

# State of Colorado



Bill Ritter, Jr.  
Governor

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Board Chair

Kristin F. Rozansky  
Board Director

State Personnel Board  
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## AGENDA PUBLIC BOARD MEETING November 20, 2007

A public meeting of the State Personnel Board will be held on Tuesday, November 20, 2007, at the Colorado State Personnel Board, 633 17th Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604. The public meeting will commence at 9:00 a.m.

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 November 15, 2007.

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

Executive Order on Partnership Agreements with Employees

### II. REQUESTS FOR RESIDENCY WAIVERS

November 1, 2007 Report on Residency Waivers

### III. PENDING MATTERS

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

#### A. Barbara Kirkmeyer v. Department of Local Affairs, State Personnel Board case number 2007G089 (June 27, 2007).

Complainant, Deputy Executive Director for the Division of Local Government within the Department of Local Affairs, appealed the April 30, 2007 letter separating her from state service, alleging: 1) that Respondent had violated the terms of the contract by not returning her to the classified pay system; 2) that she was being laid off and that Respondent had not followed any layoff rules and procedures; and 3) that Respondent was discriminating against her on the basis of political affiliation. On June 27, 2007, the Administrative Law Judge issued an Order of Dismissal in this case, concluding that: (1) Complainant waived all of her retention and reemployment rights when she entered into a Senior Executive Service (SES) contract; (2) the department head in this case opted to separate Complainant from state service in compliance with Director's Procedure 2-11(C); (3) the Board lacks jurisdiction and Complainant lacks standing to bring her appeal to the Board; and (4) Complainant's appeal to the Board is moot as there is no judgment

the Board could render that would have a practical legal effect on the controversy between Complainant and Respondent.

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

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

Complainant, a Surveyor of nursing homes for the Health Facilities and Emergency Medical Services Division at the Colorado Department of Public Health and Environment Colorado, appeals a grievance decision denying her appeal of a corrective action. In her grievance, Complainant asserted that Respondent violated her due process rights by failing to provide her the information upon which the corrective action was based and failing to give her the opportunity to respond to such information, prior to imposing the corrective action. She also alleged violations of Board Rule 6-10 and the Colorado Open Records Act. She requested rescission of the corrective action, transfer to a different team and supervisor, and reinstatement to Team Coordinator of survey teams. In her Petition for Hearing, Complainant raised additional claims, including violation of her liberty interest by informing the Colorado Health Care Association, the nursing home owners' trade association, about the personnel actions taken against her, denial of due process and equal protection, and violation of the Colorado State Employee Protection Act (Whistleblower Act).

Respondent argues that Complainant has not stated a claim that meets the jurisdictional requirements of section 24-50-123(3), C.R.S., which limits Board review of grievance decisions to statutory discrimination or whistleblower claims, constitutional claims, or violations of grievance procedures.

On November 7, 2007, the Administrative Law Judge issued a Preliminary Recommendation, recommending that the petition for hearing be granted solely on the issue of whether Respondent violated its internal grievance procedure, "Professional Conduct."

- B. Eric Gillespie v. Department of Labor & Employment, Division of Oil & Public Safety, State Personnel Board case number 2007G096(C).

Complainant, a certified Environmental Protection Specialist II employed by the Department of Labor & Employment, Division of Oil & Public Safety, filed a petition for hearing on June 11, 2007, arguing that he had been unlawfully retaliated against for speaking out against mismanagement within the public school inspection program through the issuance of a corrective action dated June 6, 2007; a letter of expectation issued May 30, 2007; and a revised Position Description Questionnaire (PDQ) issued May 30, 2007. Complainant also filed a petition for hearing on August 8, 2007, arguing that he had been further retaliated against for speaking out on the same issues when Respondent decided to remove his working title of Building Official, and changed his work assignments so that he was no longer in a stakeholders group.

Complainant requests that the corrective action, the letter of expectation and the current PDQ be removed from his file; that the previous PDQ that was paneled and reviewed be approved; that he receive back wages plus interest and any pay differentials; that the title of Building Official be restored; and that he be reinstated into the stakeholders group. Complainant also requests disciplinary action be taken against his supervisors and managers according to the provisions of the State Employee Protection Act, that attorneys fees and costs be awarded, and that any other relief deemed to be just and proper be awarded.

Respondent argues that Complainant has not made disclosures protected by the State Employee Protection Act because the e-mail communications to various state legislators and others did not specifically address a matter of public concern, contained information which was false or was disclosed without regard to the falsity or truthfulness of the information, that Complainant failed to communicate his concerns to his supervisors, that (with the exception of the corrective action) none of the actions taken constitute disciplinary actions under the Whistleblower Act, and that Complainant cannot demonstrate that any disclosures were a substantial and motivating factor in the alleged disciplinary actions. Respondent requests that a hearing be denied in this matter.

On November 8, 2007, the Administrative Law Judge issued a Preliminary Recommendation, recommending that the petition for hearing be granted.

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

- A. Jerry Autenrieth v. Department of Labor and Employment, Office of Unemployment Insurance, State Personnel Board case number 2007B094 (October 11, 2007).

Complainant appealed the decision by Respondent to rescind his appointment to a Labor and Employment Specialist (L&E) III position, seeking reinstatement to an L&E III position. Affirming Respondent's action and dismissing Complainant's appeal with prejudice, the ALJ determined that neither Complainant's nor Respondent's arguments demonstrate that the decision to rescind Complainant's L&E III position was arbitrary, capricious or contrary to rule or law; the procedure followed by Respondent in implementing the Board's decision of December 19, 2006, affirming the Initial Decision of the Administrative Law Judge in Lynn Redden and William J. Kaberlein v. Department of Labor And Employment, State Personnel Board Case No. 2005G094(C), followed the specific requirements for revising the L&E III selection process mandated by the Board; and in the final analysis, Complainant failed to demonstrate that the decision to rescind his L&E III appointment should be reversed by the Board.

- B. Scott Horak v. Department of Natural Resources, Division of Wildlife, State Personnel Board case number 2007B071 (October 18, 2007).

Complainant, a Wildlife Technician III at the Poudre Rearing Unit fish hatchery, appealed his four-month disciplinary pay reduction of ten percent by Respondent, seeking rescission of the disciplinary action, back pay, corresponding benefits, and attorney fees and costs. After hearing, the ALJ determined that Complainant committed the acts for which he was disciplined, including refusing to check the fish; refusing to document his time as requested by his lead worker, which was deemed insubordination; and removing the MS-222 (chemical used to anesthetize fish) from its normal storage place and refusing to return it until a supervisor intervened, which was considered to be sabotage in violation of the Department's Workplace Violence and Safety Policy. In addition, the ALJ found that Respondent's disciplinary pay reduction was not arbitrary, capricious, or contrary to rule or law and that the discipline imposed was within the range of reasonable alternatives. Affirming the disciplinary pay reduction, the ALJ declined to award attorney fees.

## **VII. REVIEW OF THE MINUTES FROM THE OCTOBER 16, 2007 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

## **VIII. ACKNOWLEDGMENTS**

**DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS OCTOBER 16, 2007 PUBLIC MEETING:**

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

The Board voted to deny the Motion to Stay.

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

The Board voted to adopt the findings of fact and conclusions of law numbers 1 and 4 of the Initial Decision of the Administrative Law Judge and to reverse or modify conclusions of law numbers 2 and 3.

- C. 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.

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

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

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

- Cases on Appeal to the Board and to Appellate Courts
- Annual Whistleblower Report to the Governor

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 October 16, 2007 Executive Session
- C. Other Business

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

<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>