

STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. **2020B016**

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

AMY VINCZE,
Complainant,

vs.

DEPARTMENT OF REVENUE, LEGISLATIVE SERVICES,
Respondent.

Senior Administrative Law Judge (ALJ) Susan J. Tyburski held the evidentiary hearing on August 25-26, 2020, via web conference using Google Meet. The record was closed on August 26, 2020.

Throughout the hearing, Complainant appeared *pro se*. Respondent appeared through its attorney, Assistant Attorney General Jacob Paul, Esq. Respondent's advisory witness was Patricia Farr, Complainant's Appointing Authority.

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

MATTER APPEALED

Complainant, a certified employee, appeals Respondent's termination of her employment. Complainant argues that this termination was arbitrary and capricious. She seeks reinstatement and back pay, and an award of attorney fees and costs.

Respondent argues that the termination should be affirmed, that all relief requested by Complainant be denied, and that Complainant's appeal be dismissed with prejudice.

For the reasons discussed below, Respondent's decision to terminate Complainant's employment is **affirmed**.

ISSUES

1. Whether Complainant committed the acts or omissions for which she was disciplined;
2. Whether Respondent's termination of Complainant's employment 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 an award of attorney fees and costs.

FINDINGS OF FACT

Background

1. Complainant was employed as a Budget and Policy Analyst III at the Department of Revenue (DOR) from February 2017 – August 2019. (Stipulated fact.¹)
2. At the time of her termination, Complainant was a certified employee.
3. Complainant's job duties included completing fiscal note analyses. These notes include justification for budget allocations for the various departments and divisions within DOR. (Stipulated fact.)
4. The fiscal notes are submitted to the DOR budget team for use in budget projections and expenditure analysis, which is required for the approval of fiscal allocation bills that fund the various DOR divisions. The notes are also submitted to the legislative council staff for use in drafting funding requests. (Stipulated fact.)
5. Patricia Farr was Respondent's Legislative Services Manager. She was hired in December 2016 to manage a new Legislative Services division for Respondent.
6. Ms. Farr supervised two Budget Analysts, including Complainant.
7. At all times relevant to this matter, Ms. Farr was Complainant's appointing authority. (Stipulated fact.)

Complainant's Performance History

8. In 2017, Ms. Farr coached Complainant concerning a lack of attention to detail in her work product, as well as missing work hours and failing to enter leave requests in Respondent's leave management system.
9. In early 2018, Complainant's performance improved for a couple months. In March 2018, Complainant again began to exhibit a lack of attention to detail, including a failure to account for approximately \$275,000 in costs to Respondent in one of her fiscal notes.
10. On February 27, 2019, Complainant received a Corrective Action for failure to meet work deadlines, questionable attendance, and improper use of leave. Complainant did not file a grievance regarding this Corrective Action. (Stipulated fact.)
11. The Corrective Action informed Complainant of the following requirements:
 - (1) You must adhere to your work schedule and be available during the entirety of your shift. If you are sick, you must notify me prior to the start of your shift and submit a sick leave slip in accordance with DOR leave policy.
 - (2) You must ensure that your work is done efficiently, and that your time spent is justifiably based on the complexity of the work product.

¹ The parties stipulated to certain facts.

- (3) You must use your technical skills at your position level to perform job duties and be open to receiving budget or legislative assistance for issues that pertain to specific funding issues that the Division Budget staff has knowledge of.
- (4) Your work product must meet the expectations of quality as directed by your position level and supervisors' directives.
- (5) You must ensure your work is complete, thorough, and timely based on internal and external deadlines. You must promptly respond to emails and meet all deadlines.

12. The Corrective Action warned Complainant: "Failure to comply with the requirements of this corrective action may result in further corrective and/or disciplinary action, up to and including termination."

13. In April 2019, Complainant received her Final Performance Evaluation for April 2018 through March 2019. She was rated an overall Level 1 (Needs Improvement). (Stipulated fact.)

14. Three areas identified by the evaluation where Complainant needed improvement were: Accountability, Job Production and Individual Performance. (Stipulated fact.)

15. Ms. Farr included the following narrative in the area of Accountability:

In regards to her adherence to attendance, there have been questionable absences regarding the use of leave over the past fiscal year. This has included ... instances of absences within the employee's work schedule, that weren't communicated with management prior to the occurrences. Amy has been notified that she must adhere to her work schedule and be available for the entirety of her shift. She must notify management prior to the start of her shift if she intends on being late or taking sick leave. Situations involving annual leave require prior approval by her manager and must be communicated previously. ...

