

STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. 2014B061

REVISED INITIAL DECISION AFTER REMAND

DORIS MCCAULEY,
Complainant,

v.

DEPARTMENT OF REVENUE, DIVISION OF MOTOR VEHICLES, DRIVER'S LICENSE SECTION,
Respondent.

Administrative Law Judge (ALJ) Denise DeForest held the commencement hearing in this matter on June 10, 2014. Following a number of other procedural developments, ALJ Susan J. Tyburski held the evidentiary hearing on October 5, 2016, at the State Personnel Board (Board), Courtroom 6, 1525 Sherman Street, Denver, Colorado. The record was closed on October 6, 2016, after the exhibits admitted during the hearing were reviewed and redacted for inclusion in the record. At the evidentiary hearing, Complainant appeared in person, represented by her attorney, Bill Finger. Respondent was represented by Davin Dahl, Assistant Attorney General. Respondent's advisory witness was David Lindsay, Respondent's Operations Director and Complainant's appointing authority.

MATTER APPEALED

Complainant, a certified employee, appeals Respondent's refusal to accept the withdrawal of her notice of resignation. Complainant argues that this refusal was contrary to rule and law, resulting in an arbitrary and capricious termination of Complainant's employment. She seeks reinstatement, reimbursement of back pay and lost benefits, and an award of attorney fees and costs. Respondent argues that its refusal to accept Complainant's withdrawal of her resignation was appropriate and should be affirmed. Respondent asks that Complainant's appeal be dismissed with prejudice, and that all relief requested by Complainant be denied.

ALJ Tyburski issued an Amended Initial Decision on November 22, 2016, finding that Respondent's refusal to accept Complainant's withdrawal of her notice of resignation was contrary to rule and law. The Board affirmed this Initial Decision. Following two appeals, the Court of Appeals reversed and remanded the case back to the Board. *McCauley v. Dep't of Revenue*, Case No. 2022COA25 (February 24, 2022). On June 21, 2022, the Board remanded the case to the ALJ "for further proceedings consistent with the Opinion of the Colorado Court of Appeals."

For the reasons discussed below, Respondent's decision not to accept Complainant's withdrawal of her resignation is **affirmed**.

ISSUES TO BE DETERMINED

1. Whether Respondent's refusal to accept Complainant's resignation was contrary to rule or law; and
2. Whether Complainant is entitled to an award of attorney fees and costs.

FINDINGS OF FACT

Background

1. Complainant was a certified state employee employed by Respondent as a Driver's License Examiner II in its Montrose office. Complainant was originally hired by Respondent on December 8, 2008, and was promoted to the position of Driver's License Examiner II in December 2011.

2. At all times relevant to this appeal, Robert Morgan, manager of the Grand Junction Driver's License office, was the interim manager of the Montrose Driver's License office and Complainant's immediate supervisor. In February 2014, Mr. Morgan was physically stationed in Grand Junction.

3. At all times relevant to this appeal, Pamela Hardwick was the Regional Manager of DMV's Region 4, which includes offices in Montrose, Cortez, Durango, Delta, Gunnison and Grand Junction.

4. At all times relevant to this appeal, Joi Simpson was Respondent's Operations Manager. Four Regional Managers, including Ms. Hardwick, reported to her.

5. At all times relevant to this appeal, David Lindsay was Operations Director for Respondent's Driver's License section and Complainant's appointing authority. Ms. Simpson reported to Mr. Lindsay.

6. At all times relevant to this appeal, Jessica Cuellar was an employee in the Division of Human Resources.

7. The Montrose Driver's License office was staffed by two employees, including Complainant; a third employee staffed a Driver's License office in Delta. Because of a shortage of staff on the western slope, these three employees shared coverage of the Driver's License office in Gunnison, taking turns traveling to that office.

