

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

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JAMES E. JIMERSON,  
Complainant,

v.

DEPARTMENT OF CORRECTIONS, BUENA VISTA CORRECTIONAL FACILITY,  
Respondent.

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Senior Administrative Law Judge (ALJ) Denise Deforest commenced the hearing on October 27, 2014. ALJ Pamela Sanchez held the evidentiary hearing in this matter on July 28, 29, and 30, 2015, at the State Personnel Board, 1525 Sherman St., Courtroom 6, Denver, Colorado. The record was closed on January 7, 2016, after the audio records and documents admitted into evidence during the proceeding had been reviewed and after receipt of written closing statements from the parties. Sabrina Jensen, Assistant Attorney General, and Jack D. Patten, III, represented Respondent, Department of Corrections (DOC), Buena Vista Correctional Facility (BVCF). Respondent's advisory witness, and Complainant's appointing authority, was Jason J. Lengerich, Warden of Buena Vista Correctional Facility. Complainant was represented by William S. Finger, Esq., and J. Howard Thigpen, Esq.

**MATTERS APPEALED**

Complainant, currently a Correctional Officer IV (Captain) with the Department of Corrections, appeals the June 30, 2014 disciplinary action resulting in his demotion from the position of Correctional Officer V (Major), Custody and Control Manager. Complainant argues that on March 12, 2014, he did not order an offender to be placed in Special Control and, if he had made such an order, it would have been warranted as Offender H was engaging in disruptive behavior. Complainant asks for the reversal of his demotion and restoration of his salary commensurate with the rank of Major, as well as removal of all documentation and/or any mention of his demotion and discipline arising from the March 12 incident in his performance evaluations, personnel file and administrative file. Complainant also asks for back pay, lost salary increases and benefits, and attorney fees and costs.

Respondent, Department of Corrections, Buena Vista Correctional Facility, argues that Complainant engaged in the conduct for which he was disciplined; Complainant's conduct, ordering the use of Special Controls as a form of punishment and when unjustified, violated Administrative Regulation (AR) 1450-01 Code of Conduct; AR 100-07 Reportable Incidents; AR 300-56 Special Controls and the DOC Code of Ethics; the disciplinary action was not arbitrary and capricious; the discipline should be upheld; and Complainant is not entitled to any of the requested relief.

For the reasons presented below, the undersigned ALJ finds that Respondent's disciplinary action resulting in Complainant's demotion from a Correctional Officer V to a Correctional Officer IV 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;
3. Whether the discipline imposed was within the range of reasonable alternatives; and,
4. Whether Complainant is entitled to attorney fees and costs.

## FINDINGS OF FACT

### Background:

1. James E. Jimerson, Complainant, has worked for the Department of Corrections (DOC) since 1991. At all times relevant to this proceeding, Complainant worked as a Correctional Officer V (Major), assigned to the Buena Vista Correctional Facility (BVCF) and was the Custody and Control Manager.

2. Prior to June 30, 2014, Complainant had never been issued a corrective or disciplinary action.

3. In his 23 years of service, Complainant has served in different capacities and has acted as the Shift Commander.

4. The chain of command in descending order is the Major outranks the Captain, who outranks the Lieutenant, who outranks the Sergeant, who outranks the Correctional Officer. Rank is superseded, however, by several positions. The Custody and Control Manager supervises the Shift Commander. The Shift Commander is the individual identified in Administrative Regulation (AR) 300-56 that is authorized to order Special Controls.

5. AR 300-56 defines the circumstances under which Special Controls (SC) is to be implemented. Special Controls (SC) is used as an immediate behavior management intervention to resolve safety and security incidents when offenders are displaying continuous violent, dangerous, disruptive, and/or self-injurious behavior. AR 300-56 specifically states, "*Special controls shall not be initiated or applied as punishment.* [4-4190]." (Emphasis in original.)

6. In practical terms, when an offender is placed in special controls, he is strip searched, placed in leg irons attached to a belly chain, handcuffed, and not allowed to wear anything but his underpants.

