

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

EDWARD LAWSON,
Complainant,

vs.

DEPARTMENT OF CORRECTIONS, ARROWHEAD CORRECTIONAL FACILITY,
Respondent.

Administrative Law Judge (ALJ) Mary S. McClatchey held the hearing in this matter on March 12, 2012 at the State Personnel Board, 633 17th Street, Denver, Colorado. The case commenced on the record on March 12, 2012 and the record was closed on the same date upon conclusion of the evidentiary hearing. Assistant Attorney General Heather J. Smith represented Respondent. Respondent's advisory witness was Warden Travis Trani, Complainant's appointing authority. Complainant appeared and represented himself.

MATTERS APPEALED

Complainant, formerly a certified Correctional Officer (CO) III employed by Respondent Department of Corrections at the Arrowhead Correctional Facility (Arrowhead, DOC, or Respondent) appeals his disciplinary demotion from CO III to CO II. He argues that the disciplinary action was arbitrary and capricious.

For the reasons set forth below, the action of Respondent is **affirmed**.

ISSUES

1. Whether Complainant committed the acts for which he 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 was initially hired at DOC in 1994 as a CO I, was promoted to Sergeant, CO II, in 1999, and was promoted again to Lieutenant, CO III, in 2004. In September 2011, Complainant transferred to Arrowhead.

2. As a CSO III, Complainant was responsible for ensuring and enforcing compliance with all applicable policies, procedures, and standards of conduct by DOC staff serving under his authority. In this position, he often served as relief Shift Commander, with supervisory authority over the entire staff of over twenty correctional officers, and operational authority over approximately two hundred and fifty offenders.

3. As Shift Commander, Complainant was responsible for assuring the safety and security of all inmates and staff at Arrowhead.

November 5, 2011

4. On November 5, 2011, Complainant was on duty as Shift Commander during the formal count of offenders at approximately 4:00 p.m.

5. During the E Unit offender count, which was being conducted by CO I Charles Stage, Offender C remained in his bed and refused to stand up for the count. Stage asked him to get up and Offender C became verbally combative. Stage decided to write a report on Offender C because he had also interfered with count in October 2011. Stage called Complainant to advise him of the incident.

6. As Stage began the report process, Offender C became more confrontational and stated he wanted to talk to the Shift Commander. Stage placed a call to Complainant. Then Offender C came out of his cell and began walking toward the Unit office. Stage asked him what he needed. Offender C was very agitated and loud, and he appeared threatening to Stage because of his balled fists and red face. Stage noticed that many offenders began sticking their heads out of their cells to observe Offender C's conduct.

7. Stage felt that the situation created by Offender C's actions was escalating, so he called Complainant again to inform him that Offender C was getting out of hand. Complainant said he would respond immediately.

8. Complainant left his office and went to the E Unit. When he arrived, Offender C had returned to his cell. Complainant called for Security backup. When the Security officer, CO I Owen Chace, arrived, Chace and Stage placed Offender C in handcuffs behind his back and escorted him to the Shift Commander's office.

9. Offender C sat in a chair in the Shift Commander's office, which is a very small room. Complainant and Stage discussed the importance of standing for count. Offender C denied having refused to stand during count and asked to be returned to his room; he was uncooperative. During the ensuing conversation, Stage and Chace stood in the doorway within hearing range and the door was open.

10. Complainant asked Offender C how long he had left in DOC; he responded he was going to be released in fifteen days. Complainant stated that C had not learned a thing in jail and would not be successful, he would be back, or words to that effect. Complainant pulled up Offender C's record on his computer and noticed it indicated he was in the Aryan Nazi Party gang, or ANP. The ANP is a documented Security Threat Group at DOC.

11. Complainant knew what ANP meant, but asked Offender C what it stood for. Offender C responded, "All Night Party." Complainant responded, "You are an identified gang member. Why not admit it?" Offender C refused to admit that he was in a gang.

12. Complainant stated to Offender C, "I know how much you Arian guys like child molesters, about as much as you like blacks. I could house you with a black sex offender," or words to that effect.

13. Complainant then called the Control Center and informed Sgt. Cantonwine that he sought to move Offender C into the B Unit with a Suspect 2 in it.