Administrative History of the Board's Rules Concerning Withdrawal of an Employee's Resignation¹

8. Prior to 2002, the provision limiting an employee's ability to withdraw a resignation notice was contained in State Personnel Board Rule R9-1-2, which allowed an employee to withdraw a resignation "at any time prior to 7 full working days before the set resignation date." Rule R9-1-2 subsequently became R-7-5.

¹ The ALJ incorporates these facts from the Board's rules and rulemaking record, which were previously noted in ALJ DeForest's February 28, 2015 decision denying Respondent's Motion for Summary Judgment.

9. In May 2002, R-7-5 was amended to allow an employee only two business days to withdraw a notice of resignation:

An employee may withdraw a resignation within two business days after giving notice of resignation. The appointing authority has discretion to approve a request to withdraw a resignation that is made more than two business days after the notice of resignation.

10. In October 2007, R-7-5, which became Board Rule 7-5, was further modified to provide additional restrictions on an employee's ability to withdraw a notice of resignation:

An employee who has submitted a notice of resignation at least 10 working days before its effective date may withdraw a resignation by the close of two business days after giving notice of resignation. The day that notice of resignation is given shall not be counted. A business day shall be the normal hours of operation for the department or employee's division. However, if the department or employee's division operates on a 24-hour basis, the business day shall end at midnight. The appointing authority must approve a timely withdrawal of resignation. Approval of a request to withdraw a resignation when that request is made more than two business days after the notice of resignation is within the discretion of the appointing authority.

The Board's 2013 Repeal of Board Rule 7-5

11. On December 31, 2012, the Board announced rulemaking to implement changes to the state constitution and state statutes required by Amendment S, including the repeal and replacement of Chapter 7. The Board's statement of basis and purpose for the repeal of Chapter 7 provided:

Chapter 7, Separation, in its entirety, including rules concerning general principles, resignation, layoff principles, notice requirements, determining priorities for layoff and retention rights, retention areas, retention rights, reallocation, appeals and recordkeeping, to simplify and make more clear the State's separation process.

12. The Board held its rulemaking public hearing on January 3, 2013. During that public hearing, Board Director Dana Shea-Reid stated that Board Rule 7-5 was to be repealed; no comments were made concerning the intended effect of such repeal. A Department of Personnel and Administration staff person, Skye Brunnick, made a single comment concerning the proposed repeal of Board Rule 7-5:

Under Resignation, old rule 7-5 was repealed, in which an employee who has submitted a resignation notice is later allowed to withdraw that notice and it was mandated that that the appointing authority must accept that withdrawal.

13. Board Rule 7-5 was repealed. The administrative record is devoid of any statement that such repeal was intended to completely eliminate an employee's right to withdraw a notice of resignation.

Complainant's Decision to Submit Her Notice of Resignation

14. Beginning in December 2013, Complainant began looking for a part-time job to supplement the income she received from Respondent. In the process of this job search, she was offered a full-time job outside of state employment.

15. On Wednesday, February 12, 2014, Complainant informed Mr. Morgan, via an email sent at 2:02 p.m., that she was considering submitting her notice of resignation:

This may come as a complete surprise, ... and maybe not.. .. I want you to know that I am considering taking another job. I made it to the interview on Monday over my lunch hr and they called today to offer me the job. I am still considering some things and I realize I must give this dept 10 days notice. Should I accept their job offer they want me to start Feb. 25.

Can you tell me who I should talk to about separation details? I have questions like will I get paid my sick/vac time and carry over with PERA and things like that...

Sorry to be the bad-news-bear... but I'd appreciate your help.
THANKS.

16. Mr. Morgan responded to Complainant via email at 2:31 p.m. on February 12, 2014:

Sorry to hear you are thinking of leaving us. Usually a two week notice is necessary to be able to get rehired back with the State in the future, anything less would put you on a non re-hire list. Please let me know if you need a voluntary resignation form.

I am sure that if you contact **Jessica (303) 866-4492**; she can answer any questions you might have about separation from the state.
hope this helps
please let me know if I can be anymore [sic] assistance.
[Boldface type in original.]