In addition, there have been instances over the fiscal year of inefficiencies in the completion of job duties. These circumstances ... include the non-completion of work tasks by specific due dates, (as well as incompleteness of work for which there was adequate time during work hours to complete.)

16. Ms. Farr noted the following issues in the area of Job Production:

Over the past fiscal year, Amy's job performance, as it pertains to her position has been inadequate. ... Among other issues, the following has been demonstrated by the employee over the fiscal year; [sic] non-completion of the Division's final fiscal notes, (needed to assist Budget staff with planning and forecasting), by the assigned due date, lack of analysis on fiscal notes that could've affected allocated appropriations for Divisions, (of which one example was on SB19-139), and an inattention to work detail as noted by the Division's Budget Director on the Division of Motor Vehicle Decision items.

17. Ms. Farr noted the following issues in the area of Individual Performance:

[I]n the areas that are more heavily weighted within the individual performance objective category, such as; [sic] actively managing the work-flow of the fiscal note process and developing fiscal note responses that articulate accurate thorough and defensible fiscal impacts (et al.), the employee has failed to consistently meet those objectives this year.

Legislative Proposals Assignment

18. On the afternoon of Friday, June 28, 2019, Ms. Farr told Complainant she was going to need Complainant's assistance with some legislative proposals. A legislative proposal includes a fiscal impact discussion, similar to a fiscal note. Ms. Farr stated that she wanted to complete the proposals by Friday, July 5, 2019.

19. Complainant was not at work on July 1, 2019, because her child was ill.

20. On the morning of Tuesday, July 2, 2019, Ms. Farr instructed Complainant to contact Legislative Liaison Jean Robinson for information needed for the legislative proposals. Ms. Farr believed that she instructed Complainant to prepare the legislative proposals. Complainant believed that Ms. Farr wanted her to contact Ms. Robinson to offer assistance with the legislative proposals.

21. On July 2, 2019, at 1:30 p.m., Complainant emailed Ms. Robinson:

Pat had asked me to reach out to you to see if there's any help I can offer with the legislative proposals.

Will you please let me know what I can do, be it fiscal impact, research, etc. I'd love to help!

22. On July 3, 2019, at 3:05 p.m., Ms. Robinson emailed Complainant:

Hi Amy, sure! If you wouldn't mind reading them and putting together a list of questions that come to mind that would be great. Anticipating questions and getting the most comprehensive summary is the biggest challenge so it'll be good to have more eyes on it! Thanks!

23. On July 3, 2019, at 3:10 p.m., Complainant responded to Ms. Robinson:

Absolutely! When would you like them by?

24. Ms. Robinson informed Complainant that she would set up a telephone call on July 9, 2020, to discuss the legislative proposals.

25. On July 3, 2019, Ms. Farr had a follow-up conversation with Complainant about the legislative proposals. Complainant told Ms. Farr she was in touch with Ms. Robinson and was going to participate in a conference call with her about the proposals. Ms. Farr believed that Complainant was working on the proposals.

Complainant's Absence on July 5, 2019

26. Thursday, July 4, 2019 was a state holiday.

27. July 5, 2019 was a Friday. (Stipulated fact.) Complainant had previously requested four hours of annual leave on the afternoon of July 5, as she was leaving on vacation the following day.

28. Complainant was aware that Ms. Farr would not be at the office on July 5, 2019. (Stipulated fact.)

29. Until the morning of July 5, 2019, Complainant intended to go to work on the morning of Friday, July 5, 2019. (Stipulated fact.)

30. On the morning of July 5, 2019, Complainant decided not to go to work. (Stipulated fact.)

31. Complainant did not work on July 5, 2019. (Stipulated fact.)

32. Complainant intentionally took all of July 5, 2019 off without the authorization of Ms. Farr. (Stipulated fact.)

33. Complainant intentionally entered 4.0 hours of annual leave for July 5, 2019. (Stipulated fact.)

34. Complainant did not communicate with Ms. Farr at all that she would be absent from work on the morning of July 5, 2019. (Stipulated fact.)