### March 12, 2014 Incident

7. On March 12, 2014, at 9:00 A.M., Complainant wanted to speak to Offender H. Complainant was handling grievances and wished to discuss a grievance filed by Offender H. Complainant was the highest ranking officer on the premises at that time and was the Custody and Control Manager.

8. Under the grievance system, an offender is not required to speak to anyone regarding a grievance that they have filed. If they choose not to speak to anyone about the grievance, the file is simply closed. Offender H was not, therefore, required to speak to Complainant regarding the grievance. Complainant could have simply closed the file upon Offender H's refusal to speak to him.

9. Offender H was located in the segregation unit at the time Complainant wished to speak to him. Upon reaching the unit, Complainant directed Sgt. Steven Wheeler to get Offender H so that Complainant could speak with him. Sgt. Wheeler returned from seeing Offender H and reported to Lt. Cattell that Offender H did not want to speak with Complainant.

10. Complainant then directed that Lt. William Cattell to place Offender H in Special Controls. Lt. Cattell immediately took steps to implement Special Controls. Lt. Cattell followed this direction not only because of Complainant's rank, but because Complainant was the Custody and Control Manager.

11. Complainant told Lt. Cattell, "He [Offender H] cannot refuse to come out of his cell. He has to be placed on SC."

12. Lt. Cattell went to Offender H's cell and tried to get him to come out. Offender H refused.

13. Lt. Cattell notified the Shift Commander, Captain Richard Fisher, and Captain Ed Mahala, Housing Supervisor, of the situation and that Offender H was to be placed in SC.

14. Lt. Cattell also asked Correctional Officer (CO) Darla Andrews, who had a good working relationship with Offender H, to try and get him out of his cell. Offender H still refused.

15. Captain Fisher then came to the segregation unit and went to Offender H's cell. Lt. Cattell and CO Andrews accompanied him. The offender refused Captain Fisher's request. Captain Fisher then left.

16. CO Andrews remained and, after talking to Offender H for a while, convinced Offender H to come out of his cell. CO Andrews escorted Offender H out of his cell. Although he agreed to come out of his cell, Offender H was placed in SC and moved to an observation cell.

17. Complainant contacted Lt. Cattell to find out the status of the situation and learned that Offender H was in Special Controls. Offender H was moved from the Observation Cell to an office in segregation so that Complainant could meet with him. When Offender H met with Complainant, Offender H had been stripped and was only in his underpants, was in handcuffs, and leg irons attached to a belly chain.

18. When Special Controls are ordered, this impacts normal operations of the unit. Yard time, showers, meals, hearings, etc. are interrupted because half the staff is redirected to deal with offender being placed in SC.

19. Lt. Cattell did not believe that refusing an order to come speak with Complainant about a grievance was sufficient basis for placement in Special Controls.

20. The testimony of William Cattell was credible.

## **Administrative Review of Use of SC and Fact-Finding**

21. Associate Warden Matthew Hansen, Limon Correctional Facility, performs an administrative review when Special Controls are used as follow up on the use of that behavior management control tool.

22. The purpose of conducting the administrative review is to ensure that the implementation of Special Controls was done in compliance with policy and that the documentation is completed.

23. Associate Warden Hansen, along with Associate Warden Carol Soares, Colorado State Penitentiary, and Captain James Moore, Office of Emergency Management, were asked to conduct an external Fact-Finding to determine if the March 12, 2014, use of Special Controls was appropriate.

24. Upon being briefed by Major Dave Cotton that they were to determine what took place on March 12, 2014, and whether the use of Special Controls was appropriate.

25. The Fact-Finding Committee conducted interviews on April 18, 2014, of CO Timothy Simmons, CO Andrews and Lt. Cattell.

26. CO Timothy Simmons was in the segregation area the day of the incident.

27. Captain Fisher was interviewed by the committee, but refused to respond to direct questions whether Complainant ordered for Offender H be placed in SC.

