

# State of Colorado



Bill Ritter, Jr.  
Governor

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Board Chair

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Board Director

State Personnel Board  
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## AGENDA PUBLIC BOARD MEETING October 16, 2007

A public meeting of the State Personnel Board will be held on Tuesday, October 16, 2007, at the Colorado Department of Human Services, Grand Junction Regional Center, 2800 D Road, Grand Junction, Colorado 81501-4721. The public meeting will commence at 10:30 a.m.

Those persons who wish to attend the meeting in Denver may come to the Colorado State Personnel Board at 633 17<sup>th</sup> Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604, at 10:30 a.m. to attend the meeting via teleconferencing.

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-866-3300 by October 11, 2007.

### I. REPORT OF RICH GONZALES, STATE PERSONNEL DIRECTOR (EXECUTIVE DIRECTOR, DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA])

### II. REQUESTS FOR RESIDENCY WAIVERS

A. October 1, 2007 Report on Residency Waivers

Reports are informational only; no action is required.

### III. PENDING MATTERS

A. Joseph MacDonald v. Department of Transportation, State Personnel Board case number 2007B030.

On August 21, 2007, the Board voted to strike Complainant's exhibits B through J, except for Exhibits F and G, attached to the Response to Brief on Appeal by Joseph P. MacDonald, and to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to make the Initial Decision of the Administrative Law Judge an Order of the Board. On September 19, 2007, Respondent filed its Motion to Stay. On September 27, 2007, Complainant filed his Objection to CDOT's Motion to Stay This Case. On October 2, 2007, Respondent filed its Response to Objection to CDOT's Motion to Stay This Case.

### IV. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD

- A. Edward Lawrence Donaldson v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2006B051(C).

Complainant, a security guard, appealed three actions: (1) a corrective action issued on September 22, 2005; 2) a disciplinary action of a 5-day suspension issued on December 13, 2005; and 3) a disciplinary termination issued on February 15, 2006, which the ALJ consolidated into one case. Complainant argued that Respondent discriminated against him on the basis of disability, age, race, and national origin, and sought reinstatement, back pay, benefits, and attorney fees and costs. After hearing, the ALJ concluded that Complainant committed some of the acts for which he was disciplined, including failing to give status checks during his first day on the dayshift; leaving his assigned work area for forty-one minutes to go to the State Personnel Board, and changing out of his uniform shirt to complete the errand; refusing to answer and leaving his supervisor's office, which constituted insubordination; making allegations of discrimination in the form of a written report against a coworker, as directed by his supervisor; and failing to return the fitness-to-return to work in a timely manner. However, the ALJ also found that Respondent's actions were arbitrary, capricious, or contrary to rule or law, in that the appointing authority reached a decision based on conclusions that were contrary to those that would be reached by reasonable men fairly and honestly considering the same evidence. With regard to the corrective action, the ALJ stated, "To issue a corrective action to someone, acting under direct orders, who perceives and reports those perceptions in good faith, has a chilling effect on future reports of discrimination in the workplace." The ALJ further found that the corrective action and two disciplinary actions were not within the range of reasonable alternatives, were imposed without consideration of mitigating circumstances, or were too severe. The ALJ modified Respondent's actions to rescind the corrective action and the five-day suspension, imposing an alternate disciplinary action of a one-day suspension; to rescind the termination, imposing an alternate disciplinary action on Complainant of a thirty-day suspension; and to award Complainant to back pay and benefits to the date of reinstatement. No attorney fees were awarded.

**V. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES TO GRANT OR DENY PETITIONS FOR HEARING**

- A. Daniel Schaefer v. Regents of the University of Colorado, University of Colorado at Boulder, Department of Public Safety, University Police Department, State Personnel Board case number 2008G014.

Complainant, a certified Police Officer with the University of Colorado Police Department, filed a petition for hearing on August 14, 2007, challenging the imposition of a corrective action. In his petition for hearing, Complainant alleges that Respondent violated the grievance procedure and violated his federal or state constitutional rights.

Respondent asserts that Complainant's petition does not state valid issues that would merit a hearing and that his petition for a discretionary hearing should be denied.

On October 3, 2007, the Administrative Law Judge issued a preliminary recommendation, recommending that the petition for hearing be denied.

- B. Suzanne Belanger v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2007G093.

Complainant, a General Professional (GP) VII at the Colorado Mental Health Institute at Pueblo, Department of Human Services, petitions the Board for review of her claim that Respondent's failure to upgrade her position and its action to downgrade her performance rating were based on retaliation for her filing of an earlier grievance and

petition for hearing before the Board. Complainant argues that Respondent arbitrarily and capriciously engaged in agency action, contrary to rule of law and abuse of authority, involving retaliation for her filing a grievance and appeal by: (1) terminating a pending upgrade of her position from GP VII to Health Professional (HP) VII; and (2) changing her job Performance Planning and Appraisal from an overall rating of Level 4 to an overall rating of Level 3.

Respondent argues: 1) the retaliation that Complainant alleges to have occurred does not bring this matter within the Board's jurisdiction to grant a discretionary hearing; 2) the Board does not have jurisdiction over promotion disputes in the absence of allegations of discrimination; and 3) the Board's grant of a discretionary hearing would exalt form over substance.

On October 4, 2007, the Administrative Law Judge issued a preliminary recommendation, recommending that the petition for hearing be denied.

