

**STATE PERSONNEL BOARD, STATE OF COLORADO**  
Case No. **2019G031(C)**

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**INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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**AYMAN SALLOUM,**  
Complainant,

v.

**DEPARTMENT OF TRANSPORTATION,**  
Respondent.

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Senior Administrative Law Judge (ALJ) Susan J. Tyburski held the commencement hearing on February 28, 2020, by telephone, and the evidentiary hearing on November 4-6, 2020, via web conference. The record was closed on November 6, 2020, after the ALJ received and reviewed properly redacted exhibits from the parties.

Throughout the hearing, Complainant and his attorney, Casey J. Leier, Esq., appeared via web conference. Respondent appeared via web conference through its attorneys, Assistant Attorney General Jacob W. Paul, Esq., and Senior Assistant Attorney General Lauren K. Peach, Esq. Respondent's advisory witness was Jessica Myklebust, the hiring manager for the position at issue in this case.

A list of exhibits admitted into evidence and a list of witnesses who testified at hearing are attached in an Appendix.

**PROCEDURAL HISTORY**

Complainant filed three petitions for hearing with the State Personnel Board (Board) raising a variety of claims, including discrimination on the basis of national origin and disability, as well as retaliation, in violation of the Colorado Anti-Discrimination Act (CADA). On December 3, 2018, these three petitions were consolidated. Complainant's discrimination claims were referred to the Colorado Civil Rights Division (CCRD) for investigation.

On September 30, 2019, the Board received the CCRD's No Probable Cause (NPC) Opinion. Complainant filed a timely appeal of the NPC Opinion. On January 8, 2020, ALJ Keith Shandalow issued a preliminary recommendation concerning Complainant's consolidated petitions for review. ALJ Shandalow recommended that the Board grant a hearing "solely on Complainant's claim that Respondent retaliated against him in violation of [CADA]." On January 21, 2020, the Board adopted the ALJ's recommendation. Complainant's CADA retaliation claim was subsequently set for an evidentiary hearing.

**MATTER APPEALED**

Complainant, a certified employee, appeals Respondent's decision not to select him for an Environmental Program Manager position. Complainant alleges that this non-selection was due to retaliation for raising a discrimination complaint. Complainant seeks to be placed in the

Environmental Program Manager position he was denied, a back pay award, and reimbursement of attorney fees and costs.

Respondent argues that its selection decision was not motivated by CADA retaliation, that all relief requested by Complainant be denied, and that Complainant's appeal be dismissed with prejudice.

For the reasons discussed below, the ALJ finds that Respondent's selection decision was not motivated by CADA retaliation. Therefore, Respondent's decision not to select Complainant for an Environmental Program Manager position is **affirmed**.

### **ISSUES**

1. Was Respondent's decision not to select Complainant for an Environmental Program Manager position motivated by retaliation for raising a discrimination complaint?
2. Is Complainant is entitled to an award of attorney fees and costs?

### **FINDINGS OF FACT**

#### **Background**

1. Complainant has worked for the Colorado Department of Transportation (CDOT or Respondent) in the Environmental Unit since October 2006. (Stipulated fact.<sup>1</sup>)
2. Complainant has worked in CDOT's Region 4 and Region 6. He currently works in Region 1 on the Environmental Team. (Stipulated fact.)
3. Complainant is currently employed by Respondent as an Environmental Protection Specialist III. (Stipulated fact.)
4. Complainant is from Jordan. His national origin is Jordanian.
5. Complainant received an "Exceptional" rating on his 2014-2015 annual performance evaluation.
6. Complainant received a "Satisfactory, Occasionally Exceeds" rating on his 2015-2016 annual performance evaluation.
7. Complainant received a "Satisfactory" performance rating on his 2017-2018 annual performance evaluation.
8. On October 1, 2017, CDOT hired Jessica Myklebust as the Regional Environmental Manager, Region 1 (Program Management II). (Stipulated fact.)
9. Ms. Myklebust was responsible for supervising the Region 1 Environmental team, including two Environmental Program Managers. The Environmental Program Managers serve as first-level supervisors to the rest of the team, including Complainant. (Stipulated fact.)

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<sup>1</sup> The parties stipulated to certain facts.

10. The Region I Environmental team ensures Respondent's compliance with the National Environmental Policy Act (NEPA), as well as other federal, state and local laws, in the planning, development, maintenance and operations of the Region 1 transportation system.