17. Mr. Morgan did not advise Complainant that, if she submitted her notice of resignation, she could not withdraw it.

18. Ms. Hardwick was blind-copied on Complainant's email to Mr. Morgan and his response, and forwarded these two emails to Ms. Simpson at 3:11 p.m. on February 12, 2014. Neither Ms. Hardwick nor Ms. Simpson advised Complainant that, if she submitted her notice of resignation, she could not withdraw it.

19. As Mr. Morgan suggested, Complainant attempted to contact Jessica Cuellar in Respondent's Human Resources office. She made numerous telephone calls to Ms. Cuellar on February 12 and 13, 2014. Complainant reached Ms. Cuellar's voice mail message, which appeared to be outdated, as it stated that Ms. Cuellar was out of the office on February 5, 2014. Complainant never received a return telephone call from Ms. Cuellar or anyone else in the Human Resources office.

20. Complainant went onto Respondent's website and found an employee handbook containing the following information concerning resignation:

You are expected to submit a written resignation to your appointing authority at least 10 working days before the effective date, unless you and your appointing authority agree to less time. If you do not give sufficient notice, your records may reflect that fact, and it may result in a delay of leave payout and forfeiture of reinstatement privileges. You may withdraw your resignation within two business days of giving notice. Your appointing authority has the option of approving a request to withdraw a resignation that is made after two business days.

21. The employee handbook consulted by Complainant had a cover page stating: "State Personnel System Employee Handbook FY 10-11. A publication of the Department of Personnel & Administration." The first page of this handbook contained an initial section titled "Note to readers," which included the following statement:

This handbook was written in accordance with federal and state laws, Personnel Board rules, personnel director's rules, and fiscal rules in effect at the time of publication. Subsequent revisions to these could cause conflicting statements. If such a situation should arise, **the laws, personnel rules, and fiscal rules will always be the official documents upon which a ruling will be based or an interpretation will be made.** *This handbook is a guide, not a contract.* The same caution applies to department handbooks. [Boldface, italics and underlining in original.]

22. Complainant did not read the entire handbook, but simply looked for sections that related to resignation and separation from employment. She considered this handbook to be an "agreement," because if she did not follow the rules it contained for employees, she could be disciplined.

23. Complainant did not see any information on Respondent's website informing her that she would not be allowed to withdraw her notice of resignation. She never received any training or other information from Respondent that such withdrawal was not permitted.

24. At 4:55 p.m. on Wednesday, February 12, 2014, Complainant sent Mr. Morgan the following email:

I left a message for Jessica ... thanks for the info ... she hasn't called me back yet. I will go ahead and give my 10 day notice. Im [sic] pretty sure I'll take the job and therefore that needs to be transmitted to you.

25. At 5:12 p.m. on February 12, 2014, Mr. Morgan forwarded Complainant's email to Ms. Simpson. At 8:08 p.m. on February 12, 2014, Ms. Simpson responded via email to Mr. Morgan: "I will get a letter of acceptance of her resignation out tomorrow. Thanks, Robert."

26. Ms. Simpson did not have the authority to accept an employee's resignation. Instead, she prepared an acceptance of resignation letter for Mr. Lindsay to sign.

27. Complainant completed and submitted a written notice of resignation to be effective February 28, 2014. Complainant's notice of resignation was received by Ms. Simpson on February 13, 2014.

28. Complainant relied on the information she found in this handbook to submit her notice of resignation on Thursday, February 13, 2014. Complainant explained that, based on the information she read in the online employee handbook, she understood that she had to give at least ten days' notice before resigning, and believed she had the option to withdraw her resignation within two business days of giving her notice of resignation.

29. Because Monday, February 17, 2014 was President's Day, an official state holiday, the second business day following Complainant's submission of her notice of resignation was Tuesday, February 18. Complainant believed that she had sufficient time over the 3-day weekend to review the benefits offered by her new job, consider her decision to resign and, if necessary, withdraw her resignation.