14. The B Unit houses only sex offenders enrolled in the Sex Offender Treatment and Monitoring Program. Offender C, Complainant, all staff and all offenders at Arrowhead are aware that the B Unit houses sex offenders. Non-sex-offender inmates do not want to be housed in B Unit.

15. Sgt. Cantonwine asked what a Suspect 2 was. Complainant said a Suspect 2 was a black inmate, and a Suspect 1 was a white inmate. The term, "Suspect 2" was slang that Complainant learned from watching television. Offender C knew that Suspect 2 meant a black inmate.

16. Sgt. Cantonwine informed Complainant that Unit B was at maximum capacity. Complainant responded by directing Cantonwine to locate an available cell with a black offender for Offender C. Cantonwine said he would call Complainant back.

17. Complainant then informed Offender C that he was going to put him in a room in B unit with a black guy big enough to "whoop his ass," or words to that effect. During their conversation, Offender C stated he would rather go to the "hole," solitary confinement, than to B Unit.

18. When Complainant made the statement of his intent to move Offender C into the B Unit with an African American offender, he knew it was possible Offender C would become violent; Complainant escalated the situation.

19. Sgt. Cantonwine called back and informed Complainant there was a C Unit room with a white offender with no gang affiliation available for Offender C. Offender C refused to be moved anywhere at Arrowhead. Complainant informed Sgt. Cantonwine that he did not want to place Offender C with any other offender. Therefore, Offender C was transferred to Fremont Correctional Facility.

20. Complainant did not attempt to de-escalate the situation with Offender C on November 5, 2011. During his conversation, Complainant did not attempt to learn why he was upset, and said nothing intended to establish a positive interaction with Offender C.

21. Complainant felt that once Offender C admitted he was a gang member, then it would be appropriate to move on and attempt to make a positive connection with him. That never occurred.

22. Complainant's conduct on November 5, 2011 had the potential to create a violent situation for DOC staff and inmates.

Reporting of Incident

23. On November 6, 2011, Sgt. Cantonwine contacted CO III Erin Burns, the Shift Commander on duty, regarding the above incident. Lt. Burns wrote an Incident Report, stating that Sgt. Cantonwine had expressed his concerns about Complainant's request to move an offender with documented Security Threat Group ties into a cell with a black offender as it could

potentially escalate into a violent situation for staff or the offenders. The report also stated that Cantonwine was concerned about Complainant's request to move a general population offender into a living unit designed for sex offenders.

24. On November 8, 2011, during the Custody and Control staff meeting, Captain Ken Maestas met with Complainant and asked him whether he had threatened to move Offender C into a B Unit cell with a black sex offender. Complainant responded with a general denial and stated that he had informed Offender C he would not do that to him.

25. Officers Stage and Chace wrote reports detailing Complainant's conversation with Offender C on November 5, 2011, consistent with the findings above.

26. On November 15, 2011, Captain Ken Maestas spoke with Offender C regarding the incident on November 5 with Complainant. Offender C's account was consistent with the reports of Stage, Chace, and Cantonwine.

27. Captain Maestas and Major Lind then met with Complainant on November 15, 2011, to discuss what had occurred. Complainant initially denied having threatened to move Offender C onto the sex offender unit with a black inmate. Major Lind asked Complainant to detail the events of the incident. Complainant stated that Stage and Chace had brought Offender C to the Shift Commander's office; Complainant identified him as a member of a white supremacist gang; and Complainant threw out a difficult situation to him of having him live with a black inmate as a psychological tactic to get the inmate to calm down. Complainant confirmed he had called the Control Center and requested a room on B Unit with a "Suspect 2" for Offender C.

28. At the end of the meeting, Captain Maestas asked Complainant if he felt he had done anything wrong on November 5, and he said, "No." Major Lind then asked Complainant to write a statement.

Complainant's Incident Report

29. On November 15, 2011, Complainant wrote an Incident Report on the November 5 confrontation with Offender C. He stated in part that once he realized Offender C would not own any responsibility for his behavior, "I thought I could solve the whole thing if I moved C to another unit and wait for the COPD process. C was so uncooperative I presented him with a difficult scenario. I called my Control Sgt. Cantonwine and I asked for a Number Two Suspect in B Unit. Sgt. Cantonwine did not understand my request. I explained I wanted a Black Offender in B Unit with an empty bunk to move C into. Sgt. Cantonwine said he did not have any available beds in B Unit, he would call me back. I led C to believe I would move him in with a Black Offender in B Unit known, as the Sex Offender Unit. C was still as uncooperative as before he refused to be moved into a set up he said."

