

STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. **2025B060**

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

DEREK WHIPPLE,
Complainant,

v.

DEPARTMENT OF PUBLIC SAFETY, COLORADO BUREAU OF INVESTIGATIONS,
Respondent.

Senior Administrative Law Judge (ALJ) Susan J. Tyburski held the evidentiary hearing in the State Personnel Board's (Board) Courtroom 6 on June 17-18, 2025. The record was closed on June 18, 2025.

Throughout the hearing, Complainant appeared with his attorneys, Taylor Frandsen, Esq. and Kodie Clinton, Esq. Respondent appeared through its attorney, Senior Assistant Attorney General Eric W. Freund, Esq. Respondent's advisory witness was Deputy Director Dan Volz.

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

MATTER APPEALED

Complainant, a certified employee, appeals the disciplinary termination of his employment by Respondent. Complainant denies that he committed the alleged misconduct for which he was disciplined. Complainant argues that Respondent's disciplinary action was arbitrary, capricious, and contrary to rule and law. As a remedy, Complainant seeks reinstatement, reimbursement of his attorney fees and costs, and other remedies.

Respondent argues that Complainant committed the misconduct for which he was disciplined and that its disciplinary action was not arbitrary, capricious, or contrary to rule or law. Respondent argues that its disciplinary termination of Complainant's employment should be affirmed and Complainant's appeal be dismissed with prejudice.

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

ISSUES TO BE DETERMINED

- 1.) Did Complainant commit the alleged misconduct for which he was disciplined?
- 2.) Was Respondent's disciplinary action arbitrary, capricious, or contrary to rule or law? If so, what is the appropriate remedy?

FINDINGS OF FACT

Complainant's Employment With Westminster Police Department

1. In June of 2013, Complainant began his employment with the Westminster Police Department.
2. While employed with the Westminster Police Department, Complainant was a member of the North Metro Drug Task Force, a multi-jurisdictional drug task force for Adams and Broomfield counties.
3. The Westminster Police Department had a Special Weapons And Tactics (SWAT) team. The Westminster SWAT Policy states that the SWAT team "provides the Department with a trained, specially equipped team to respond to barricaded gunmen incidents, hostage situations, high risk warrant service, special situations, and other high risk incidents which pose a high level of danger."
4. The Westminster Police Department SWAT team was organized into four units: Entry, Inner Perimeter, Rifle¹ and Negotiations. Each unit was supervised by a unit leader who reported directly to the SWAT team Commander and Assistant Commander.
5. SWAT team members who served in the Entry, Inner Perimeter and Rifle units were known as "SWAT Operators."
6. The Westminster Police Department SWAT team had a rigorous selection process for its SWAT Operators that included two days of written and physical tests. When an applicant successfully completed the required tests and was selected to be part of the SWAT team, the SWAT team held a special ceremony and gave the new SWAT Operator a SWAT designator pin.
7. Officers selected for the SWAT team assumed SWAT duties as a voluntary assignment, secondary to their regular police duties.
8. SWAT team Operators were trained on, and issued, a SWAT team weapon.
9. In 2018 and 2019, Complainant applied three times to be a member of the Westminster Police Department SWAT team, but did not pass all the required written and physical tests.

¹ The Rifle unit was also referred to as the Sniper unit.

10. In 2019, Commander Trevor Materasso asked Complainant to be a driver for the Westminster Police Department SWAT team. At this time, the drivers for the SWAT team did not have to successfully complete a selection process. The drivers were not considered official members of the SWAT team and were not included in the Westminster SWAT Policy.
11. Complainant agreed to be a driver for the Westminster Police Department SWAT team and was given a SWAT team shirt, bulletproof vest, and helmet. Complainant did not receive a SWAT designator pin or a SWAT team weapon.
12. At the time Complainant served as a driver for the Westminster Police Department SWAT team, the drivers did not have an official team leader.
13. Because Complainant was not a member of the Westminster Police Department SWAT team, he could not serve as a team leader or an assistant team leader for any of the three SWAT Operator units.

