she did not provide an answer. As an accommodation, however, Johnson assured Complainant that Kaiser would remove himself from her supervisory chain for three months, and would not be included in any meetings where Complainant's performance may be discussed, nor would he be consulted on any personnel or performance issues regarding Appellant.
47. In making his final decision, Johnson reviewed and considered: 1) the January 25, 2010 memorandum Warner wrote to Kaiser; 2) the resident's Cues and Clues; 3) the resident's active treatment plan; 3) the September 17, 2009 letter; 4) CDHS Policy 2.24; 5) the CDHS Employee Code of Conduct; 6) Complainant's May 22, 2009 Corrective Action; 7) Complainant's April 9, 2009 Corrective Action; 8) Complainant's January 9, 2009 Corrective Action; and 9) the August 13, 2007 memorandum issued to Complainant.
48. Johnson also considered the fact that Complainant had received training in active treatment, but refused to sing to the resident even though singing was in the resident's Cues and Clues and active treatment plan. Johnson was very troubled by Complainant's refusal to sing to the resident.
49. In addition, Johnson considered Complainant's rude behavior towards Warner when Warner asked her to sing to the resident, as well as her refusal to participate in the meeting with him, Warner and Kaiser without a representative present. He also considered Complainant's denial regarding previous negative interactions after being transferred to 67th House, even though she had one on January 20, 2010, with Cordova.
50. Johnson concluded that Complainant violated the CDHS Employee Code of Conduct by being rude to Cordova and Warner; by refusing to sing to the resident; by refusing to participate in the meeting with Johnson, Warner and Kaiser; by failing to be truthful regarding her interaction with Cordova; and by failing to record the bruise on the resident's arm, as required. Johnson also determined that Complainant was in violation of CDHS Policy 2.24, was insubordinate despite being given a number of previous corrective actions and warnings, and that she violated previous corrective actions.

51. After gathering and carefully considering all of the relevant information, including the information provided by Complainant during the Board Rule 6-10 meeting, Johnson determined that Complainant had patterns of behavior which persisted despite receiving Corrective Actions and other written notifications designed to correct her behavior. Johnson imposed a disciplinary action of a five percent pay reduction for three months on Complainant. She also received required to attend additional training in the following areas: 1) Right of Individuals served; 2) Active treatment; 3) Employee Code of Conduct; and 4) Approach and interaction. Furthermore, she was required to read: 1) All residents' cue and clues; 2) All residents' behavior plans; 3) All residents' residential objectives; 4) All residents' money management objectives; and 5) All residents' individual plans.

52. Johnson gave Complainant a Letter of Disciplinary Action dated March 11, 2010. That letter provided, in part:

In Accordance with Rule 6-12 of the state Personnel Rules and Procedures, you are hereby notified that the following disciplinary action will be taken against you. You will have a five percent (5%) pay reduction in your base pay for three months, effective April 1, 2010 through June 30, 2010. . . . The reasons for this disciplinary action are: violations of a previous corrective action for not following the Employee Code of Conduct, violation of a previous corrective action for failure to perform assigned job duties, failure to perform competently and insubordination.

....

On 1/21/10, I received a phone call from the Day Program Director, Cheri Warner, who reported to me that you were working one-on-one with a resident and were not providing active treatment. She further reported that why you were told that you could sing to the individual that you replied, "I don't sing and I won't sing." Ms. Warner said she was contacting me because she was very concerned about you refusing to do something that was in the individual's cue and clues. Ms. Warner also told me that you were disrespectful and rude. When I came to SLC to meet with you and Ms. Warner and my supervisor (Ken Kaiser), you informed us that you wouldn't answer any questions about what had occurred that day without representation.

At your R-6-10 meeting you were asked about a letter you had received on September 17, 2009. The letter explained that CDHS Policy Number 2.24 that . . . "your refusal to communicate with authority figures regarding your performance insubordination." You said that you remembered receiving the letter.

....

On 5-23-09 you were issued a corrective action for failing to follow the CDHS Employee Code of Conduct. You were instructed that you were to follow the CDHS Code of Conduct "throughout your employment at WRRRC." Your interactions with co-workers on both 1/20/10 and 1/21/10 are clear violations of this corrective action as well as further violation of the Employee Code of Conduct. . . . At your R-6-10 meeting you were asked if besides the incident that occurred on 1/21/10 there had been any other issued since you started working on 1/19/10. You replied, "Not that I'm aware of." You were then told that the interaction that you had with a co-worker on 1/20/09 [sic] was reported to Quality Assurance (QA). You then said that QA had interviewed you and that the investigator told you it was because you and a co-worker were arguing in front of resident. You reported that you told the investigator that you were not arguing.

. . . .

