

STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. 2016B002

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

EDGAR CARLIS,
Complainant,

v.

DEPARTMENT OF HUMAN SERVICES, DIVISION OF YOUTH CORRECTIONS,
Respondent.

Administrative Law Judge (ALJ) Pamela Sanchez held the hearing in this matter on October 28, 2015, at the State Personnel Board, 1525 Sherman St., Courtroom 6, Denver, Colorado. The record was closed on November 10, 2016, after the audio and video recordings admitted into evidence during the proceeding had been reviewed. Joseph F. Haughain, Senior Assistant Attorney General, represented Respondent, Department of Human Services, Office of Children, Youth and Families, Division of Youth Corrections, Lookout Mountain Youth Services Center. Respondent's advisory witness, and Complainant's appointing authority, was Maricela Shull, Assistant Director, Lookout Mountain Youth Services. Complainant appeared and represented himself.

MATTERS APPEALED

Complainant, a Youth Corrections Officer I (YCO I) with the Department of Human Services, appeals issuance of a disciplinary action implementing a 5% reduction in his base pay for the months of July, August and September 2015, arguing that he did not willfully, intentionally or deliberately cause harm and that the discipline imposed is "a very harsh and overzealous reaction." Complainant asks that the words "willful misconduct" be removed from the disciplinary letter and replaced with the words "unintentional mistake"; the words "continued lack of effort to improve your performance" be removed and replaced with the words "a concern that needs to be addressed"; and the 5% reduction in his base pay be removed and the disciplinary action be reduced to a corrective action.

Respondent, Department of Human Services, Office of Children, Youth and Families, Division of Youth Corrections, Lookout Mountain Youth Services Center, argues that Complainant engaged in the conduct for which he was disciplined; principles of progressive discipline were followed; the disciplinary action was not arbitrary and capricious; and that the discipline should be upheld.

For the reasons presented below, the undersigned ALJ finds that Respondent's disciplinary action implementing a 5% reduction in Complainant's base pay for the months of July, August and September 2015 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

Background:

1. Edgar Carlis, Complainant, has worked for the Department of Human Services, Division of Youth Corrections, for 16 years. At all times relevant to this proceeding, Complainant worked as a Youth Corrections Officer I (YCO I or CYCO I) assigned to Lookout Mountain Youth Services Center (Lookout Mountain).

2. Lookout Mountain is a long term residential facility for high risk youth offenders incarcerated for violent, sex and drug offenses requiring a high security treatment center.

3. It is one of Complainant's job duties to administer medication to the youth offenders. Complainant completed training in medication administration and is designated as Qualified Medication Administration Personnel (QMAP) in Colorado.

4. Medications are distributed to the offenders from the Control Center ("Control," "Control Center" or "Control Desk"). The Control Center contains a desk that has a locked drawer which is located below the main level of the desk. A counter runs along the outer edge of the desk, which is approximately 8 to 12 inches above the main level of the desk.

5. The procedure for administering medication requires that an offender approach the Control Center with an identification card. Only one offender is allowed to be at or near the Control Center at any given time. Medications are stored by offender name on cards that have individual plastic bubbles containing the pills to be administered at one time. Once the identity of the offender is matched with the individual's identification card and the name on the medication card, the medication is removed from the bubble and placed in a small cup. The medication card should then be returned to the locked drawer. The cup is then taken and placed on the top counter, along with water and crackers if available. The YCO is to observe the offender placing the medication in his mouth and is then to visually confirm the medication is in the offender's mouth. After drinking water, the YCO is to confirm the medication was ingested by visually inspecting the offender's mouth and either asking the offender to move his tongue so all parts of the mouth are visible, or giving the offender crackers to ensure that the medication was swallowed. At no point is the offender given access to his medication card with multiple doses of medication.

Basis for Discipline - April 28 Incident

6. On the morning of April 28, 2015, Complainant was assigned to the Juniper West Unit at the Control Center and Offenders X.M. and A.G. were assigned to his supervision. Complainant began to administer medications. At that time, two youth offenders had been released from their secure rooms and were standing near the Control Desk.

7. Complainant placed a medication card containing medications prescribed for Offender X.M. on the top counter of the control desk. The medication card contained 5 doses of medication, each in a separate plastic bubble, designated for Offender X.M.

8. Medication cards should only be removed from the Control Desk drawer in order to obtain the pills to prepare them for administration. Once the pills for any given offender are obtained, the medication card should be placed back in the drawer and is never to be accessible to the offender receiving the pills.