Complainant's Employment With Colorado Bureau of Investigation

14. In December 2022, Complainant accepted a statewide Field Agent position at the Respondent's Colorado Bureau of Investigation (CBI).
15. In September 2023, Complainant was assigned to the Drug Enforcement Agency (DEA) Front Range Task Force as a Task Force Officer. Complainant has executed numerous search warrants with this Task Force.
16. Respondent's Code of Ethics and Professional Conduct, Section IV(A), requires that all its employees "demonstrate the highest ethical standards of personal integrity and honesty." Section V(A)(4) of this Code provides that Respondent's employees "will not knowingly depart from the truth by making false or misleading statements or reports to supervisors regarding job related issues..."
17. During his employment with CBI, Complainant's 2022-2023 and 2023-2024 evaluations rated his performance as Highly Effective.
18. Prior to the termination of his employment, Complainant never received a corrective or disciplinary action.

Complainant's Application for CBI's Special Response Team (SRT)

19. During the summer of 2024, CBI decided to create a Special Response Team (SRT) to support investigation and enforcement activities involving violent crime, drugs, firearms and organized crime, especially in Colorado's rural areas.
20. Kellon Hassenstab, Assistant Director, CBI, was appointed SRT Administrator and was tasked with building the SRT from the top down, starting with SRT leaders.

21. Agent in Charge (AIC) Kevin Torres was appointed SRT Commander.
22. In or about September of 2024, Torres suggested that Complainant apply for a SRT leadership position.
23. Complainant drafted a Memorandum with the subject "Special Response Team and Squad Leadership Positions Letter of Interest." This Memorandum was dated October 1, 2024.
24. Before submitting his Memorandum for a SRT leadership position, Complainant gave his girlfriend the Memorandum to review.
25. Complainant submitted the revised Memorandum to Hassenstab and Torres on October 3, 2024. The original date of October 1, 2024 was not changed on the revised Memorandum.
26. Complainant's Memorandum included the following description of his work with the Westminster Police Department SWAT team:

In 2019, I was selected for Westminster Police Department's Special Weapons and Tactics (SWAT) Team. The Westminster PD SWAT team consists of an operator team of approximately 20 people that are on an on-call or part-time assignment. The Westminster PD SWAT team was responsible for executing high-risk warrants in the City of Westminster at the discretion of the SWAT Commander. While on the Westminster PD SWAT team, we executed multiple high-risk warrant operations to include hostage rescue, homicide suspect warrant arrests, and multiple narcotics residential warrants. Westminster SWAT team on average would execute one to two warrants a month. Although I was never assigned to a team leader on the Westminster PD SWAT team, I was often looked at as an informal leader for the team. I was asked to fill in as a team leader when an official team leader was absent. I have also attended multiple tactical trainings including Greeley Police Department SWAT school, Thornton Police Department SWAT school, Aurora Police Department Tactical Vehicle apprehension, Bus and Train assaults, multiple CI and UC rescue schools along with hundreds of hours of monthly Westminster PD SWAT team training.

27. Complainant's Memorandum concluded with the following statement:

I have discussed the vision of the newly created SRT program at CBI with Agent in Charge Kevin Torres, and I feel my training and experience as an Operator, Detective, Field Training Agent, and Agent would be beneficial in helping to shape and create the new Colorado Bureau of Investigation Special Response Team.