30. Later in the report Complainant wrote, "I told C I was not going to move him to B Unit with a Black Offender. I was moving C to C Unit into a smaller room alone that I moved the previous Offender out of in order to move C into that room alone. C stated, 'Well you can just put me in the hole.' I told C it was my decision."

Predisciplinary Meeting

31. On November 23, 2011, Complainant attended the predisciplinary meeting with Warden Trani and Major Randy Lind, the Warden's representative. Complainant elected not to have a representative present.

32. Warden Trani opened the meeting by stating its purpose was to discuss Complainant's alleged violations of the DOC Code of Conduct. He also read Board Rule 6-10, which governs predisciplinary meetings, confirmed Complainant understood the rule, and asked Complainant if he was ready to proceed. Complainant agreed that he understood the purpose of the meeting and to proceed.

33. Major Lind presented the contents of the incident reports prepared by Chace, Stage, and Cantonwine. He then expressed concern that Complainant had not been truthful in his meeting with Lind and Maestas when first confronted about it. Complainant responded that he had told them that he told Offender C he would not actually move him to a B Unit cell with a black offender. In addition, he denied having led C to believe that he would actually do it, stating he had told Offender C that he would in fact be moved to a C Unit cell like a closet. Complainant claimed that he did not deny to Lind and Maestas that the incident occurred.

34. Complainant stated that he still did not feel he had done anything wrong on November 5, 2011.

35. Major Lind gave Complainant until November 30, 2011 to provide additional mitigating information. Complainant did not provide any further information to the Major.

Prior Disciplinary History

36. Warden Trani reviewed Complainant's personnel file prior to making a decision. Complainant had a January 2011 disciplinary action and a November 2010 corrective in his file. In addition, he had been placed on a Performance Improvement Plan in March 2011 as a result of an overall Needs Improvement evaluation.

37. On November 2, 2010, Complainant received a corrective action for inappropriate conduct with a new female correctional officer whom he was training to perform pat searches of inmates exiting the cafeteria. When Complainant noticed that the officer was not performing the pat search correctly, he performed a hands-on pat search of other male officers; then, Complainant performed a pat search on the female officer. The corrective action found Complainant's conduct to be in violation of Administrative Regulation (AR) 1450-01, Code of Conduct, and that his conduct as a supervisor was unacceptable and he had exercised poor judgment. The letter noted that it was critical that he display sound judgment at all times, and that part of his job as a supervisor is to serve as a role model for other staff and offenders over whom he exercises authority.

38. Complainant did not grieve this corrective action.

39. On January 19, 2011, Complainant received a disciplinary action consisting of a \$100.00 loss in pay for six months. The action arose out of an incident wherein Complainant had sought to impose a performance document on a subordinate for refusal and inability to write an incident report on the computer. Complainant's decision had been overruled by his

superiors. When Complainant next saw his subordinate, Complainant stated that he had not been trying to “bust his balls,” and that Complainant’s “dick was bigger than his.”

40. The disciplinary action letter stated that Complainant’s statements to his subordinate were made to be intimidating, and reflected discredit upon Complainant as a correctional professional and the DOC. The letter stated, “Your poor judgment and inappropriate conduct towards your subordinate employees calls into question your ability to effectively perform your job duties as a supervisor and leader. You are expected to set a positive example for your subordinates, peers and offenders, to which you have failed. Additionally, your comments were intimidating and threatening towards your subordinates.” In addition to the loss in pay, the letter imposed a corrective action requiring Complainant to immediately read and adhere to Administrative Regulation (AR) 1450-01, Code of Conduct; and to complete the course in Developing Fundamental Critical Thinking Skills.

41. Referring to the November 2010 corrective action, the letter stated that Complainant had established a recent pattern of poor judgment and inappropriate conduct.