35. Respondent's leave management policy, DOR-011, paragraph (4)(a) provides:

Employees must enter all requested leave into the Department of Revenue (DOR) leave system in advance for prior approval except in cases such as illness. Upon return to work from sick leave all leave must be entered into the leave system immediately.

36. On the morning of July 5, 2019, Ms. Farr sent an email to Complainant asking that Complainant finish the proposals by the end of the day, or at least send her a summary of her work completed so far. (Stipulated fact.) This email was sent at 7:54 a.m., and contained the following instructions about completing the legislative proposals:

Just as a reminder from what we did last year, simply use the DI template for the leg. Proposals. It can be brief (1-2 pgs.)

I'm also including one of the proposals we sent to Jean last year, as an example.

We simply need to summarize the information regarding the proposal (including cost). The cost is a big part, because in the past we've been asked for the costs once these proposals become bills, and we've had situations where the Division gives us different info.

If you can send me what you have COB today, since you'll be out on Monday, that

would be helpful. If your [sic] not done, simply send me an email explaining what you found and I can finish it.

37. Complainant did not respond to Ms. Farr's July 5 email until the following Monday, July 8, 2019. (Stipulated fact.) Complainant did not contact Ms. Farr until approximately 7:13 p.m. on July 8, 2019.

38. Complainant did not complete the legislative proposals.

39. When Ms. Farr returned to work on July 8, 2019, she discovered that Complainant failed to report to work on July 5, 2019. Because of Complainant's failure to complete the legislative proposals, Ms. Farr had to put her other work aside and complete the proposals.

40. Complainant was on annual leave the week of July 8-12, 2019. (Stipulated fact.)

41. When Complainant returned from annual leave, she did not correct her time entry for July 5, 2019.

Rule 6-10 Meeting

42. On July 24, 2019, Complainant received a Notice of Rule 6-10 meeting from Ms. Farr. (Stipulated fact.)

43. On July 30, 2019, Complainant met with Ms. Farr for a meeting held pursuant to Board Rule 6-10. (Stipulated fact.)

44. During the Rule 6-10 meeting, Complainant explained that she did not check her emails on July 5, and did not see the assignment that Ms. Farr sent her until the following week.

45. On August 5, 2019, Complainant provided Ms. Farr with an email including additional information for Ms. Farr to consider in making her decision. (Stipulated fact.) In this email, Complainant described her failure to report for work on July 5, 2019, and her failure to notify Ms. Farr of her absence, as a poor "judgment call."

Discipline Decision

46. Ms. Farr deliberated for several weeks. She reviewed Complainant's performance history, considered Complainant's explanations, and considered the effects of Complainant's actions on the operations of her office. Ms. Farr consulted with Respondent's Chief Financial Officer, Laurie Dugan, as well as with Respondent's Human Resources partner.

47. On August 23, 2019, Ms. Farr issued a Notice of Disciplinary Action finding that Complainant's actions constituted violations of C.R.S. § 24-50-166, Board Rule 5-1 and the DOR Code of Conduct. (Stipulated fact.)

48. Ms. Farr made the following finding concerning Complainant's conduct:

I find that you intentionally took the day off without my authorization and intentionally failed to account for the full use of leave for the day. I further find that you failed to complete your work assignment as directed and that you were aware of the July 5, 2019 deadline. Your failure to meet legislation deadlines and

unauthorized leave and failure to account for leave ... constitute willful misconduct or violation of department rules or law that affect the ability to perform your job pursuant to Board Rule 6-12(2).

49. Ms. Farr considered the Board Rule 6-9 factors in making her decision, including the mitigating information provided by Complainant and alternative forms of discipline. (Stipulated fact.)

50. Ms. Farr decided to terminate Complainant's employment with DOR. (Stipulated fact.)

51. Complainant filed a timely appeal of Respondent's termination of her employment.

ANALYSIS

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; § 24-50-101, *et seq.*, C.R.S.; *Dep't of Institutions v. Kinchen*, 886 P.2d 700, 704 (Colo. 1994). Such cause is outlined in State Personnel Board Rule 6-12, 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, Respondent has the burden to prove by a preponderance of the 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 706-708. The ALJ is required to make "an independent finding of whether the evidence presented justifies a dismissal for cause." *Id.* at 706. The Colorado Supreme Court explained that, in attempting to justify a decision to discipline a certified public employee, this burden of proof is appropriate because "the appointing authority is the party attempting to overcome the presumption of satisfactory service" by the employee. *Id.* at 708.