#### Complainant's Workload Grievance

11. On July 3, 2018, Complainant initiated an informal Step I grievance concerning his workload. (Stipulated fact.)

12. On July 11, 2018, Ms. Myklebust met with Complainant to discuss his Step I grievance concerning his workload.

13. On July 19, 2018, Ms. Myklebust granted Complainant's request to redistribute his workload. In her written Step I grievance decision, Ms. Myklebust thanked Complainant for "coming to me with your concerns" and "agreeing to the additional time for me to look into your concerns so that I could give them my full consideration."

14. Complainant did not appeal Ms. Myklebust's Step I grievance decision.

#### Complainant's Corrective Action Grievance – Step I

15. On July 3, 2018, Ms. Myklebust issued a Corrective Action to Complainant to address Complainant's "poor interpersonal communications, difficult interactions, and deficient customer service."

16. On July 12, 2018, Complainant initiated an informal Step I grievance protesting the Corrective Action. (Stipulated fact.)

17. In his July 12th grievance, Complainant argued that the Corrective Action was biased, capricious and arbitrary, as well as groundless and based exclusively on hearsay. Complainant also alleged that Ms. Myklebust was creating a hostile work environment, discriminating against him and treating him differently because of his national origin. (Stipulated fact.)

18. In his July 12th grievance, Complainant sought rescission of the Corrective Action, permission to run the hazardous materials program without involvement from Ms. Myklebust, approval of his request to work from home one day per week, a letter of apology from Ms. Myklebust, and an end to Ms. Myklebust's conduct in alienating CDOT staff against him, undermining his authority, and coercing him to participate in professional activities against his professional judgment. (Stipulated fact.)

19. On July 23, 2018, Ms. Myklebust met with Complainant about his grievance. (Stipulated fact.)

20. On July 30, 2018, Ms. Myklebust issued a written decision partially granting and partially denying Complainant's requested relief. Ms. Myklebust removed the training requirements originally identified in the Corrective Action. Ms. Myklebust did not agree to relinquish her Environment Unit managerial duties as they pertain to Complainant and the hazardous materials program; however, she agreed that Complainant could continue to exercise significant independence and discretion. Finally, Ms. Myklebust did not grant Complainant's

request to work from home, but agreed to revisit this request in six months. (Stipulated fact.)

21. Ms. Myklebust did not rescind the Corrective Action. (Stipulated fact.)

22. Complainant appealed his grievance to the second step of the grievance process.

### The Environmental Program Manager Selection Process

23. Beginning on July 23, 2018, Respondent posted the position of Environmental Specialist IV, with a working title of Region I Environmental Program Manager. This position was open to all Colorado residents and was open from July 26, 2018 to August 9, 2018. (Stipulated fact.)

24. The job posting for the Environmental Program Manager position required applicants to submit a written narrative with their application. The job posting provided the following instructions for the written narrative:

The education, experience, abilities, and accomplishments listed in this announcement have been identified as critical criteria for successful performance in this position. Include with your application a written narrative describing how you would use these critical success criteria to approach your first 6 months in this position. Be specific and detailed in describing your experience, abilities, and approach as they relate to this position's requirements of experience working in a leadership or decision making capacity and working within a broad range of natural and cultural environmental resources areas. Limit your answers to a total of 2 single-sided pages ... Your responses will be used as a part of the comparative analysis process. Document on your application or additional pages the extent you possess the above competencies. Failure to include the narrative may be considered as "failure" of the first step in the comparative analysis process for this position.

25. On August 7, 2018, Complainant submitted an application for the Environmental Program Manager position. (Stipulated fact.)

26. On August 10, 2018, Respondent notified Complainant that he met the minimum qualifications for the position and that his application would move forward to the next step in the comparative analysis process. (Stipulated fact.)

27. Ms. Myklebust asked James Eussen, Jordan Rudel and David Cesark to serve as Subject Matter Experts (SMEs) for the comparative analysis of the candidates' application materials.

28. Mr. Eussen and Mr. Rudel completed their comparative analyses. Mr. Cesark was unable to complete his review of the candidates' application materials and withdrew from the comparative analysis process.

29. Each SME used only the application materials to compare the respective qualifications of the candidates.

30. During the comparative analysis process, the SMEs were not aware of Complainant's pending discrimination complaint.

31. Ms. Myklebust did not talk with the SMEs about any of the candidates.

32. At the time they engaged in their comparative analysis, Mr. Eussen and Mr. Rudel did not know about Complainant's discrimination complaint.

33. Each SME independently evaluated the candidates' application materials and rated each candidate on a scale of 1-5 in the areas of job knowledge, program management/directing others and narrative. The range of ratings were defined as follows: "1" was "Not Acceptable," "3" was "Average," and "5" was "Exceptional." An "Overall Rating" was then assessed for each candidate.