Your insistence that your [interaction] didn't constitute an argument and your statement that to your knowledge you didn't have any issues at 67th prior to 1/21/10, violated the following bullets of the Employee Code of Conduct

- Be truthful and honest
- Accept responsibility for your mistakes

Your interactions with Cheri Warner on 1/21/10 also violate the CDHS employee Code of Conduct. Ms. Warner reported that when she entered the room a coworker reported telling you that the resident you were working with liked to be sung to. Ms. Warner reported that, "Shaun adamantly shook her head no and said, "I don't sing and I won't sing." She reported your demeanor as "defiant." . . . At your R-6-10 meeting, when describing the interaction, you said of Ms. Warner, "She came up and got in my face."

53. Complainant timely appealed her disciplinary action.

DISCUSSION

I. GENERAL

A. Burden of Proof

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 perform competently;

- (2) willful misconduct or violation of these or department rules or law that affect the ability to perform the job;
- (3) false statements of fact during the application process for a state position;
- (4) willful failure to perform, including failure to plan or evaluate performance in a timely manner, or inability to perform; and
- (5) final conviction of a felony or any other offense involving moral turpitude that adversely affects the employee's ability to perform or may have an adverse effect on the department if the employment is continued.

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 or modify 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 most acts for which she was disciplined.

Complainant was disciplined for violating previous corrective actions, failing to perform assigned job duties, failure to perform competently, and insubordination. Specifically, Complainant was disciplined for 1) refusing to sing to the resident, as indicated in his Cues and Clues; 2) being rude and disrespectful to Warner; 3) refusing to participate in the meeting with Warner, Kaiser and Johnson without representation, in spite of receiving the September 17, 2009 letter and in violation of CDHS Policy Number 2.24; 4) violating her previous Corrective Actions; 5) violating portions of the CDHS Employee Code of Conduct; 6) arguing with Cordova; and 7) failing to be truthful regarding her interaction with Cordova on January 20, 2010. Respondent has proven by a preponderance of the evidence that Complainant committed the acts for which she was disciplined except for arguing with Cordova on January 20, 2010. Although Complainant was rude to Cordova, the two did not argue.

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; or 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).

Johnson did not neglect or refuse to use reasonable care and diligence to gather all of the relevant information concerning the allegations against Complainant. He reviewed all of the relevant information, including the written narrative from Warner concerning the events of January 20 and January 21, 2010; Complainant's prior Corrective Actions and other written warnings; and CDHS Policy 2.24 and Complainant's non-compliance with that policy. He also reviewed the CDHS Employee Code of Conduct. He considered the fact that Complainant had a negative interaction with Cordova, but did not disclose it to him. Additionally, he gave Complainant the opportunity to respond to all of the allegations during the Board Rule 6-10 meeting.

Johnson carefully and honestly considered all of the information he had gathered before he made his decision to discipline Complainant. He considered all ranges of discipline, but determined that she had patterns of conduct which persisted even after receiving Corrective Actions and other performance documents. Johnson's determination that the appropriate discipline for Complainant was a five percent pay reduction for three months was reasonable.

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. Complainant had received a number of Corrective Actions and performance documents. By those documents, she had previously been warned that she needed to provide appropriate treatment to residents, that she needed to perform her job duties as directed, and that she needed to demonstrate respect for others and commit to resolve conflicts. She previously had been given a copy of the CDHS Code of Conduct and was told that she needed to follow its directives. Complainant flagrantly disregarded these directives.

Complainant's disciplinary action of a three-month five-percent pay reduction is within the range of reasonable alternatives, given her actions after her transfer to 67th House leading up to her administrative leave.

D. Respondent did not discriminate against Complainant.

On her appeal form, Complainant alleged that Respondent discriminated against her on the basis of her gender, her race/color, her religion or creed and her organizational membership. However, Complainant put forth no evidence of discrimination at hearing. Therefore, those claims are deemed abandoned.

CONCLUSIONS OF LAW

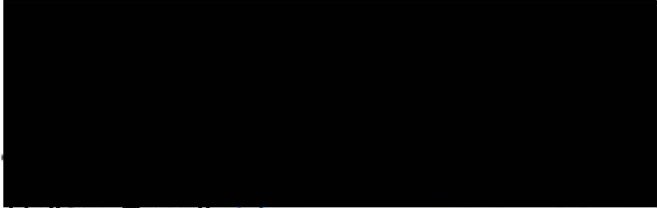
1. Complainant committed most of the acts for which she was disciplined.
2. Respondent's action was not arbitrary, capricious, or contrary to rule or law.


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

ORDER

Respondent's action is **affirmed**.

Dated this 9th day of September, 2010



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. 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.

CERTIFICATE OF SERVICE

This is to certify that on the 10 day of Sept., 2010, I electronically served 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:

Shaun Riley

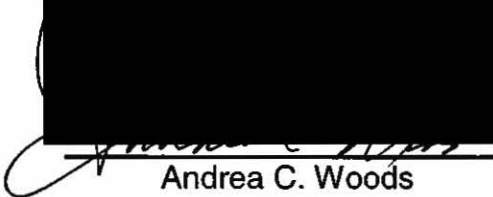
[Redacted]

and in the interagency mail, to:

Joseph E. Haughain

[Redacted]

[Redacted]



Andrea C. Woods