

State of Colorado



Bill Ritter, Jr.
Governor

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Board Director

State Personnel Board
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AGENDA PUBLIC BOARD MEETING December 18, 2007

A public meeting of the State Personnel Board will be held on **Tuesday, December 18, 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 December 13, 2007.

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

II. REQUESTS FOR RESIDENCY WAIVERS

December 1, 2007 Report on Residency Waivers

III. PENDING MATTERS

There are no pending matters before the Board this month.

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

There are no Initial Decisions or other Final Orders of the Administrative Law Judges on Appeal to the Board this month.

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

A. Timothy A. Smelser v. Department of Corrections, State Personnel Board case number 2008G027.

Complainant, a certified Correctional Officer III employed by the Department of Corrections, filed a petition for hearing on October 5, 2007, arguing that he was denied relief in the final grievance decision and that decision was arbitrary, capricious or contrary to rule or law because: 1) his appointing authority had failed to adequately address multiple issues in his grievance; 2) Complainant was given, without sufficient time and tools, the duty to contact witnesses to be interviewed by the panel reviewing his grievance; and 3) time deadlines were violated.

Respondent argues that Complainant failed to meet his burden of showing that grounds exist under C.R.S. § 24-50-123(3) that merit a full hearing, that his arguments go beyond the content of his original grievance and therefore cannot be appealed to the Board, and that Complainant's proposed remedies are beyond the authority of the Board to grant his petition for hearing.

On December 5, 2007, the Administrative Law Judge issued a Preliminary Recommendation recommending that Complainant's petition for hearing be denied.

B. Gary Mason v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2008G017.

Complainant is a Police Officer II who applied for the position of Police Officer III, but was not selected for the position. Complainant voiced his concerns within and outside of the Department that the person selected was not qualified for the position. Shortly thereafter, Complainant was involved in an incident where he administered Oleoresin Capsicum (OC or pepper spray) to a patient at the Colorado Mental Health Institute at Pueblo. Complainant drafted a report regarding the incident. When the Deputy Police Chief reviewed the report, he wrote questions and comments on the report, indicating that he wanted additional information. Complainant grieved the Deputy Police Chief for the comments and questions written on the report, alleging retaliation. Complainant received a final agency decision denying his grievance. Complainant also received a Memorandum of Expectation regarding the OC incident and subsequent report. Complainant filed petitions for hearing with the Board alleging retaliation in violation of the State Employee Protection Act (Whistleblower Act) based on both the denial of his grievance and the Memorandum of Expectation he received.

Respondent argues that Complainant's appeal regarding the denial of his grievance is unsupported, that the Board lacks jurisdiction to review Complainant's appeal of the Memorandum of Expectation, that Complainant cannot establish that his claimed disclosure was a matter of public concern, that there was a legitimate business reason for the Memorandum of Expectation, and that its actions were not arbitrary, capricious, retaliatory, or contrary to rule or law.

On December 6, 2007, the Administrative Law Judge issued a Preliminary Recommendation recommending that Complainant's petition for hearing be granted solely on the issue of whether the Memorandum of Expectation issued to Complainant was a violation of the Whistleblower Act.

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

A. Dane Branch v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2008B009 (November 26, 2007).

Complainant, a trooper, appealed his two-day (20 hour) suspension by Respondent, seeking reversal of the suspension and imposition of a lesser form of discipline. After hearing, the ALJ found that Complainant committed the majority, but not all, of the acts for which he was disciplined, including leaving the gas pump going while he was filling his patrol car, on the assumption that it would shut off automatically; that the gas pump did not shut off automatically; and that the result was a spill of about 22 gallons of gasoline. The ALJ also concluded that Complainant did not notify anyone of the spill, take any actions to mitigate the spill, or assist the store clerk in dealing with the spill. Complainant instead asked the store clerk for a refund of the cost of the spilled gasoline, which resulted in the store clerk calling the store manager at about 3:00 A.M. so that Complainant could make his argument for a refund to her. The ALJ found that the portion

of the disciplinary action which was founded upon the appointing authority's decision that Complainant had not reported the situation completely was not proven by a preponderance of the evidence. The ALJ further found that a disciplinary suspension for violation of two other sections of the general orders was not arbitrary, capricious, or contrary to rule or law, and the discipline imposed was within the range of reasonable alternatives when considered in light of the actions taken by Complainant. Affirming Respondent's action with modification, the ALJ ordered Respondent to amend the disciplinary letter of July 16, 2007, to remove references to a violation of General Order #3 and to Major Butts' incorrect assertions that Complainant was less than completely truthful regarding whether the patrol car was unattended or not while it was being fueled; affirmed the remainder of the disciplinary letter and the imposition of the two-day suspension; and declined to award attorney fees and costs.

VII. REVIEW OF THE MINUTES FROM THE NOVEMBER 20, 2007 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VIII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS NOVEMBER 20, 2007 PUBLIC MEETING:

- A. Barbara Kirkmeyer v. Department of Local Affairs, State Personnel Board case number 2007G089.

The Board voted to strike the Request for Oral Argument and Respondent's Response to Complainant's Request for Oral Argument, and to adopt the Dismissal Order.

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

The Board voted to strike Complainant's Objection to Preliminary Recommendation of ALJ, and Request for a Hearing Without Limiting the Hearing Issues, Respondent's response thereto, and Complainant's Request for Oral Argument; to adopt the Preliminary Recommendation of the Administrative Law Judge; and to grant the hearing solely on the issue of whether Respondent violated its internal grievance procedure, "Professional Conduct."

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

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

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

X. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts
- Mandate/Appeal Dismissed - Butler v. Department of Revenue, State Personnel Board case number 2007G029, Court of Appeals No. 2007CA1261
- Mandate/Order Affirmed - Robinson v. Regents of the University of Colorado, State Personnel Board case number 2005G008, Court of Appeals No. 2006CA1014

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 November 20, 2007 Executive Session
- C. Other Business

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

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