42. Complainant did not appeal the January 2011 disciplinary and corrective action.

43. In March 2011, Complainant received an overall annual performance evaluation rating of Needs Improvement. The Narrative section noted the following: Complainant had not conveyed a professional image of DOC, as evidenced by the corrective actions and disciplinary action; he had failed to create a work culture that fosters high standards of ethics, and to behave in a fair and ethical manner towards others; he had failed to respect, understand, value, and seek out differences in support of a diverse workplace; he had not communicated properly and professionally with others; and, he had failed to handle conflict constructively by placing himself in the middle of it when he should have acted in the supervisor role.

Demotion Letter

44. After reviewing all of the reports, Complainant’s recent disciplinary history, and considering the nature and seriousness of Complainant’s conduct on November 5, 2011, Warden Trani decided that he could no longer trust Complainant to serve in the CO III position. On December 6, 2011, Respondent issued a letter demoting Complainant to the position of CO II and lowering his pay by 10% from \$5389 to \$4851 per month. The letter found Complainant to have engaged in willful misconduct and violation of the DOC rules that affect the ability to perform the job, under State Personnel Board Rule 6-12. The letter stated that Complainant’s actions on November 5, 2011 reflected discredit upon him as a correctional professional, and brought discredit upon the DOC; Complainant’s poor judgment and inappropriate conduct towards the offender called into question his ability to effectively perform his job duties as a supervisor and leader; he used his position as Shift Commander and Supervisor to intimidate and harass an offender; the offender could have easily escalated the incident into a use of force or assaultive situation that would have jeopardized the safety of his employees and the offender; and, as a supervisor and leader, he is expected to set a positive example for his subordinates, peers, and offenders, which he had failed to do.

45. Addressing Complainant’s lack of candor after the incident occurred, the letter stated that Complainant was not truthful when confronted by Captain Maestas and Major Lind. It stated that it was essential to be able to trust the integrity of correctional personnel, especially supervisory personnel, and that his willful choice to violate departmental policy and willfully

depart from the truth during an official investigation had irreparably damaged his credibility and integrity. The letter pointed out that DOC is a criminal justice agency and as such has adopted high standards for employment. The nature of the work can require employees to appear in court to testify and it is critical that an individual's integrity be able to withstand the intensity of that scrutiny.

46. The end of the letter addressed Complainant's recent pattern of poor judgment and inappropriate conduct over the past thirteen months, consisting of the October 21, 2010 Corrective Action; the January 19, 2011 Disciplinary Action; and the March 29, 2011 Performance Improvement Plan resulting from his Level 1 rating on his Performance Evaluation.

47. The letter found Complainant to have violated the following:

DOC Mission Statement: To protect the citizens of Colorado by holding offenders accountable and engaging them in opportunities to make positive behavioral changes and become law-abiding, productive citizens.

Administrative Regulation (AR) 100-19 Communications with Offenders. The DOC will facilitate professional contact and interaction between DOC employees, contract workers, volunteers, and offenders. Communications with offenders should be made in a professional and respectful manner.

AR 1450-1, Code of Conduct.

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

Procedures:

A. DOC employees, contract workers, volunteers, offenders, and their families shall be treated professionally, regardless of age, sex, race, national origin, sexual orientation, religious affiliation, disabilities/handicaps, or offender's criminal history. Excessive physical force or verbal abuse of offenders by DOC employees . . . will not be permitted.

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

T. DOC employees, contract workers, and volunteers will not engage in acts of corruption, bribery, indecent, or disorderly conduct.

X. DOC employees . . . shall neither falsify any documents nor willfully depart from the truth, either in giving testimony or in connection with any official duties or official investigation.

Y. During the course of an official DOC investigation, DOC employees, contract workers, and volunteers shall cooperate fully by providing all pertinent information that they may have.

HH. DOC employees . . . shall comply with and obey all DOC administrative regulations.

ZZ. Any act or conduct, on or off duty, which affects job performance . . . or reflects discredit upon the individual as a DOC employee . . . is expressly prohibited as conduct unbecoming, and may lead to corrective and/or disciplinary action.

48. Complainant timely appealed his demotion.

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. XII, §§ 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 the acts for which he was disciplined.