## **VI. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES**

### **A. Jason P. Monett v. Department of Corrections, Colorado State Penitentiary, State Personnel Board case number 2006G074 (September 24, 2007).**

Complainant, a correctional officer, appealed his disciplinary termination by Respondent, seeking reinstatement, back pay, a redaction of his personnel file to remove termination materials, a declaration that Complainant's state service time has been continuous, and an award of attorney fees and costs. After hearing, the ALJ determined that Complainant brought chewing tobacco into the facility by hiding the can of tobacco in a coffee cup, and that he had placed an amount of the chew into his mouth while he was on duty and while he was in the pod office. The ALJ also found that, contrary to Complainant's assertion that Respondent's action was arbitrary, capricious, or contrary to rule or law, Appointing Authority Medina possessed lawful appointing authority in this matter, Complainant's Board Rule 6-10 meeting met all applicable requirements, Complainant's knowledge that there were other staff members who chewed tobacco does not render Respondent's actions in this case arbitrary or capricious, and Respondent correctly concluded that Complainant's actions violated several departmental regulations. Affirming the disciplinary termination of Complainant, the ALJ concluded that the discipline was within the range of reasonable alternatives and that attorney fees were not warranted.

### **B. Jeff Baughman v. Colorado State University, State Personnel Board case number 2007B076 (October 4, 2007).**

Complainant, a grounds keeper, appealed the terms imposed in a demotion letter by Respondent, seeking both a modification of the provision in the demotion letter stating that a driver would no longer be available to transport him to and from job sites during the revocation of his driver's license and an order directing Respondent to permit CSU employees to provide transportation to him on the job. After hearing, the ALJ determined that Respondent proved by preponderant evidence that Complainant committed the acts for which he was disciplined; that is, he failed to regain his driver's license within a year of losing it and he neglected to inform his direct supervisor of this fact despite repeated requests for documentation. Affirming the disciplinary action, the ALJ found that Respondent's decision to demote Complainant was not arbitrary, capricious or contrary to rule or law because the appointing authority considered all relevant information necessary to make a decision in this case, took pains to assure that Complainant did not suffer too great a decrease in salary, and reasonably deemed it an untenable burden on Complainant's unit to continue to provide a driver for Complainant in the completion of his duties.

- C. Timothy Nawrocki v. Department of Public Safety, State Personnel Board case number 2007B097 (October 4, 2007).

Complainant, a trooper, appealed his disciplinary demotion and transfer by the Department of Public Safety, Colorado State Patrol, seeking reinstatement to the position of Captain and a rescission of the transfer. After hearing, the ALJ found that Respondent proved by preponderant evidence that Complainant committed the acts for which he was disciplined, which Complainant did not deny. In addition, the ALJ concluded that Respondent's decision to demote Complainant was not arbitrary or capricious, because, prior to making the decision to demote Complainant, the appointing authority used reasonable diligence and care to consider all relevant evidence and information available to him, including that which was provided by Complainant, his long pattern of violating patrol regulations, his two previous disciplinary actions, and conduct which demonstrated that Complainant did not possess the leadership qualities necessary to serve as a Captain. However, the ALJ also found that no reasonable appointing authority would impose a 100-mile transfer for altruistic purposes, in addition to a disciplinary demotion, and thus, the ALJ rescinded the transfer decision, as a transfer was not within the range of reasonable alternatives.

**VII. REVIEW OF THE MINUTES FROM THE SEPTEMBER 18, 2007 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

**VIII. ACKNOWLEDGMENTS**

**DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS SEPTEMBER 18, 2007 PUBLIC MEETING:**

- A. Barbara Pridemore v. Department of Public Health & Environment, State Personnel Board case number 2007G073.

The Board voted to accept Complainant's information Sheet as timely and based on extenuating circumstances, including, but not limited to, the lateness with which Respondent served its mandatory disclosures on Complainant, and the Board's determination that neither party suffers prejudice by a reversal, the Board voted to reverse the Amended Dismissal Order and to remand the matter to the Administrative Law Judge. Notwithstanding Board Rule 8-50(C), the ALJ is to consider the case on its merits based upon both of the parties' information sheets and render a preliminary recommendation.

- B. Selisa Hall v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2008G010.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny the hearing.

**IX. REPORT OF DAVID KAYE, DIRECTOR OF THE DIVISION OF HUMAN RESOURCES, DPA**

- Overview of Proposed Personal Leave Policy (Joi Simpson)

**X. ADMINISTRATIVE MATTERS & COMMENTS**

A. ADMINISTRATIVE MATTERS

- Budget Report
- Cases on Appeal to the Board and to Appellate Courts
- Signature of Board members on Minutes of Board meetings

- Mandate in MacDonald v. Department of Transportation, State Personnel Board Case No. 2006B098, Court of Appeals No. 07CA0816

B. OTHER BOARD BUSINESS

- Staff Activities

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

**XI. PROPOSED LEGISLATION AND/OR RULEMAKING**

**XII. EXECUTIVE SESSION**

- A. Case Status Report
- B. Minutes of the September 18, 2007 Executive Session
- C. Other Business

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**NEXT REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.**

<b>November 20, 2007</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>December 18, 2007</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>January 15, 2008</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>February 19, 2008</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>March 18, 2008</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>April 15, 2008</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>May 20, 2008</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>June 17, 2008</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>