9. After administering medication to Offender X.M., Complainant failed to remove the medication card that he had placed on the counter top from the counter top.

10. Complainant then allowed another offender to approach the Control Desk before he had prepared the medication for that individual.

11. While the second offender, A.G., waited for his medications to be issued, he took the medication card prescribed to Offender X.M. off the counter at the Control Desk and put it under his shirt.

12. Complainant did not observe Offender A.G. removing the medication and remained unaware that the medication prescribed for Offender X.M. was removed from the Control Center.

13. A few minutes later, Complainant was joined at the Control Center by Tiffany Jenkins, CYO I. Ms. Jenkins offered to help Complainant with medication administration. As required by protocol, Ms. Jenkins began conducting an inventory of the medication before distributing any. In doing the inventory, Ms. Jenkins discovered that Offender X.M.'s medication card was missing. Ms. Jenkins first attempted to find the medication card and then asked Complainant about it, as he was the only other staff member distributing medication that morning. Complainant told Ms. Jenkins that he had given Offender X.M. his medication and thought the medication card should be back in the drawer.

14. Ms. Jenkins contacted other staff and help was brought in from other areas to conduct room searches. The wing was locked down and the offenders were prevented from leaving the area even though they were due at school. Offenders X.M. and A.G. were strip searched. The medication card itself was never located. Another staff member ultimately located the pills when conducting a second search of Offender A.G.'s room. Offender A.G. had hidden the pills in the heel of one of his shoes in his room.

15. Once the pills were located, Offender A.G. admitted that he had taken the pills with the intent of selling them.

16. There are several types of risks caused by offenders obtaining medication that is not prescribed to them. First, if Offender A.G. had ingested medication that was prescribed to someone else, the pills may have harmed him. Once it was known to the other offenders that he had the pills, Offender A.G. may have been beaten up or abused by other offenders in order to obtain the pills. Finally, if Offender A.G. had sold the pills, the offender who bought the pills could have been harmed upon taking them. As any of these scenarios would have resulted in staff involvement, those staff members would have been at risk while intervening with the offenders.

Board Rule 6-10 Meeting:

17. Complainant's appointing authority was Maricela Shull, Assistant Director of Lookout Mountain Youth Services Center.

18. Ms. Shull held a Board Rule 6-10 meeting with Complainant on June 10, 2015, on the issue of Complainant's potential violation on April 28, 2015, of the Division of Youth Corrections (DYC) Policy 9.3, "Security Control Juvenile Supervision and Movement." Jason Lillich, Director of Lookout Mountain Youth Services Center, was also in attendance at the meeting. Complainant attended the meeting without a representative. The meeting was recorded and admitted into evidence at hearing as Exhibit 12.

19. DYC Policy 9.3 requires that: juveniles shall always be supervised by facility staff inside and outside the facility; Control Center staff shall primarily be responsible for the control of juvenile movement; staff shall be responsible for knowing the location of the juveniles assigned to their supervision at all times; facility procedures shall govern the supervision of juveniles outside the facility perimeter; and staff shall be positioned to supervise all juveniles assigned to them, having the ability to see and hear, to prevent, intervene and/or respond to situations.

20. At the time of the April 28, 2015 incident, Complainant was assigned to the Control Center and Offenders X.M. and A.G. were assigned to his supervision.

21. At the Board Rule 6-10 Meeting Complainant acknowledged that he did not follow the established practice of keeping the youth offenders a proper distance from the Control Center. Complainant did not dispute that he placed Offender X.M.'s medication card on the counter, that he failed to secure the medication card back in the drawer after distributing the medication, and that Offender A.G. obtained the medication from the counter top where Complainant placed it.

22. Complainant explained that it was simply a mistake and not done to intentionally harm anyone. Complainant did not dispute that he was unaware that Offender A.G. had taken the medication card until CYO Jenkins performed an inventory and discovered that it was missing.

23. Complainant acknowledged that he knew it is DYC policy that offenders are not allowed to approach the desk unless asked and that offenders be in a location where a CYO could watch them. Complainant also acknowledged that he had reviewed DYC Policy 9.3 on or by November 15, 2014, in compliance with a corrective action issued to him dated November 7, 2014.

24. During the meeting, a video recording of the April 28, 2015 incident regarding the unauthorized removal of Offender X.M.'s medication card was reviewed. Complainant was given an opportunity to comment on the conduct depicted in the video recording.