34. Complainant's written narrative in his application materials did not discuss how he would use the "critical success criteria" to approach his first six months as an Environmental Program Manager.

35. After reviewing Complainant's application materials, Mr. Eussen rated Complainant as "2" in job knowledge and "1" in program management/directing others. Mr. Eussen rated Complainant's narrative as a "1," and assigned an overall rating of "1.5." In the comments section, Mr. Eussen noted:

Very weak application and narrative, including no mention of first 6 months. Needs a lot more detail to show applicant has an understanding of position and requirements. Even though applicant has been with CDOT for approximately 12 years there was no NEPA or CDOT project management experience mentioned.

36. After reviewing Complainant's application materials, Mr. Rudel rated Complainant as "3.5" in job knowledge and "3" in program management/directing others. Mr. Rudel rated Complainant's narrative as a "3," and assigned an overall rating of "3.2." In the comments section, Mr. Rudel noted:

CDOT employee for over 10 years. Has managed over 45 people for the country of Jordan.

37. The SMEs' ratings were forwarded to Respondent's Human Resources Department.

38. Erin Hardin from Respondent's Human Resources Department averaged the SMEs' ratings for a final score for each candidate. Based solely on these final scores, Ms. Hardin prepared a list of the top six candidates to be interviewed and forwarded that list to Ms. Myklebust.

39. When she prepared the final candidate list, Ms. Hardin did not know about Complainant's discrimination complaint.

40. Five of the six highest scoring candidates, including the candidate who was ultimately selected to fill the position, submitted a written narrative that discussed how they would approach their first six months as an Environmental Program Manager.

41. The passing score for the comparative analysis was 59%. Complainant received a score of 47%.

42. Based on the comparative analysis, 6 of the 18 candidates received a passing score and proceeded to final consideration for the position. One candidate removed herself from consideration. Respondent notified the remaining 11 candidates who did not receive passing scores that they were no longer in consideration for the position. (Stipulated fact.)

43. On August 21, 2018, Complainant received notice of his non-selection. (Stipulated fact.) In this notice, Ms. Hardin explained this decision:

You met the initial requirements and were included in the first assessment step for this position. The first step was a review of your application material by a selection committee<sup>2</sup> against our description of the exceptional applicant, in order to identify a top group. The committee has completed their review of material from all qualified applicants for the position. This is to inform you that your application did not place you in the top group. As a result, you are no longer in consideration for this position.

44. On August 24, 2018, Complainant filed an appeal with the State Personnel Board challenging Respondent's removal of his name from consideration for the Environmental Program Manager position and alleging that Respondent discriminated against him based on his national origin. (Stipulated fact.)

#### Complainant's Corrective Action Grievance – Step II

45. On August 2, 2018, Complainant initiated a Step II grievance with Appointing Authority Richard Zamora, Region I Deputy Director for Program Delivery. (Stipulated fact.)

46. Mr. Zamora requested an extension of time to allow him to refer Complainant's allegations of discrimination for an investigation. Complainant agreed to an extension.

47. The investigation of Complainant's allegations of discrimination was conducted by Christine Anderson, Employee Relations Manager.

48. On October 16, 2018, Mr. Zamora received the results of Ms. Anderson's investigation of Complainant's discrimination allegations. Ms. Anderson concluded that there was no evidence of discrimination or disparate treatment of Complainant.

49. On October 23, 2018, Mr. Zamora issued his Step II grievance decision. Mr. Zamora found no basis for Complainant's complaints concerning Ms. Myklebust and denied Complainant's requests for relief.

50. In his Step II grievance decision,<sup>3</sup> Mr. Zamora made the following recommendation:

Although I am not granting your requested relief, I believe that improving your relationship with Ms. Myklebust is critical to the overall success of the

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<sup>2</sup> The "selection committee" consisted of Mr. Eussen and Mr. Rudel.

<sup>3</sup> Complainant appealed Respondent's refusal to revoke the corrective action in one of his petitions for hearing. Per its January 21, 2020 Order, the Board did not grant a hearing on this issue.

Environmental Program and Region I. Therefore, I am offering the opportunity for you and Ms. Myklebust to engage in third party mediation via the Colorado State Employee's Assistance Program (CSEAP). I sincerely hope you will accept this offer and willingly engage in mediation with Ms. Myklebust as I believe it will be pivotal in improving your working relationship.