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

B. RESPONDENT ESTABLISHED, BY A PREPONDERANCE OF THE EVIDENCE, THAT COMPLAINANT COMMITTED THE ACTS OR OMISSIONS FOR WHICH SHE WAS DISCIPLINED.

Ms. Farr based her disciplinary decision on the following acts or omissions: Complainant's decision not to report to work on July 5, 2019; Complainant's decision not to request a full eight

hours of annual leave; and Complainant's failure to complete a work assignment.

On July 2, 2019, Ms. Farr gave Complainant a work assignment concerning some legislative proposals. Ms. Farr testified that she instructed Complainant to prepare the proposals, and to contact the Legislative Liaison, Jean Robinson, to obtain necessary information for the proposals. Complainant testified that she understood her work assignment to be assisting Ms. Robinson with the legislative proposals, and reached out to Ms. Robinson to offer her assistance. Ms. Robinson asked Complainant to prepare a list of questions that might arise concerning the proposals. Ms. Robinson scheduled a conference call for July 9, 2019, to discuss Complainant's contributions.

On July 3, 2019, Ms. Farr asked Complainant how she was doing with the legislative proposal assignment. Complainant told Ms. Farr that she was working on it and had been in touch with Ms. Robinson. Ms. Farr believed Complainant was working on the legislative proposals.

Complainant requested four hours of annual leave for the afternoon of Friday, July 5, 2019. On the morning of July 5, 2019, Complainant was feeling overwhelmed with preparations for her upcoming vacation travel. She decided not to go to work, did not notify Ms. Farr of her absence, and did not revise her annual leave request in the DOR leave system. Ms. Farr expected Complainant to be at work on the morning of July 5, 2019, and sent her an email concerning the the legislative proposals she believed Complainant was working on. Complainant did not check her email on July 5, 2019, and did not see Ms. Farr's message until July 8, 2019. As a result, Ms. Farr had to complete the legislative proposals.

Complainant argued that she was not aware that Ms. Farr expected her to complete the the legislative proposals by July 5, 2019. The testimony of Ms. Farr and of Complainant demonstrated that they both had communication issues. Ms. Farr's statements were sometimes unclear, and Complainant did not listen well. Therefore, it is possible that Complainant misunderstood the assignment she was originally given by Ms. Farr on July 2nd. However, Ms. Farr's July 5th email outlined a clear assignment. Because Complainant did not check her email on July 5th, she did not receive this assignment and failed to complete any part of it. Complainant's failure to work on July 5th, as scheduled, resulted in the need for Ms. Farr to complete the proposals herself.

Respondent's leave management policy, DOR-011, requires employees to enter all requested leave into the DOR leave system "in advance for prior approval except in cases such as illness." Complainant's decision not to report to work on July 5, 2019, and her failure to notify Ms. Farr of her absence, violated Respondent's leave management policy. Complainant's failure to report for work on July 5, 2019 resulted in her failure to receive, and to complete any portion of, the work Ms. Farr assigned to her.

Respondent has established, by a preponderance of the evidence, that Complainant failed to report to work on July 5, 2019; failed to notify her supervisor of her absence; failed to request a full eight hours of annual leave for her absence; failed to enter an accurate time record for July 5, 2019; and failed to complete the work assigned to her by Ms. Farr. Therefore, Respondent has established that Complainant committed the acts or omissions for which she was disciplined.

C. RESPONDENT'S DISCIPLINARY ACTION WAS NOT ARBITRARY OR CAPRICIOUS, OR CONTRARY TO RULE OR LAW, AND WAS WITHIN THE RANGE OF REASONABLE ALTERNATIVES.

In determining whether an agency's decision to discipline an employee 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 that after a consideration of the evidence before it as clearly to indicate that its action is based on conclusions from the evidence such that reasonable persons fairly and honestly considering the evidence must reach contrary conclusions." *Lawley v. Dep't of Higher Educ.*, 36 P.3d 1239, 1252 (Colo. 2001).

Ms. Farr credibly testified that the decision to terminate Complainant's employment was very difficult. Before she reached that decision, Ms. Farr deliberated for several weeks. She reviewed Complainant's performance history, considered Complainant's explanations, and considered the effects of Complainant's actions on the operations of her office. Ms. Farr consulted with Respondent's Chief Financial Officer, Laurie Dugan, as well as with Respondent's Human Resources partner. The evidence established that Ms. Farr used "reasonable diligence and care" in gathering the necessary information, and gave that information "candid and honest consideration," as required by *Lawley*.