28. Complainant was interviewed by the Fact-Finding Committee and told them that, after being unsuccessful at getting Offender H to come out of the cell, he left the area and directed staff to tell Captain Fisher that the offender had refused to come out. Complainant left the area before SC was implemented.

29. When Complainant was advised that several individuals, including Lt. Cattell and Captain Fisher, had told the committee that Complainant had ordered the use of Special Controls, Complainant responded, "If they say I did, then maybe I did." Complainant then went on to say that he did not recall doing so at any time.

30. Complainant made the argument to the Fact-Finding Committee that when Offender H was seen by Captain Fisher, Offender H was disruptive and threatened Captain Fisher. Therefore, the use of Special Controls was warranted.

31. Complainant reported to the Fact-Finding Committee that he was not aware that Offender H was in Special Controls when Complainant met with Offender H on March 12, 2014. Offender H had been removed from the observation cell and taken to the Segregation IT office to meet with Complainant. During that meeting, Offender H was stripped and only wearing his underpants, was in handcuffs and leg irons attached to a belly chain.

32. Complainant did not prepare an incident report regarding the use of Special Controls until asked to do so by Warden Lengerich. AR 100-07 requires for an incident report to be prepared prior to the completion of shift, after the incident is under control, by any DOC employee who observes or participates in any incident or unusual occurrence. An offender engaging in disruptive, threatening or violent behavior would qualify as an incident.

33. Complainant asserts that Offender H became disruptive at the point he threatened Captain Fisher, but did not prepare a report. When asked by the Fact-Finding Committee why he had not, Complainant asserted that he did not draft a report because he wanted to avoid Code of Penal Discipline (COPD) charges against Offender H.

34. The Fact-Finding Committee concluded that Complainant went to speak to Offender H on March 12, 2014, and ordered the use of Special Controls because Offender H refused to speak to him. The committee determined that the implementation of SC in this case was not consistent with policy and AR 300-56.

35. Moreover, the Fact-Finding Committee found Complainant's report of the incident subsequently prepared on April 8, 2014, contradicted his statements to the committee and the committee concluded that the statements were false.

36. Associate Warden Hansen drafted a report on April 22, 2014, based on the interviews and committee discussions, which set forth the Fact-Finding Committee's conclusions.

37. The testimony of Matthew Hansen was credible.

#### **Review of Fact-Finding Committee and Inspector General Report**

38. Warden Jason Lengerich was not at the Buena Vista Correctional Facility (BVCF) at the time the incident occurred. Warden Lengerich became the Appointing Authority and Warden at BVCF on April 1, 2014.

39. Warden Lengerich became aware of the incident upon receipt of an After Action Packet regarding the March 12, 2014 use of Special Controls.

40. Warden Lengerich had spoken to Complainant prior to initiating the Fact-Finding Committee and asked Complainant to prepare a written report. It was the April 8, 2014 report prepared by Complainant in response to the Warden's request which the Fact-Finding Committee concluded was falsified and contradicted Complainant's statements to them.

41. Warden Lengerich also asked Captain Fisher to prepare a report regarding the March 12 incident.

42. Upon receipt of the conclusions reached by the Fact-Finding Committee, Warden Lengerich devised a multifaceted plan to address the use of special controls and to further investigate the incident. In addition to conducting training on use of Special Controls, Warden Lengerich requested that the Office of the Inspector General at BVCF start a Professional Standards Investigation.

43. Investigator Alex Wold was assigned to the investigation. The issue under investigation was whether Complainant gave false information during a Fact-Finding inquiry concerning the use of special controls on an offender.

44. Investigator Wold reviewed the incident reports and Fact-Finding Committee Report.

45. Investigator Wold then interviewed Complainant, on two occasions, in addition to interviewing Sgt. Wheeler, Capt. Fisher, Lt. Cattell, CO Simmons, and CO Andrews.