## **ANALYSIS**

### **A. JURISDICTION AND BURDEN OF PROOF.**

Complainant argues that Respondent's decision not to select him for the Environmental Program Manager position was the result of retaliation prohibited by the Colorado Anti-Discrimination Act (CADA), § 24-34-402(1)(e)(IV), C.R.S. Claims of retaliation under CADA are within the Board's statutory authority. § 24-50-125.3, C.R.S. Complainant bears the burden of proof on this claim. § 24-4-105(7), C.R.S.

### **B. COMPLAINANT'S *PRIMA FACIE* CASE OF CADA RETALIATION.**

CADA prohibits discrimination "against any person because such person has opposed any practice made a discriminatory or unfair employment practice by this part 4, because he has filed a charge with the commission, or because he has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to parts 3 and 4 of this article." § 24-34-402(1)(e)(IV), C.R.S. To establish a *prima facie* case of retaliation, Complainant must show: (1) protected opposition to discrimination; (2) an adverse employment action occurred subsequent to or contemporaneous with the protected activity; and (3) a causal connection between the protected activity and the adverse employment action. *Smith v. Board of Educ. of Sch. Dist. Fremont RE-1*, 83 P.3d 1157, 1162 (Colo. App. 2003).

CADA's anti-retaliation provision parallels the anti-retaliation provision of Title VII of the Civil Rights Act of 1964. Therefore, federal cases interpreting Title VII serve as a guide to interpreting CADA. *Colorado Civil Rights Comm'n v. Big O Tires*, 940 P.2d 397, 399 (1997). Board Rule 9-4 provides: "Standards and guidelines adopted by the Colorado Civil Rights Commission and/or the federal government, as well as Colorado and federal case law, should be referenced in determining if discrimination has occurred."

The Tenth Circuit has held that, to meet the first element of a *prima facie* retaliation claim, "the employee must convey to the employer his or her concern that the employer has engaged in a practice made unlawful by [anti-discrimination statutes]." *Hinds v. Sprint/United Mgmt. Co.*, 523 F.3d 1187, 1203 (10th Cir. 2008). The parties stipulated that Complainant raised a discrimination complaint in his July 12, 2018 grievance. Therefore, Complainant has established the first element of a *prima facie* case.

As for the second element of a *prima facie* case, the Colorado Court of Appeals has held that "[a]dverse employment action means an ultimate employment decision involving hiring, firing, compensation, benefits, or the failure to promote or grant leave." *Krauss v. Catholic Health Initiatives*, 66 P.3d 195, 201 (Colo. App. 2003). See also *George v. Ute Water Conservancy Dist.*, 950 P.2d 1195, 1197 (Colo. App. 1997) (an adverse employment action under CADA includes "a failure to hire or promote"). Thus, Respondent's decision not to select Complainant for the Environmental Manager position constitutes an adverse action, meeting the second element of a *prima facie* case.

For the third and final element of a *prima facie* case, Complainant must establish a causal connection between his discrimination complaint and Respondent's decision not to select him for the Environmental Program Manager position. This decision was the result of a comparative analysis of the candidates' application materials made by two subject matter experts: Mr. Eussen and Mr. Rudel.

Mr. Eussen and Mr. Rudel testified that they based their comparative analysis solely on the application materials submitted by the candidates. They each conducted an independent assessment of these materials and rated each candidate in the areas of job knowledge, program management/directing others and narrative.

Complainant argued that the experts unfairly disregarded his extensive experience and expertise, and denied him an interview, because of his discrimination complaint. However, Respondent's investigation of Complainant's discrimination complaint was initiated after the comparative analysis process was completed. Mr. Eussen and Mr. Rudel testified that they had no knowledge of Complainant's discrimination complaint when they conducted their comparative analysis. Their testimony was consistent with the testimony of Ms. Hardin, who testified that she was unaware of Complainant's discrimination complaint while she was facilitating the comparative analysis process and compiling the final candidate list. Ms. Myklebust testified that she did not talk to Mr. Eussen, Mr. Rudel or Ms. Hardin about Complainant, or express a preference for any of the candidates during this stage of the selection process. The testimony of these four witnesses were consistent and credible. Thus, the preponderance of the evidence established that Complainant's discrimination complaint had no bearing on the SMEs' ratings or Ms. Hardin's exclusion of Complainant from the final candidate list.

Complainant provided no evidence to rebut the testimony of these four witnesses. Complainant believed that he was the superior candidate; therefore, he concluded that his exclusion from the final candidate list must be the result of retaliation. However, the preponderance of the evidence established that neither Mr. Eussen, Mr. Rudel nor Ms. Hardin were aware of Complainant's discrimination complaint during the comparative analysis process. Without evidence of a causal connection between Complainant's discrimination complaint and his omission from the list of final candidates to be interviewed, Complainant failed to establish a *prima facie* case of CADA retaliation.