28. On November 15, 2024, Complainant participated in an oral interview for the SRT leadership position in front of a panel. The panel members were Torres, Hassenstab, CBI's Deputy Director Dan Volz and CBI's Assistant Director Kirby Lewis.
29. During the interview, Complainant briefly stated that he started as a driver for the SWAT team so he could work his way up. Complainant did not clarify that he never served as a SWAT team Operator.
30. Complainant's statements led the panel members to believe that Complainant had extensive experience as a SWAT team Operator.
31. Hassenstab chose AIC Christian Mohr to be the team leader for the SRT team.
32. On November 21, 2024, Hassenstab contacted Mohr to inform him that he had been selected to be the team leader for the SRT team. During their conversation, Hassenstab informed Mohr that Complainant was being considered as Assistant Team Leader and asked Mohr whether he could work with Complainant. Mohr told Hassenstab that Complainant lacked the experience to be an Assistant Team Leader because he was never on the Westminster Police Department's SWAT team.
33. On November 22, 2024, Hassenstab talked with Sergeant Blair Wilson, Assistant Commander of the Westminster Police Department SWAT team. Wilson has been involved with the SWAT team since 2013, and informed Hassenstab that Complainant was never selected for the SWAT team. While Complainant may have been present for some SWAT operations as a driver or a detective, Wilson stated that Complainant never participated in a SWAT operation as an Operator.
34. Hassenstab was concerned that Complainant's description of his experience on the Westminster Police Department SWAT team was not truthful. Hassenstab contacted Volz and explained his concerns.

Respondent's Internal Affairs Investigation

35. Volz relayed Hassenstab's concerns to CBI Director Chris Schaefer. Schaefer authorized an Internal Affairs investigation into Complainant's statements about his Westminster Police Department SWAT team experience.
36. On November 26, 2024, Special Agent Greg Zentner was assigned to conduct an internal affairs investigation into alleged untruthfulness by Complainant concerning the Memorandum he submitted on October 3, 2024.
37. On December 12, 2024, Zentner interviewed Wilson, who stated that Complainant was not a SWAT Operator or SWAT team member. Wilson explained that there is a distinct difference between the officers who drive the SWAT vehicles and the SWAT Operators. Wilson stated that this difference is made very clear to the drivers of the SWAT vehicles.

38. Wilson told Zentner that Complainant's statement that he was asked to fill in as a team leader was "False, and quite frankly it's ridiculous." Only senior SWAT Operators serve as assistant team leaders. Wilson said that Complainant was certainly not considered an informal leader and could not be an informal leader because he was not a SWAT team member.
39. On January 9, 2025, Complainant attended an in-person interview with Special Agent Zentner. At the beginning of this interview, Zentner reviewed CBI form OPS-2, a Truthfulness and Confidentiality Agreement, with Complainant by reading it out loud. Complainant acknowledged and signed this Agreement.
40. The Truthfulness Agreement signed by Complainant states, in pertinent part:
- Colorado Bureau of Investigation (CBI) personnel are required to answer all questions truthfully and completely. It is the affirmative and continuing duty of each member to fully cooperate and make disclosure(s) during the course of the investigation and to bring attention to all information which may be relevant and pertinent, whether the information is specifically requested or not.
41. During the interview, Complainant told Zentner that he "hurriedly completed" the Memorandum for the SRT and submitted it on October 3, 2024. He admitted that his description of his experience in this Memorandum was not clear and stated he should have been more precise.
42. Complainant told Zentner that one of the reasons he agreed to be a driver for the SWAT team was to become familiar with SWAT operations and hopefully be selected as a SWAT Operator in the future.
43. Complainant told Zentner that, while there was pushback from some of the longtime SWAT team members, the drivers were eventually accepted as SWAT team members. Complainant admitted that he was never a SWAT Operator and usually operated the ARV (Armored Rescue Vehicle) for the SWAT team.
44. On January 22, 2025, Zentner conducted a follow-up interview with Complainant. Zentner asked Complainant about his reference to being an Operator in the last sentence of his Memorandum. Complainant explained that he "wasn't necessarily an Operator on the Westminster SWAT team," but stated that he had been an "Operator" during his work with CBI and with the North Metro Drug Task Force because he threw "flashbangs," jumped out of cars and arrested people, breached doors, carried shields and cleared out houses.
45. On January 24, 2025, Zentner issued an Internal Affairs Investigative Report, concluding that "sufficient evidence and facts exist to substantiate the allegation of untruthfulness" by Complainant.