46. Investigator Wold concluded that Offender H was placed in Special Controls at 9:44 A.M. on March 12, 2014, after refusing to come out and see Complainant, upon Complainant's order, and before any threats to staff had been made. He further concluded that there was no justification given or documented by Complainant or Capt. Fisher for the use of Special Controls

47. By doing so, Investigator Wold concluded that Complainant violated AR 300-56 and AR 100-7(IV)(C).

48. Warden Lengerich reviewed Investigator Wold's report and supporting documentation, and listened to the audio recordings of the interviews Investigator Wold conducted, before determining that a Board Rule 6-10 meeting was necessary.

**Board Rule 6-10 Meeting:**

49. As Complainant's Appointing Authority, Warden Jason Lengerich held a Board Rule 6-10 meeting with Complainant on June 16, 2014, on the need to administer disciplinary or corrective action due to Complainant's possible violation of Administrative Regulation 1450-01, Code of Conduct, and Administrative Regulation 300-56, Special Controls. The meeting was audio recorded and entered into evidence as Exhibits 11 and 12.

50. The Board Rule 6-10 meeting was attended by Warden Lengerich and his representative, Associate Warden Steven Owens, San Carlos/La Vista Correctional Facility, by Complainant, and his representative, Associate Warden William Brunell.

51. During the Board Rule 6-10 meeting, Warden Lengerich advised Complainant that Warden Lengerich had reviewed the incident reports, the Fact-Finding Report, the report prepared by the Inspector General's Office and the audio recordings of all related interviews. Complainant was given the opportunity to provide any additional information he wished considered, but did not submit any.

**Disciplinary Decision:**

52. Warden Lengerich determined that Complainant's conduct failed to comply with the Department's mission and vision and reflected negatively upon Complainant's credibility. Complainant's actions also significantly impacted the safety and security of the facility and seriously affected his ability to perform his job duties appropriately.

53. Warden Lengerich further concluded that Complainant not only chose to violate policy by placing an offender on Special Controls without justification, but also ordered subordinates to take actions outside of policy which placed them and the offender in harm's way. In doing so, Complainant's action created a culture of intimidation and counter productive interaction with offenders.

54. Warden Lengerich found that Complainant's conduct violated AR 100-07, by failing to write an incident report, and AR 300-56, by ordering Special Controls without justification. Moreover, Complainant engaged in conduct which violated AR 1450-01, Code of Conduct, which states in pertinent part:

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 individuals as a DOC employee . . .

55. Finally, Warden Lengerich determined that Complainant's conduct violated the Code of Ethics, which Complainant signed on 2/17/14, stating that employees must hold the respect and confidence of the people of the state and shall avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated.

56. In determining what discipline to impose, Warden Lengerich found that even at the Board Rule 6-10 meeting, Complainant took responsibility for the placement of Offender H in Special Controls, but never clearly stated if he ordered it or not.

57. As an officer at the rank of Major, who was also the Manager of Custody and Control possessing experience as a Shift Commander, Complainant was required to know DOC policies and the standards for use of SC.

58. Before determining whether to impose discipline, Warden Lengerich reviewed Complainant's personnel file and noted that his performance ratings were always average to exceptional. Complainant participated in numerous events to help and assist the DOC, which mitigated against a more severe sanction.

59. The testimony of Jason Lengerich was credible.

60. On June 30, 2014, Complainant was issued a formal disciplinary action resulting in his demotion from Corrections/Youth Security Office V (Major) to Correctional, Youth or Clinical Security Officer IV (Captain), effective July 1, 2014, with a salary reduction to \$6412 per month.

61. Complainant filed a timely appeal of the June 30, 2014 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; C.R.S. § 24-50-101, *et seq.*; *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. *Kinchen*, 886 P.2d at 704.

The Board may reverse or modify Respondent's decision if the action is found to be arbitrary, capricious or contrary to rule or law. C.R.S. § 24-50-103(6).