Disciplinary Decision:

25. As part of her consideration of the proper response regarding Complainant's conduct leading to the unauthorized removal by Offender A.G. of Offender X.M.'s medication card, Ms. Shull considered Complainant's statements at the Board Rule 6-10 meeting, his prior corrective actions and his employee file.

26. On November 7, 2014, Complainant was issued a corrective action for failure to comply with NYC Policy 9.3 by failing to complete a security check and secure a youth's sleeping room door resulting in the youth leaving his room without staff knowledge. The November 7 Corrective Action required Complainant review NYC Policy 9.3, sign an acknowledgement of having done so and agree to abide by the practices set forth in NYC Policy 9.3.

27. On May 15, 2015, Complainant was issued a corrective action for violation of NYC Policy 9.3 by failing to maintain visual control of offenders and failing to realize that one offender had been left behind while Complainant was supervising movement of a group of offenders. Complainant was assigned to supervise 15 offenders being moved to a dining room from their rooms on the Juniper West Unit. While Complainant was advised of the unit count by a coworker as being 15 offenders, there were actually only 14 offenders lined up to go to dinner. One resident was left behind in the bathroom and reached over the counter at the Control Desk to acquire a radio and call staff to return for him.

28. While the May 15 Corrective Action was issued after the April 28 incident occurred, it was issued before the Board Rule 6-10 meeting regarding the April 28 incident was held and before a decision was made regarding what discipline, if any, to impose on Complainant for that incident.

29. Ms. Shull concluded that Complainant's history evidenced a repeated failure to properly supervise and control the offenders. Ms. Shull also determined that the corrective action issued on November 7, 2014, had not sufficiently altered Complainant's behavior to prevent the incident that occurred on April 28, 2015.

30. While the medication itself was recovered, the potential for serious harm to Offender A.G., the other youth and staff, caused by the April 28 incident was substantial.

31. Ms. Shull concluded that that Complainant's repeated failure to comply with NYC Policy 9.3 constituted willful misconduct and demonstrated a continued lack of effort to improve his performance.

32. Ms. Shull's testimony was credible.

33. On July 1, 2015, Complainant was issued a formal disciplinary action resulting in a 5% reduction of Complainant's base for the months of July, August and September, 2015. This resulted in a reduction in the amount of \$245.60 for each month. At the conclusion of the disciplinary action, Complainant's base pay would be restored to its previous level.

34. Complainant filed a timely appeal of the July 1, 2015 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.

Complainant did not present any evidence at hearing. Therefore, Complainant did not dispute or refute the evidence establishing that on April 28, 2015, he allowed two offenders to be out of their rooms and approach the Control Center at the same time in violation of established practice; he failed to properly supervise Offender X.M. and Offender A.G. during medication administration by allowing Offender A.G. to be present while administering medication to Offender X.M. and by allowing Offender A.G. to approach the Control Desk before Complainant had prepared the medication for administration to Offender A.G.; he willfully placed prescription medication on the counter top of the Control Desk in violation of established practice; he failed to properly supervise Offender A.G. by not maintaining visual supervision of Offender A.G. when Offender A.G. was at the Control Center and did not observe Offender A.G.'s actions; and he failed to maintain control of the Offender X.M.'s medication card and return it to the locked drawer once the medication had been administered to the youth to whom the medication was prescribed.

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, Ms. Tiffany Jenkins, Mr. Michael J. Martinez, Mr. Nicolas Galbreath, and Assistant Director Maricela Shull, was credible.

As a result, Respondent has successfully demonstrated by a preponderance of the evidence that Complainant violated DY0 Policy 9.3, failed to comply with established practices

for medication administration, and failed to perform competently. Respondent also demonstrated Complainant's willful misconduct.

Complainant argues that his placement of the medication card on the counter top was a mistake and, therefore, he did not engage in willful misconduct. Respondent established, however, that Complainant chose to disregard established practices and DY0 policy throughout the entire incident. Complainant was disciplined not only for mishandling the medication card, but also allowing two offenders to be at the Control Center at the same and allowing Offender A.G. to stand at the counter unsupervised. Respondent established that Complainant was aware of proper procedure and policies governing medication administration and supervision of youth offenders when he was assigned to the Control Center. Respondent established that Complainant committed the acts for which he was disciplined and, by doing so, engaged in willful misconduct.