Rule 6-10 Process

46. Dan Volz was Complainant's Appointing Authority.
47. Volz received and reviewed a copy of Zentner's Investigative Report.
48. On February 10, 2025, Volz issued a Notice of Rule 6-10 Meeting to Complainant. In the Notice, Volz informed Complainant that they would discuss information concerning Complainant's truthfulness concerning his "background and experience" provided during the "internal selection process" for the SRT.
49. Volz informed Complainant that, in advance of the Rule 6-10 meeting, he could review the documentation and evidence to be discussed in the meeting, including the entire Internal Affairs Investigation file.
50. On February 18, 2025, Complainant met with Volz for a Rule 6-10 meeting. Chief of Staff Susan Medina attended with Volz. Complainant attended the meeting without a representative.
51. At the beginning of the Rule 6-10 meeting, Complainant confirmed that he had "a good opportunity" to review the information to be discussed concerning his alleged untruthfulness.
52. During the Rule 6-10 meeting, Complainant explained that, as a driver, he "was part of the Westminster SWAT team." He "wore the same uniform as those guys" and "went out on every call with those guys." He "didn't breach a door, but [he] was a part of the team."
53. Complainant also explained that he "was the next go-to guy" on the SWAT driving "team" after Derek Rogers, who was more senior. Rogers served as a kind of "informal team leader" for the drivers and would oversee the maintenance on the equipment. When Rogers was not available, Commander Materasso would call Complainant and tell him that he was "in charge" of ensuring that certain equipment was at a specific location and would tell the other drivers "where we're going." Complainant clarified that he had "never been a tactical team leader" and did not "wear a team leader patch."
54. During the 6-10 meeting, Complainant stated that the Westminster SWAT team was "like a football team" that looked at the drivers "like water boys" who were not part of the Team. Complainant expressed frustration that, as a driver, he was not considered part of the SWAT team. Because he has executed warrants during his experience as a police officer, he stated: "I'll stand by saying I had SWAT team experience." Complainant stated that he stood "on the same perimeter spot" as an Operator.
55. During the 6-10 meeting, Complainant argued that the accusation that the statements in his Memorandum were untruthful is simply the "Westminster SWAT mentality" of "a hard-headed bunch of old dudes."

56. During the 6-10 meeting, Volz asked about Complainant's statement that he was "selected to the SWAT team." Complainant explained that he was specifically asked by Commander Materasso to be a driver for the SWAT team and therefore was "selected" by him.
57. Complainant stated that he did not intend to mislead anyone during the SRT leadership selection process.
58. Volz gave Complainant an additional 7 business days to provide any additional information. Complainant did not provide Volz with any additional information.

Termination Decision

59. On March 14, 2025, Volz issued a Notice of Disciplinary Action to Complainant, terminating his employment effective that day.
60. In the Notice of Disciplinary Action, Volz concluded that the "statements and information" provided by Complainant during the SRT leadership selection process were "misleading and untruthful."
61. Volz concluded that Complainant made false statements or omitted material facts during the course of employment, engaged in willful misconduct and failed to perform competently, as outlined in Board Rule 6-12(B).
62. In reaching his decision, Volz considered the factors listed in Board Rule 6-11, including Complainant's statements during the Rule 6-10 meeting, the absence of any prior corrective or disciplinary actions involving Complainant, Complainant's "Highly Effective" performance rating in his two performance reviews, and the seriousness and effect of Complainant's conduct.
63. Volz determined that termination of Complainant's employment was "the only appropriate action." Volz explained:

The CBI has an obligation to ethically and under law to disclose findings of dishonest and untruthful behavior by sworn law enforcement officers. As such, your credibility as a witness in current and any future investigations will adversely impact the viability of criminal prosecutions in which you are or would be involved.