## **II. HEARING ISSUES**

### **A. Complainant committed the acts for which he was disciplined.**

One of the essential functions of a *de novo* hearing process is to permit the Board's administrative law judge to evaluate the credibility of witnesses. *See Charnes v. Lobato*, 743 P.2d 27, 32 (Colo. 1987) ("An administrative hearing officer functions as the trier of fact, makes determinations of witness' credibility, and weighs the evidence presented at the hearing"); *Colorado Ethics Watch v. City and County of Broomfield*, 203 P.3d 623, 626 (Colo.App. 2009) (holding that "[w]here conflicting testimony is presented in an administrative hearing, the credibility of the witnesses and the weight to be given their testimony are decisions within the province of the presiding officer"). The testimony of Respondent's witnesses was credible.

Respondent has successfully demonstrated by a preponderance of the evidence that Complainant ordered that Offender H be placed in Special Controls upon being told that Offender H refused to leave his cell and speak with Complainant. Complainant did not dispute that he knew the policies and standards which apply to the implementation of Special Controls. At the time Complainant ordered that Offender H be placed in Special Controls, Offender H had not engaged in any conduct which would have justified the use of Special Controls. Despite his involvement in the use of Special Controls on Offender H, Complainant did not prepare or complete an incident report. When the order was challenged, Complainant claimed to be unaware that Offender H was in Special Controls despite meeting with Offender H when Offender H was only in his underpants and restrained in handcuffs and leg irons attached to a belly chain. Complainant gave inconsistent, inaccurate, misleading and contradictory information to the Fact-Finding Committee, Investigator Wold and Warden Lengerich. Respondent established that Complainant engaged in the conduct for which he was disciplined and that Complainant violated AR 1450-01, AR 100-07, AR 300-56, and the Code of Ethics.

### **B. The Appointing Authority's action was not arbitrary, capricious, or contrary to rule or law.**

#### **(1) Respondent's decision to impose discipline was neither arbitrary nor capricious:**

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).

Respondent's actions in this case were neither arbitrary nor capricious. The evidence at hearing demonstrated that Respondent took reasonable steps to investigate Complainant's role in the implementation of Special Controls on Offender H and to determine what steps he took afterwards. Respondent obtained reports and reviewed interviews regarding the factual events that occurred and gave Complainant the opportunity to respond and provide information he wished the appointing authority to consider. Respondent gave candid and honest consideration to Complainant's statements and tempered any disciplinary action in consideration of Complainant's long history of good service. Respondent's decision to impose discipline in this case was not arbitrary or capricious.

**(2) Respondent's action was not contrary to rule or law:**

**A. Board Rule 6-9:**

Respondent's determination in taking disciplinary action comports with Board Rule 6-9, 4 CCR 801, which requires that a decision to take disciplinary action "shall be based on the nature, extent, seriousness, and effect of the act, the error or omission, type and frequency of previous unsatisfactory behavior or acts, prior corrective or disciplinary actions, period of time since a prior offense, previous performance evaluations, and mitigating circumstances. Information presented by the employee must also be considered."

The evidence at hearing demonstrated that Respondent evaluated the evidence supporting the allegations of Complainant's responsibility for ordering that Offender H be placed in Special Controls under circumstances that did not justify its use. The basis for Complainant's discipline is not simply that he chose to use Special Controls to punish Offender H for refusing to speak to him. The decision to discipline Complainant was also based on the impact on his conduct on his subordinates and the larger prison culture when an individual of his rank and his responsibility chooses to disregard the requirements and standards of the administrative regulations. Complainant's actions endangered the men and women that carried out his order and put Offender H at risk. In implementing Special Controls, Complainant distracted half the staff to carrying out his order and left the other half at greater risk. The nature of Complainant's conduct was not simply to disregard policy to punish an offender; he also chose to obscure his actions behind inaction and misdirection. Warden Lengerich made clear that he considered Complainant's many years of service and high rank in the organization which served not only as mitigating factors, but also as aggravating factors when evaluating the true nature and extent of his behavior. Respondent established through a preponderance of the evidence that all the information was reviewed and considered, including Complainant's statements and performance history.