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 the April 28, 2015 incident. Respondent obtained statements regarding the factual events that occurred that day and spoke with Complainant regarding his conduct. As noted earlier, Complainant never disputed that he allowed the two offenders to approach the Control Center at the same time or that he failed to follow established procedures in administering the medication in question. Complainant acknowledged his role in the incident but argued that it was not willful misconduct but rather simply an error that should not lead to discipline. Respondent gave candid and honest consideration to Complainant's statements, prior employment and history of corrective actions. 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 action 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 April 28 incident as part of a series of incidents involving Complainant’s supervision of offenders, but chose to impose discipline based on the level of seriousness of the incident, the prior corrective action involving the same issue, proper supervision of the offenders, and risk to the youth involved. Respondent reviewed all the information and considered Complainant’s explanation and arguments regarding his prior performance and history. The evidence established that there was no violation of Board Rule 6-9 in Respondent’s decision that 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.”

Complainant argues that he simply made a mistake and did not intentionally seek to harm the youth under his supervision. Complainant believes that a corrective action would have been sufficient to address his behavior. Complainant’s argument is not persuasive. Complainant had been counseled and received a corrective action in November 2014 regarding DYC Policy 9.3 and the need to ensure proper supervision of the youth assigned to him. While the November 2014 Corrective Action did not involve medication administration, it did involve proper supervision of the offenders and maintaining proper security practices to ensure the safety of the youth and staff alike. Moreover, Board Rule 6-2 does not require that there be a corrective action in every instance prior to the imposition of discipline. Here, Respondent has established that Complainant’s conduct was so serious and created such a high risk to the youth and other staff that immediate discipline was proper. Under such circumstances, Respondent’s decision to impose discipline is not a violation of Board Rule 6-2.

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. Complainant reviewed the video recording of the April 28 incident during the Board Rule 6-10 meeting and was given the opportunity to offer any explanation or response to the issues and concerns raised by Mr. Lillich and Ms. Shull. 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.

Complainant argues that as his placement of the medication card on the counter top was unintentional, he did not engage in willful misconduct and had no intent to do harm. Therefore, Complainant asserts that discipline should not be imposed. Complainant's argument does not take into account his November 2014 corrective action, as well as the fact that the discipline was not only imposed for Complainant's placement of the medication card on the counter top, but also for his failure to properly supervise the offenders and his failure to follow established practices and policy from the moment he approached the Control Center to administer medications on April 28, 2015.

Complainant was only to allow one offender at the Control Center at any given time. Complainant allowed two. Complainant was to remove Offender X.M.'s medication from the card, place the pills in a cup for distribution and immediately return the medication card to the locked drawer. Complainant placed the medication card on the counter top accessible to anyone, lost track of it and was unaware it had been removed from the area until told by Ms. Jenkins. Complainant was not to allow an offender at the Control Center until medication was prepared for distribution. Complainant allowed Offender A.G. to stand at the Control Desk while he searched for and prepared Offender A.G.'s medication. Complainant was to watch any offender while the offender was at the Control Center. Complainant was unaware of anything Offender A.G. was doing while Complainant was obtaining and preparing Offender A.G.'s medications. Complainant was not disciplined only because he placed the medication card on the counter top; but rather, because Complainant chose to disregard numerous established practices governing these interactions, violating policy in doing so and placing the youth and staff at risk as a consequence of his decisions.

Under such circumstances, Maricela Shull's conclusion that no lesser sanction would be likely to improve Complainant's performance is reasonable. The disciplinary action of a 5% reduction in base pay for the three months, July, August and September, 2015, is within the range of reasonable alternatives available to Respondent in this case.

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 disciplinary action is **affirmed**. The 5% reduction of Complainant's base pay for the months of July, August and September is affirmed. Complainant's appeal is Dismissed with Prejudice.

Dated this 16th day
of December, 2015 at
Denver, Colorado.



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

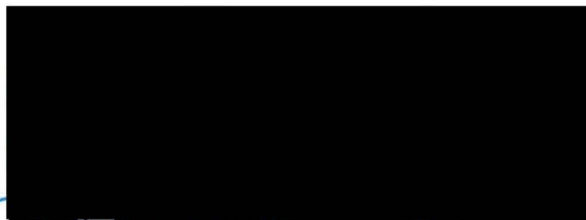
CERTIFICATE OF MAILING

This is to certify that on the 17th day of December, 2015, I electronically served true copies of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**, addressed as follows:

Edgar Carlis



Joseph F. Haughain
Senior Assistant Attorney General
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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.