Truthful and credible testimony in court is vital and one of the most important condition [sic] of your employment. I have no confidence that you would be able to overcome this obstacle and findings of untruthfulness in general does [sic] not make you a candidate for any position in the CBI.

64. On March 18, 2025, Hassenstab emailed the following "Credibility Disclosure Notification" to a number of District Attorneys' offices in Colorado:

This notification is to inform you that there is information in the Colorado Bureau of Investigation's possession regarding former Agent Derek Whipple that may affect the peace officer's credibility in court. This notification is due to a sustained finding that former Agent Derek Whipple knowingly made an untruthful statement concerning a material fact.

65. Complainant timely appealed his termination to the Board.

ANALYSIS

A. REVIEWING AN AGENCY'S DISCIPLINE OF CERTIFIED EMPLOYEES

The Colorado Supreme Court has clarified certified employees' rights in two crucial decisions. In *Dep't of Institutions v. Kinchen*, the Colorado Supreme Court held that Respondent has the burden to prove by a preponderance of the evidence that the alleged misconduct on which the discipline was based occurred in a *de novo* hearing. *Kinchen*, 886 P.2d at 700, 706-08 (Colo. 1994). In disciplining an employee, an Appointing Authority must establish a constitutionally authorized ground. *Id.* at 707. The ALJ is required to make "an independent finding of whether the evidence presented justifies a [disciplinary action] 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.

In a subsequent case, the Colorado Supreme Court clarified the two-part inquiry required in an ALJ's review of a disciplinary action:

[I]n reviewing an Appointing Authority's disciplinary action, the ALJ must logically focus on two analytical inquiries: (1) whether the alleged misconduct occurred; and if it did, (2) whether the Appointing Authority's disciplinary action in response to that misconduct was arbitrary, capricious, or contrary to rule or law.

Dep't of Corrections v. Stiles, 477 P.3d 709, 717 (Colo. 2020). The Colorado Supreme Court explained that the second analytical inquiry is only necessary if the Appointing Authority establishes that the conduct on which the discipline is based occurred:

If the Appointing Authority establishes by a preponderance of the evidence that the alleged misconduct occurred, the Board or the ALJ must turn to the second analytical inquiry. At that stage, the Board or the ALJ must review the Appointing Authority's decision in accordance with the statutorily mandated standard of arbitrary, capricious, or contrary to rule or law.

Id. at 718. See also C.R.S. § 24-50-103(6).

B. COMPLAINANT COMMITTED THE MISCONDUCT FOR WHICH HE WAS DISCIPLINED.

Volz terminated Complainant's employment for "misleading and untruthful" statements provided during the SRT leadership selection process. The preponderance of the evidence establishes that Complainant committed this misconduct.

In his Memorandum, Complainant created the impression that he was an experienced Operator on the Westminster SWAT team. Complainant also stated that he served as an "informal team leader." Complainant never stated that he was a driver. The focus of Complainant's Memorandum is on the SWAT Operators and does not mention the drivers. When Complainant had an opportunity to clarify that he served as a driver rather than an Operator with the Westminster SWAT team during his interview for the SRT, he failed to do so. While Complainant briefly mentioned that he started as a driver for the SWAT team so he could work his way up, the interview panel members were left with the impression that he had extensive Operator experience on the Westminster SWAT team.

Hassenstab credibly testified that, after reviewing Complainant's Memorandum, he believed that Complainant had been selected for the Westminster SWAT team, had extensive experience as an "Operator" for the SWAT team and had served as an "informal leader" for the team. Hassenstab testified that, during his interview, Complainant discussed his "informal leadership" on the SWAT team and being able to fill in as a team leader. As a result, Hassenstab considered Complainant to be a "very strong candidate" for a SRT leadership position.