The evidence established that there was no violation of Board Rule 6-9 in Respondent's decision as the nature, extent, and seriousness of the violations in the case required the imposition of discipline.

### **B. Progressive Discipline:**

Board Rule 6-2, 4 CCR 801, provides that “[a] certified employee shall be subject to corrective action before discipline unless the act is so flagrant or serious that immediate discipline is proper.”

The evidence presented at hearing established that the nature of Complainant’s conduct was not limited to ordering the use of Special Controls under circumstances which would not meet the requirements of AR 300-56, but also in failing to document the incident as required in AR 100-07 and failing to provide a full and accurate account of his role in the March 12 incident. Complainant put others at risk, including the offender, while in the leadership position of a Major with substantial authority as the Custody and Control Manager. Complainant’s conduct during and after the March 12 incident was so flagrant or serious that immediate discipline was proper.

### **C. Board Rule 6-10:**

Board Rule 6-10, 4 CCR 801, provides, in relevant part: “When considering discipline, the appointing authority must meet with the certified employee to present information about the reason for potential discipline, disclose the source of that information unless prohibited by law, and give the employee an opportunity to respond. The purpose of the meeting is to exchange information before making a final decision.”

Complainant did not dispute Respondent’s compliance with Board Rule 6-10. Respondent met with Complainant prior to the issuance of any discipline and gave him the opportunity to present any information regarding the allegations against him. Complainant is not required to present any additional information and chose not to do so. There was no violation of Board Rule 6-10 in this matter.

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

The final issue is whether the discipline imposed was within the range of reasonable alternatives available to Respondent.

Respondent established by a preponderance of the evidence that under the circumstances presented here, no lesser sanction would be reasonable. While at first blush it might appear that being demoted with a reduction in pay is too severe a sanction for improperly issuing a single order, upon evaluating the role of Complainant’s rank and position, as well as the impact of his conduct on his subordinates, the offender, and the prison culture, and considering his actions during the various investigations of the March 12 incident, the disciplinary action is within the range of reasonable alternatives available to Respondent in this case.

### **D. Complainant did not establish a basis for entitlement to attorney fees and costs.**

Attorney fees are warranted if an action was instituted frivolously, in bad faith, maliciously, or as a means of harassment or was otherwise groundless. § 24-50-125.5, C.R.S. and Board Rule 8-38, 4 CCR 801. The party seeking an award of attorney fees and costs shall bear the burden of proof as to whether the personnel action is frivolous, in bad faith, malicious, harassing, or otherwise groundless. Board Rule R-8-38(B), 4 CCR 801.

Complainant offered no evidence at hearing regarding establishing that Respondent's actions were frivolous, in bad faith, malicious or undertaken as a means of harassment or were otherwise groundless. Therefore, Complainant did not establish that attorney fees and costs were warranted.

**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.
4. Complainant request for attorney fees and costs is properly denied.

**ORDER**

Respondent's disciplinary action is **AFFIRMED**. Complainant's demotion to Correctional, Youth or Clinical Security Officer IV (Captain), effective July 1, 2014, with a salary reduction to \$6412 per month is **AFFIRMED**. Complainant's appeal is **Dismissed with Prejudice**.

Dated this 11<sup>th</sup> day  
of January, 2016 at  
Denver, Colorado.



Pamela Sanchez, Administrative Law Judge  
State Personnel Board  
1525 Sherman Street, 4<sup>th</sup> Floor  
Denver, CO 80203  
(303) 866-3300

**CERTIFICATE OF MAILING**

This is to certify that on the 13<sup>th</sup> day of January, 2016, I electronically served true copies of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**, addressed as follows:

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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 8-62, 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 8-65, 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 8-63, 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 8-64, 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 8-67, 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 8-70, 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 8-60, 4 CCR 801.