30. At 2:56 p.m. on Thursday, February 13, 2014, Complainant sent Mr. Morgan a hand written fax stating: "I cannot get Jessica to return my calls since yesterday 2-12-14 & now her voice mail said she's out - Do you have another person I can contact for employment separation?" (Underlining in original.)

31. On February 14, 2014, Mr. Morgan left for a trip to California over the long holiday weekend. He did not respond to Complainant's fax query.

32. On Friday, February 14, 2014, Mr. Lindsay signed a letter accepting Complainant's resignation, and providing her notice of her appeal rights. Ms. Simpson attempted to fax this letter to Complainant at her place of work in Montrose. This fax transmission was not received by Complainant.

33. The fax at Complainant's workplace in Montrose was connected to the public telephone line. When the telephone line was in use, no fax transmissions could be received.

Complainant's Attempts to Withdraw Her Notice of Resignation

34. On Saturday, February 15, 2014, Complainant researched her new job, and discovered that her new employer did not participate in PERA or offer insurance benefits comparable to those available through her employment with Respondent.

35. On Sunday, February 16, 2014, Complainant sent Mr. Morgan a text message indicating that she wished to retract her notice of resignation. Mr. Morgan contacted his supervisor, Ms. Hardwick, about Complainant's desire to withdraw her notice of resignation. Ms. Hardwick instructed Mr. Morgan to have Complainant contact her. Mr. Morgan relayed that message to Complainant. Ms. Hardwick subsequently instructed Mr. Morgan to tell Complainant to contact Ms. Simpson.

36. On Monday, February 17, 2014, Mr. Morgan contacted Complainant and told her to contact Ms. Simpson the next day (Tuesday, February 18), as Monday was a holiday. No one advised Complainant that she could not withdraw her notice of resignation.

37. Mr. Morgan never asked to meet with Complainant to discuss her request to retract her notice of resignation. He was never consulted by anyone in management about whether there was a need for Complainant to continue to work in the Montrose office, or whether she should be allowed to withdraw her notice of resignation.

38. At 11:02 a.m. on Monday, February 17, 2014, Complainant sent Ms. Simpson, Ms. Hardwick, Mr. Morgan, Jessica Cuellar and HR Director Andrew Gale the following email:

Hello to all,
I contacted Robert first and then Joy Latham [sic] on Sunday by text and phone to withdraw my resignation. When Robert got my message I was instructed to contact Pam as he was out of state. Therefore I sent her the same text I sent to Robert.
Robert contacted me on Monday when he returned to town and said I had to contact Joi on Tuesday per Pam.
Therefore I'm sending an email to all parties today.
I would like to withdraw the resignation I submitted on feb. 13.
Thank you.

39. Complainant did not receive a response to her request to withdraw her notice of resignation.

Mr. Lindsay's Decision Not to Accept Complainant's Withdrawal of Her Notice of Resignation

40. Mr. Lindsay conferred with Andrew Gale in the Human Resources department, and was advised that, because Board Rule 7-5 was repealed, Complainant was not allowed to withdraw her resignation. After the repeal of Board Rule 7-5, it was a "standard practice" not to accept a withdrawal of an employee's notice of resignation, because the existing Board Rule 7-4 did not mention such withdrawal.

41. In deciding not to accept Complainant's withdrawal of her notice of resignation, Mr. Lindsay did not consider Complainant's work record or the staffing needs of the Driver's License section on the western slope, because "the Rules did not mention" those considerations. He did not attempt to meet with, or contact, Complainant to discuss her separation from employment, and did not notify her that he was refusing to accept the withdrawal of her notice of resignation. Mr. Lindsay explained that there was no requirement that such communication take place.

42. Mr. Lindsay told Ms. Simpson he was not going to accept Complainant's withdrawal of her notice of resignation, and expected her to inform Complainant.