During Complainant's Internal Affairs interview with Special Agent Zentner, Complainant told Zentner that he "hurriedly completed" the Memorandum for a SRT leadership position and submitted it on October 3, 2024. Complainant stated that he should have been more careful and never intended to mislead anyone. During the hearing, however, Complainant admitted that he actually drafted the Memorandum on October 1, 2024, and then asked his girlfriend to review it for him. Complainant submitted the Memorandum two days later, on October 3, 2024. Thus, Complainant had ample opportunity to revise the Memorandum before submitting it. Complainant's contradictory statement to Zentner is concerning, as it followed Zentner's review of a Truthfulness Agreement with Complainant, which Complainant acknowledged and signed.

During the Internal Affairs investigation, Wilson told Zentner that there is a distinct difference between the officers who drive the SWAT vehicles and the SWAT Operators, and this difference is made very clear to the drivers. Wilson said that Complainant's claim that he was asked to fill in as a team leader was "false" and "ridiculous," because only senior SWAT Operators serve as assistant team leaders. Wilson told Zentner that Complainant was certainly not considered an informal leader and could not be an informal leader because he was not a SWAT team member.

During the Rule 6-10 meeting with Volz, Complainant expressed frustration with the SWAT team's exclusion of drivers from team membership, referring to the SWAT team as "a hard-headed bunch of old dudes." Because he has executed warrants during his experience as a police officer, Complainant stated: "I'll stand by saying I had SWAT team experience." These comments indicate that Complainant resented he was not considered to be part of the Westminster SWAT team and reflect an inclination to exaggerate his experience with the SWAT team.

Volz credibly testified that Complainant's statements about his SWAT team experience were more than just "puffery" or embellishment. Volz concluded that Complainant was untruthful about his SWAT team experience, about serving as an informal team leader, and about his ability to fill in as a team leader. As a result, Volz concluded that Complainant could no longer continue to serve as an Agent for CBI. Because CBI has a duty to report sustained findings of untruthfulness to District Attorneys, a "Credibility Disclosure Notification" was sent to a number of District Attorneys' offices in Colorado.

The preponderance of the evidence establishes that Complainant provided misleading and untruthful statements during the SRT leadership selection process. Therefore, Complainant committed the misconduct for which he was terminated.

C. RESPONDENT'S DISCIPLINARY ACTION WAS NOT ARBITRARY OR CAPRICIOUS.

In determining whether an agency's decision is arbitrary or capricious, the ALJ 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 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).

In reaching the decision to discipline Complainant, Volz gathered and reviewed the available information concerning Complainant's alleged misleading and untruthful statements, including the Internal Affairs Investigation Report and file. Volz convened a Rule 6-10 meeting to review this information with Complainant. Complainant was allowed to review the evidence gathered by Volz in advance of the Rule 6-10 meeting, including the Internal Affairs Investigation file. Complainant was provided an opportunity to respond to the allegations of misconduct during the meeting. After the Rule 6-10 meeting, Complainant was provided an additional seven days in which to provide additional information to Volz. Complainant did not provide any additional information. The preponderance of the evidence establishes that Volz used "reasonable diligence and care to procure such evidence as he was by law authorized to consider in exercising his discretion." *Lawley*, 36 P.3d at 1252.

Volz credibly testified that, in addition to all the information in the Internal Affairs Investigation Report and file, he considered Complainant's performance history, as well as the information and arguments provided by Complainant. The preponderance of the evidence establishes that Volz gave this evidence "candid and honest consideration." *Lawley*, 36 P.3d at 1252.

As discussed above, Volz credibly testified that Complainant's statements about his SWAT team experience were more than just "puffery" or embellishment. Volz concluded that Complainant was untruthful about his SWAT team experience, about serving as an informal team leader, and about his ability to fill in as a team leader. Volz credibly testified that he considered imposing a lesser disciplinary penalty on Complainant; however, there was no other CBI Agent position in which an adverse credibility determination would not be an issue. Volz was also concerned that Complainant did not take "real" accountability for his misconduct. As a result, Volz concluded that Complainant could no longer continue to serve as an Agent for CBI.