The Board must determine not only whether discipline is warranted, but must also decide whether the discipline imposed was within the range of reasonable alternatives. In deciding to take disciplinary action, Respondent must consider "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." Board Rule 6-9.

The parties stipulated that Ms. Farr considered the Board Rule 6-9 factors in making her decision to terminate Complainant's employment, including the mitigating information provided by Complainant and alternative forms of discipline. Ms. Farr testified that she considered other disciplinary measures, such as a suspension or a demotion. Because Complainant's performance issues persisted despite prior coaching and corrective actions, Ms. Farr concluded that she could not trust Complainant or rely on her to come into work or complete her assignments. Ms. Farr credibly testified that she felt she needed to do what was best for the department.

Complainant argues that her decision not to report for work on July 5, 2019 was not "flagrant misconduct, but a momentary lapse in judgment," which does not justify the harsh penalty of termination. However, Complainant made no effort to notify Ms. Farr of her absence, and failed to correct her time records when she returned from vacation. Complainant's "lapse in judgment" was compounded by her failure to accurately report the time she was not at work, as well as the need for Ms. Farr to finish the neglected assignment.

Complainant's performance history indicates that her failure to report to work and to complete her assignment on July 5, 2019 was not an isolated occurrence. Complainant had been warned about continuing problems with attendance, timely completion of assignments and failure to properly request leave earlier in the year. Despite receiving a Corrective Action addressing these issues on February 27, 2019, as well as unsatisfactory performance ratings due

to similar problems in April 2019, Complainant made the decision not to report to work on July 5, 2019. Complainant did not notify Ms. Farr of her absence and did not correct her time records for July 5, 2019. Under these circumstances, Ms. Farr's decision to terminate Complainant's employment was reasonable. *Lawley*, 36 P.3d at 1252.

The preponderance of the evidence establishes that Respondent's decision to terminate Complainant's employment was not arbitrary, capricious or contrary to rule or law, and was within the range of reasonable alternatives.

D. COMPLAINANT IS NOT ENTITLED TO AN AWARD OF 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).

Because the ALJ finds that Respondent's termination should be affirmed, as discussed above, this action was not "instituted frivolously, in bad faith, maliciously, or as a means of harassment or was otherwise groundless." Therefore, Complainant is not entitled to an award of attorney fees and costs.

CONCLUSIONS OF LAW

1. Complainant committed the acts or omissions for which she was disciplined.
2. Respondent's termination of Complainant's employment was not arbitrary or capricious, or contrary to rule or law.
3. Respondent's termination of Complainant's employment was within the range of reasonable alternatives.
4. Complainant is not entitled to an award of attorney fees and costs.

ORDER

Respondent's termination of Complainant's employment is **affirmed**. Attorney fees and costs are not awarded. Complainant's appeal is **dismissed with prejudice**.

Dated this 2nd day
of October, 2020.

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

CERTIFICATE OF SERVICE

This is to certify that on the 2nd day of October, 2020, I electronically served true copies of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** addressed as follows:

Amy Vincze

[REDACTED]
[REDACTED]
[REDACTED]

Jacob Paul, Esq.
Assistant Attorney General
1300 Broadway, 10th Floor
Denver, CO 80203
Jacob.paul@coag.gov

[REDACTED]

APPENDIX

EXHIBITS

COMPLAINANT'S EXHIBITS ADMITTED: The following exhibits were stipulated into evidence: Exhibits A-C, H, I, JA, JB, KA, KB, L-Q. The following exhibits were admitted into evidence over Respondent's objection: Exhibits E-G.

RESPONDENT'S EXHIBITS ADMITTED: The following exhibits were stipulated into evidence: Exhibits 1-7, 9-12, 14-21. The following exhibits were admitted into evidence without objection: Exhibits 22 and 23. The following exhibits were admitted into evidence over Complainant's objection: Exhibits 8 and 13.

WITNESSES

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

Patricia Farr, Legislative Services Manager, Department of Revenue

Amy Vincze, Complainant

Krista Meulengracht, former Senior Budget Analyst, Department of Revenue

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.