43. On February 18, 2014, Ms. Simpson told Complainant she was sending her Mr. Lindsay's February 14, 2014 acceptance of Complainant's notice of resignation, along with her appeal rights. Ms. Simpson informed Complainant that she would have to "pack her things" and be out of the office by February 28, 2014. Complainant testified that she "was forced out."

44. On February 18, 2014, a fax of Mr. Lindsay's letter accepting Complainant's resignation, with a notice of her appeal rights, was sent to Complainant's workplace in Montrose and was received by Complainant. Mr. Lindsay explained that it was "our responsibility to inform employees of their rights."

45. Mr. Lindsay was not aware of any training or other information provided to employees concerning the effect of a notice of resignation after Board Rule 7-5 was repealed. He explained that employees were expected to be familiar with, and to follow, the "Rules" posted on Respondent's website, and could also contact Human Resources for clarification.

46. After receiving Mr. Lindsay's letter, Complainant filed a timely appeal of Respondent's refusal to accept the withdrawal of her notice of resignation on February 18, 2014.

47. Mr. Morgan stated that, after Complainant's employment was terminated, her position at the Montrose office remained vacant for months. He had to send an employee from the Grand Junction office to fill in at the Montrose office. If no state vehicle was available for that employee to travel to Montrose, he had to pay that employee mileage.

48. Mr. Lindsay acknowledged that he read ALJ DeForest's February 28, 2015 summary judgment decision, but that he was not a lawyer and therefore did not fully comprehend the legal implications of that decision.

ANALYSIS

A. BURDEN OF PROOF

Complainant has the burden to prove by a preponderance of the evidence that Respondent's refusal to accept Complainant's withdrawal of her resignation was contrary to rule or law, and that this refusal led to an arbitrary or capricious termination of Complainant's employment. If Complainant succeeds in meeting this burden of proof, the Board may reverse or modify Respondent's actions. § 24-50-103(6), C.R.S.

B. RESPONDENT'S DECISION NOT TO ACCEPT COMPLAINANT'S WITHDRAWAL OF HER RESIGNATION WAS NOT CONTRARY TO RULE OR LAW.

1. Alleged Property Interest in Continued Employment

In *McCauley v. Dep't of Revenue*, No. 20CA1344, slip op. (February 24, 2022), the Colorado Court of Appeals found that, while the Colorado Constitution provides certified state employees with a property interest in continued employment, the Constitution does not address the issue of an employee's resignation. The statute concerning resignation, § 24-50-126, C.R.S., does not address the issue of withdrawal of an employee's resignation. *McCauley*, slip op. at p. 8, ¶ 20 – p. 10, ¶ 21. At the time Complainant requested that her resignation be withdrawn, the Board rules did not contain a provision allowing employees to withdraw a resignation. The Court of Appeals concluded: "In the absence of a constitutional provision, statute or Board rule, the Department was not compelled to accept McCauley's withdrawal of resignation." *Id.*, slip op. at p. 8, ¶ 18.

Complainant argues that her constitutional property interest in continued employment included an implied right to withdraw her resignation. However, the Court of Appeals found that a certified employee's property interest in employment "ceases to exist when the employee releases it." *McCauley*, slip op. at pp. 10-11, ¶ 21-22, relying on *Cunliffe v. Indus. Claim Appeals Off.*, 51 P.3d 1088, 1089 (Colo. App. 2002). In *Cunliffe*, the Court held:

[F]or unemployment compensation purposes, a voluntary resignation is an unconditional event, the legal significance and finality of which are not altered by the interval between the employee's notice and his or her departure from the job. Therefore, an employer who accepts an employee's unequivocal notice of resignation is entitled to rely on it without the risk of being charged for compensation benefits if the employee attempts to withdraw the resignation before its effective date. ... Consequently, we hold that when an employee voluntarily resigns and the employer refuses to accept an attempted retraction of the resignation prior to its effective date, the employee's resignation is considered to have been voluntary for purposes of determining the employee's entitlement to unemployment benefits.

Id. at 1089-1090.