The preponderance of the evidence establishes that Volz reached "conclusions from the evidence such that reasonable persons fairly and honestly considering the evidence" would not be compelled to "reach contrary conclusions." *Lawley*, 36 P.3d at 1252. For the above reasons, Respondent's termination of Complainant's employment was not arbitrary or capricious.

D. RESPONDENT'S TERMINATION OF COMPLAINANT'S EMPLOYMENT WAS NOT CONTRARY TO RULE OR LAW.

In considering potential disciplinary action against Complainant, Volz followed the provisions of Board Rule 6-10. Volz sent Complainant notice of a Rule 6-10 meeting to Complainant in compliance with Board Rule 6-9. Complainant was allowed to review the evidence gathered by Volz in advance of the Rule 6-10 meeting, including the Internal Affairs Investigation file. Complainant was provided an opportunity to respond to the allegations of misconduct during the meeting. After the Rule 6-10 meeting, Complainant was provided an additional seven days in which to provide additional information to Volz. Volz issued a Notice of Disciplinary Action in compliance with Board Rule 6-13.

In reaching the decision to discipline Complainant, Volz considered the factors listed in Board Rule 6-11, including Complainant's statements during the Rule 6-10 meeting, the absence of any prior corrective or disciplinary actions involving Complainant, Complainant's "Highly Effective" performance rating in his two performance reviews, and the seriousness and effect of Complainant's conduct. Thus, the preponderance of the evidence establishes that Respondent's termination of Complainant's employment was not contrary to rule or law.

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

Complainant's claim for reimbursement of attorney fees and costs is governed by Board Rule 8-51(B), which provides:

"[A]ttorney fees and costs may be assessed against a party if the Board finds that the personnel action from which the proceeding arose ... was frivolous, in bad faith, malicious, a means of harassment, or was otherwise groundless.

Because the ALJ affirms Respondent's disciplinary termination, Complainant is not entitled to an award of attorney fees and costs.

CONCLUSIONS OF LAW

Complainant committed the misconduct for which he was disciplined. Respondent's disciplinary action was not arbitrary, capricious, or contrary to rule or law. Complainant is not entitled to an award of attorney fees and costs.

ORDER

For the above reasons, Respondent's termination of Complainant's employment is **affirmed**.

Dated this 31st day
of July, 2025, at
Denver, Colorado.

/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 31st day of July, 2025, I electronically served true copies of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** and the attached **NOTICE OF APPEAL RIGHTS** addressed as follows:

Front Line Law, LLC
Taylor Frandsen, Esq.
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Kodie Clinton, Esq.
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Eric W. Freund, Esq.
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_____

APPENDIX

EXHIBITS

COMPLAINANT'S EXHIBITS ADMITTED: The following exhibits were stipulated into evidence: C, D, F, GG.

RESPONDENT'S EXHIBITS ADMITTED: The following exhibits were stipulated into evidence: Exhibits 1-35.

WITNESSES

The following is a list of witnesses in the order in which they testified during the evidentiary hearing:

Kellon Hassenstab, Assistant Director, CBI
Blair Wilson, Commander, Westminster Police Department
Christian Mohr, Agent In Charge, CBI's Organized Crime Team
Greg Zentner, Special Agent, CBI's Office of Professional Standards
Trevor Materasso, former SWAT Commander, Westminster Police Department
Dan Volz, Deputy Director, CBI
Kevin Torres, Agent In Charge, CBI's Special Investigation Illicit Marijuana Team
Derek Whipple, Complainant

NOTICE OF APPEAL RIGHTS

EACH PARTY HAS THE FOLLOWING RIGHTS:

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

RECORD ON APPEAL

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

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

BRIEFS ON APPEAL

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

ORAL ARGUMENT ON APPEAL TO THE BOARD

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

MOTION FOR RECONSIDERATION

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