Respondent has proven by preponderant evidence that Complainant committed the acts upon which discipline was based. Complainant admitted at hearing that he made no attempt to de-escalate the situation with Offender C when he met with him on November 5, 2011. He confirmed that instead of trying to discuss what was causing Offender C to act out aggressively, he decided to use what he deemed to be a psychological tactic of requiring the offender to admit his membership in a Security Threat Group before taking a positive tack with him. Complainant also admitted that he did in fact state to Offender C he planned to put him in a cell with a black sex offender.

Complainant's defense at hearing was that he never planned to follow through on his threat to house Offender C with a black sex offender. However, Complainant was the Shift Commander at the time he made the statement; therefore, he had full authority to execute on it. In addition, Complainant ordered the Control Sergeant on duty to find a cell with a black offender in it, either on the sex offender unit or on another one. This concrete action, made in front of Offender C and two security guards, demonstrated his intent to cause Offender C to believe he would follow through with his threat.

Complainant's actions towards Offender C were a willful departure from his responsibility as Shift Commander to maintain the security and safety of correctional staff and offenders under his command. His statements had a real potential to escalate Offender C to the point of physical violence and thus were an egregious abuse of his authority. Complainant's explanation that he was using a psychological tactic demonstrates poor judgment, particularly for a high ranking correctional professional. No reasonable Shift Commander or correctional officer of any rank would have escalated the situation as he did.

Complainant violated the DOC Code of Conduct. The Code requires that correctional staff treat offenders in a professional and respectful manner, exercise good judgment and sound discretion, and refrain from behavior that jeopardizes the security of the facility. Complainant violated all of these requirements through his behavior on November 5, 2011.

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).

The action of Respondent was not arbitrary and capricious. Respondent utilized several layers of the chain of command to thoroughly investigate this incident. Complainant's initial failure to disclose the full nature of his confrontational conduct towards Offender C led to the need for additional involvement by higher authorities. If Complainant had admitted his error in judgment immediately, he would not have so seriously damaged his credibility with Warden Trani and others. His failure to participate fully and honestly in the investigation narrowed the Warden's options significantly, because it led the Warden to lose confidence in his judgment and trustworthiness as a leader.

Complainant argued at hearing that his actions were not serious enough to warrant a demotion. However, his behavior escalated a situation to a potential security threat. When a Shift Commander unilaterally creates a potential security threat to the facility he oversees, this is serious misconduct warranting immediate discipline under Board Rule 6-2, 4 CCR 801. Further, there was no conceivable reason for making the threat. Complainant was apparently offended by C's membership in a racist organization; while understandable, this does not rationalize or excuse Complainant's conduct. Even accepting Complainant's statements that he meant his

threat as a type of psychological ploy, this is additional evidence of his exceedingly poor judgment.

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

The action imposed by Respondent was within the range of reasonable alternatives. Complainant had recently been given a disciplinary and a corrective action, followed by an overall Needs Improvement evaluation. He had been placed on a corrective action requiring strict compliance with the Code of Conduct. Instead of taking his situation seriously, he flagrantly violated the Code by causing a security threat in the facility he oversaw. Complainant's pattern of misconduct in a leadership position over the last year necessitated his demotion.

CONCLUSIONS OF LAW

1. Complainant committed the acts for which he 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**. Complainant's appeal is dismissed with prejudice.

Dated this 21st day
of April, 2012 at
Denver, Colorado.



Mary S. McClatchey
Administrative Law Judge
State Personnel Board
633 – 17th Street, Suite 1320
Denver, CO 80202-3640
(303) 866-3300

CERTIFICATE OF MAILING

This is to certify that on the 24th day of April, 2012, I electronically served true copies of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**, addressed as follows:

Edward Lawson



Heather Smith A.A.G.



Andrea 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 electronic record on appeal in this case is **\$5.00**. This amount does not include the cost of a transcript, which must be paid by the party that files the appeal. That party may pay the preparation fee either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS. A party that is financially unable to pay the preparation fee may file a motion for waiver of the fee. That motion must include information showing that the party is indigent or explaining why the party is financially unable to pay the fee.

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

BRIEFS ON APPEAL

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

ORAL ARGUMENT ON APPEAL

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

PETITION FOR RECONSIDERATION

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