Because Complainant's resignation was voluntary, and because no constitutional provision, statute or Board rule required Respondent to accept Complainant's withdrawal of her resignation, its decision not to do so was not contrary to rule or law.

2. Alleged Violation of Board Rule 7.1

Board Rule 7.1 provides, in pertinent part: "The appointing authority shall communicate, or make a reasonable effort to communicate, with an employee before conducting any involuntary separation." Complainant argues that Respondent's failure to communicate with Complainant before its decision not to accept her withdrawal of her resignation violated Board Rule 7.1.

In rejecting this argument, the Court of Appeals held that Respondent's refusal to consider Complainant's withdrawal of her resignation did not convert Complainant's voluntary resignation into an involuntary separation. *McCauley*, slip op. at p. 13, ¶ 26. Because Complainant's resignation was voluntary, Board Rule 7.1 did not require the appointing authority to discuss Complainant's proffered withdrawal of that resignation with Complainant. Therefore, Respondent's refusal to consider Complainant's withdrawal of her resignation did not violate Board Rule 7.1.

C. RESPONDENT'S DECISION NOT TO ACCEPT COMPLAINANT'S WITHDRAWAL OF HER RESIGNATION DID NOT RESULT IN AN INVOLUNTARY TERMINATION OF EMPLOYMENT.

As discussed above, Respondent was not legally required to accept, or even to consider, Complainant's withdrawal of her resignation. When an employee voluntarily resigns, the employee waives any property right in their continued employment. *McCauley*, slip op at p. 12, ¶ 24. Complainant voluntarily submitted a written notice of resignation effective February 28, 2014. Respondent accepted Complainant's resignation. There was no evidence that Complainant's resignation was coerced or forced. Employees have the right to resign. § 24-50-126, C.R.S. Employers who accept a notice of resignation are entitled to rely on it. *Cunliffe*, 51 P.3d at 1089-1090.

Because Complainant voluntarily proffered her resignation, Respondent's refusal to accept her subsequent request to withdraw her resignation did not create an involuntary termination of employment. *McCauley*, slip op. at p. 13, ¶ 26. There are, therefore, no grounds for an arbitrary and capricious analysis under § 24-50-103(6), C.R.S. In the absence of any legal authority requiring Respondent to consider Complainant's request to withdraw her resignation, Respondent's refusal to do so could not be considered to be an arbitrary or capricious termination of employment.

D. COMPLAINANT IS NOT ENTITLED TO AN AWARD OF ATTORNEY FEES AND COSTS.

Section 24-50-125.5(1), C.R.S., provides, in pertinent part:

Upon final resolution of any proceeding related to the provisions of this article, if it is found that the personnel action from which the proceeding arose ... was

instituted frivolously, in bad faith, maliciously, or as a means of harassment or was otherwise groundless ... the department, agency, board, or commission taking such personnel action shall be liable for any attorney fees and other costs incurred by the employee ... against whom such personnel action was taken...

A frivolous personnel action is an action for which “no rational argument based on the evidence or law was presented.” Board Rule 8-33(A). Personnel actions that are “in bad faith, malicious, or ... a means of harassment” are actions “pursued to annoy or harass, made to be abusive, stubbornly litigious, or disrespectful of the truth.” Board Rule 8-33(B). A groundless personnel action is one in which it is found that “a party fails to offer or produce any competent evidence to support such an action...” Board Rule 8-33(C).

As discussed above, Respondent’s decision not to accept Complainant’s withdrawal of her resignation was not contrary to rule or law, and could not be considered to be an arbitrary and capricious termination of employment. Because Complainant’s resignation was voluntary, and because Respondent was not legally required to accept Complainant’s proffered withdrawal, Respondent’s refusal to accept Complainant’s withdrawal of her resignation was not “instituted frivolously, in bad faith, maliciously, or as a means of harassment or was otherwise groundless.” Therefore, Complainant is not entitled to an award of attorney fees and costs.