### **C. RESPONDENT'S COMPARATIVE ANALYSIS OF THE CANDIDATES.**

Even if Complainant had established a *prima facie* case of CADA retaliation, he failed to demonstrate that Respondent's reasons for failing to include Complainant in its list of final candidates to be interviewed was pretextual. Once an employer meets its burden of proffering a legitimate, non-discriminatory reason for an adverse employment decision, Complainant must "demonstrate by competent evidence" that this articulated reason is "a pretext for discrimination." *Big O Tires*, 940 P.2d at 401.

Respondent established that Complainant was excluded from the final candidate list following an objective comparative analysis performed by Mr. Eussen and Mr. Rudel. Board Rule 4-10 provides: "The assessment process is considered to be competitive if a reasonable opportunity was provided to potentially qualified persons to apply and compete against the same job-related standards." Board Rule 4-12 provides that a comparative analysis may be based upon an "application/resume review."

The job posting for the Environmental Program Manager position required each candidate



to submit a written narrative explaining in detail how they would use the “critical success criteria” of “education, experience, abilities, and accomplishments” to approach their first six months in the position. The narrative that Complainant submitted with his application failed to explain how he would use the “critical success criteria” during his first six months as an Environmental Program Manager. This narrative was a crucial element of the required application materials. In contrast to Complainant, five of the six candidates who earned the highest comparative analysis scores, and thus were placed on a list to be interviewed, submitted stronger narratives that included this explanation. Thus, the preponderance of the evidence establishes that the candidates’ scores were the result of an impartial and objective process, in compliance with Board Rules 4-10 and 4-12.

The preponderance of the evidence establishes that Mr. Eussen’s and Mr. Rudel’s comparative analysis was based on their independent, objective analysis of the application materials submitted by the candidates. Their ratings were compiled and averaged by Ms. Hardin, who then used these ratings to create a list of the top six candidates to be interviewed. Complainant’s unsubstantiated belief that his experience and expertise were intentionally disregarded by Mr. Eussen and Mr. Rudel does not constitute “competent evidence” that this articulated reason is “a pretext for discrimination.” *Big O Tires*, 940 P.2d at 401. Therefore, Complainant has failed to demonstrate that Respondent’s comparative analysis process constituted a pretext for retaliation under CADA.

#### **D. COMPLAINANT’S CLAIM FOR ATTORNEY FEES AND COSTS.**

§ 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 as 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, the ALJ finds that Complainant failed to establish a *prima facie* case of CADA retaliation. Respondent’s decision not to select Complainant for the Environmental Program Manager position was the result of an impartial and objective process. Complainant failed to establish that Respondent’s decision was groundless, malicious, or made in bad faith or as a means of harassment. Therefore, under § 24-50-125.5(1), C.R.S., Complainant is not entitled to an award of attorney fees and costs.

#### **CONCLUSIONS OF LAW**


1. Respondent’s decision not to select Complainant for the Environmental Program Manager position was not motivated by retaliation for raising a discrimination complaint.

2. Complainant is not entitled to an award of attorney fees and costs.

**ORDER**

Respondent's non-selection of Complainant for an Environmental Program Manager position is **affirmed**. Attorney fees and costs are not awarded. Complainant's appeal is **dismissed with prejudice**.

Dated this 21st day  
of December, 2020  
at Denver, Colorado.

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

**CERTIFICATE OF SERVICE**

This is to certify that on the 21st day of December, 2020, I electronically served true copies of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** addressed as follows:

Finger Law P.C.  
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## **APPENDIX**

### **EXHIBITS**

**COMPLAINANT'S EXHIBITS ADMITTED:** The following exhibits were admitted into evidence: Exhibits B, C, F, G, H, I, K-P, W, FF, JJ, KK, OO, PP, QQ, UU, ZZ.

**RESPONDENT'S EXHIBITS ADMITTED:** The following additional exhibits were admitted into evidence: Exhibits 1, 10, 11, 16-36.

### **WITNESSES**

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

Christine Anderson, Investigator  
Erin Hardin, Human Resources Specialist  
Jordan Rudel, Subject Matter Expert  
Jim Eussen, Subject Matter Expert  
Jessica Myklebust, Regional Environmental Manager, Region I  
Complainant Ayman Salloum, Environmental Protection Specialist III

## **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 Rules 8-62 and 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 8-66, 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.