CONCLUSIONS OF LAW

1. Respondent's refusal to accept Complainant's withdrawal of her resignation was not contrary to rule or law.
2. Complainant is not entitled to an award of attorney fees and costs.

ORDER

Respondent’s decision not to accept Complainant’s withdrawal of her resignation is **affirmed**. Attorney fees and costs are not awarded. Complainant’s appeal is **dismissed with prejudice**.

DATED this 21st day of
July 2022, at
Denver, Colorado.

/s/ _____
Susan J. Tyburski, Senior Administrative Law Judge
State Personnel Board
1525 Sherman Street, 4th Floor
Denver, CO 80203

CERTIFICATE OF SERVICE

This is to certify that on the 21st day of July, 2022, I electronically served true copies of the foregoing **REVISED INITIAL DECISION AFTER REMAND** and the attached **NOTICE OF APPEAL RIGHTS** addressed as follows:

William Finger, Esq.
Bill@fingerlawpc.com

Vincent E. Morscher, Esq.
Senior Assistant Attorney General
Vincent.Morscher@coag.gov

APPENDIX

EXHIBITS

COMPLAINANT'S EXHIBITS ADMITTED: Exhibits A, B, C, D, E, F, I, K, L, M, N, O, P, R.

RESPONDENT'S EXHIBITS ADMITTED: Exhibits 1, 2, 3, 5, 6, 7, 8, 9, 17.

WITNESSES

The following is a list of witnesses who testified in the evidentiary hearing:

Robert Morgan, Grand Junction Driver's License Office Manager and Complainant's supervisor
David Lindsay, Respondent's Operations Director and Complainant's appointing authority
Doris McCauley, Complainant
Pamela Hardwick, Regional Manager of Respondent's Region 4

NOTICE OF APPEAL RIGHTS

EACH PARTY HAS THE FOLLOWING RIGHTS:

1. To abide by the decision of the Administrative Law Judge ("ALJ").
2. To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is served to the parties. § 24-4-105(15), C.R.S. and Board Rule 8-53(A)(2).
3. Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is served to the parties. §§ 24-4-105(14)(a)(II) and 24-50-125.4(4), C.R.S. The appeal must describe, in detail, the basis for the appeal, the specific findings of fact and/or conclusions of law that the party alleges to be improper and the remedy being sought. Both the designation of record and the notice of appeal must be received by the Board no later than the applicable twenty (20) or thirty (30) calendar day deadline referred to above. *Vendetti v. Univ. of S. Colo.*, 793 P.2d 657 (Colo. App. 1990) and § 24-4-105(14) and (15), C.R.S.
4. The parties are hereby advised that this constitutes the Board's motion, pursuant to § 24-4-105(14)(a)(II), C.R.S., to review this Initial Decision regardless of whether the parties file exceptions.

RECORD ON APPEAL

The cost to prepare the electronic record on appeal in this case is \$5.00. This amount does not include the cost of a transcript, which must be paid by the party that files the appeal. Board Rule 8-53(C). That party may pay the preparation fee either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS. A party that is financially unable to pay the preparation fee may file a motion for waiver of the fee. That motion must include information showing that the party is indigent or explaining why the party is financially unable to pay the fee.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. To be certified as part of the record, an original transcript must be prepared by a disinterested, recognized transcriber and filed with the Board within 59 days of the date of the designation of record. See Board Rule 8-53(A)(5)-(7). For additional information contact the State Personnel Board office at (303) 866-3300 or email at dpa_state.personnelboard@state.co.us.

BRIEFS ON APPEAL

When the Certificate of Record of Hearing Proceedings is served to the parties, signifying the Board's certification of the record, the parties will be notified of the briefing schedule and the due dates of the opening, answer and reply briefs and other details regarding the filing of the briefs, as set forth in Board Rule 8-54.

ORAL ARGUMENT ON APPEAL TO THE BOARD

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

MOTION FOR RECONSIDERATION

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