

# State of Colorado



**Bill Ritter, Jr.**  
*Governor*

**Rich Djokic**  
*Board Chair*

**Kristin F. Rozansky**  
*Board Director*

**State Personnel Board**  
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Denver, Colorado 80202-3604  
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## **AGENDA PUBLIC BOARD MEETING March 18, 2008**

A public meeting of the State Personnel Board will be held on **Tuesday, March 18, 2008, 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 March 13, 2008.

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

**II. REQUESTS FOR RESIDENCY WAIVERS**

March 1, 2008 Report on Residency Waivers

- Report on Residency Waivers for past three fiscal years

**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. John Johnson v. Department of Human Services, State Personnel Board case number 2007G054.

Complainant, a General Professional VIII - Management Class with the Department of Human Services, grieved his non-selection for the position of Office Director of State and Veterans Nursing Homes. He argues that his non-selection was discriminatory based on age, race/color, and sex, and retaliation for filing grievances in September-November 2006.

Respondent argues that Complainant abandoned his civil rights allegations by not appealing the Colorado Civil Rights Division's finding of no probable cause, and therefore, there is no basis for the Board to grant a discretionary hearing on the issue of discrimination; the decision to hire a different candidate was not based on retaliation; and Complainant's allegations do not bring him within any of the other allegations that would allow the Board to grant a hearing.

On March 4, 2008, a Preliminary Recommendation of the Administrative Law Judge was issued, recommending that a hearing be granted.

B. Nicole Carter-Maddox v. Department of Health Care Policy & Financing, State Personnel Board case number 2008G044.

Complainant was employed as a probationary General Professional II at the Department of Health Care Policy and Financing until her termination. Complainant filed a petition for hearing, arguing that her termination was arbitrary, capricious or contrary to rule or law because she was terminated due to discrimination based on race/color, cronyism, and favoritism. As relief, Complainant requests reinstatement into the state personnel system.

Respondent argues that Complainant was terminated during the probationary period for unsatisfactory performance, her claims of discrimination are without merit, and because she has not proven a *prima facie* case of discrimination, her petition for hearing should be denied.

On March 4, 2008, a Preliminary Recommendation of the Administrative Law Judge was issued, recommending that a hearing be denied.

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

A. David Romero v. Regents of the University of Colorado, University of Colorado at Boulder, Housing Facilities Services, State Personnel Board case number 2007B015(C) (February 19, 2008).

Complainant, a project manager, appealed Respondent's imposition of a ten percent pay reduction for a period of twelve months and Respondent's termination of his employment, and sought reinstatement of his employment, removal of the disciplinary actions from his file, back pay and interest, attorney fees and costs, and any other relief deemed just and proper. After hearing, the ALJ determined that Complainant committed unprofessionally rude, confrontational or disrespectful communications in 2006 and that Respondent's imposition of discipline for those acts was neither arbitrary, capricious nor contrary to rule or law. The ALJ also found that the pay reduction was within the range of reasonable alternatives under the circumstances. In addition, the ALJ found that the acts that Complainant committed which were the bases for the termination of his employment were technical problems with his work as a project supervisor, and were not related to the prior disciplinary offenses for communication issues. Additionally, Respondent did not demonstrate that Complainant's actions were so flagrant or serious as to warrant immediate discipline. Under such circumstances, Board Rule 6-2 requires that Respondent assess corrective action prior to imposing discipline. Given that these steps were not followed in this matter, the ALJ rescinded the termination of employment as contrary to rule. The ALJ reinstated Complainant with full back pay and benefits, permitted Respondent to impose a corrective action about the technical issues with Complainant's work if it chose to do so, and declined to award attorney fees to Complainant.

- B. Ezekiel A. Martinez v. Department of Human Services, Division of Facilities Management, State Personnel Board case number 2007B075 (February 25, 2008).

Complainant, a custodian, appealed the termination of his employment by Respondent, due to exhaustion of Complainant's leave. In his appeal, Complainant asserted claims of unlawful discrimination on the basis of disability, age, race, and a claim of medical discrimination, and sought accommodation with a job in state employment, medical insurance, one year of severance pay, documentation of Custodian II and Vocational Education work, and recognition of five years of good service. Affirming Respondent's action, the ALJ concluded that Complainant did not present a *prima facie* case of discrimination and the appointing authority's action in terminating Complainant's employment due to exhaustion of leave was not arbitrary, capricious, or contrary to rule or law.

- C. Anthony Benson v. Department of Corrections, Centennial Correctional Facility, State Personnel Board case number 2008B032 (February 27, 2008).

Complainant, a correctional officer, appealed his termination by Respondent, seeking rescission of the disciplinary action, back pay, corresponding benefits, and attorney fees and costs. After hearing, the ALJ determined that Complainant did commit the act for which he was disciplined, that is, driving under the influence of alcohol and receiving a DUI on December 10, 2006, which ultimately resulted in a four-day jail sentence. However, the ALJ also found that Respondent's disciplinary termination was arbitrary, capricious, or contrary to rule or law, and the discipline imposed was not within the range of reasonable alternatives because Complainant was disciplined twice for the same incident, in violation of Board Rule 6-8, for his DUI of December 10, 2006: once for receiving the DUI and once for his sentence, which Respondent contended was a separate and distinct incident. Rescinding Respondent's termination of Complainant, the ALJ awarded attorney fees and costs to Complainant.

- D. Francisco Bustamante v. Regents of the University of Colorado, University of Colorado at Boulder, Division of Facilities Management, State Personnel Board case number 2008B029 (February 27, 2008).

Complainant, a custodian, appealed his termination by Respondent and sought rescission of the termination and reinstatement to his position at the University. After hearing, the ALJ found that Complainant committed the acts for which he was disciplined (being loud and intimidating in a conversation he had with a coworker), his prior corrective actions resulted from his inappropriate behavior towards coworkers, one of his disciplinary actions resulted from inappropriate behavior towards a coworker, his personnel file contained an evaluation in which he was rated as "Unsatisfactory" in the area of Communication, in another evaluation he received an "Unsatisfactory" rating in the area of Interpersonal Relations, and it was noted that he lacked respect for others and discouraged a positive work environment. Affirming Respondent's actions, the ALJ concluded that Respondent's action was not arbitrary, capricious, contrary to rule or law, or discriminatory, and the discipline imposed was within the range of reasonable alternatives.

- E. John Malloy v. Department of Human Services, Division of Youth Corrections, Platte Valley Youth Services Center, State Personnel Board case number 2007B102 (March 3, 2008).

Complainant, a Correctional Security Officer and supervisor, appealed the 5% reduction in pay for a period of three months imposed by Respondent, asserting that Respondent has violated the Colorado State Employee Protection Act. As relief, Complainant sought removal of the disciplinary action from his personnel file, a return of the monies withheld,

a transfer from Platte Valley, and attorney fees and costs. After hearing, the ALJ determined that Complainant committed the acts for which he was disciplined, which were mostly related to standards of supervisory performance; Respondent's actions were not arbitrary, capricious or contrary to rule or law; and those actions were within the range of reasonable alternatives. With regard to the violation of the Colorado State Employee Protection (Whistleblower) Act, the ALJ found that Complainant did not prove that Respondent's actions were in violation of the Act because Complainant did not make a "disclosure of information" and did not demonstrate that the disclosures he made were a substantial or motivating factor in Respondent's imposition of the disciplinary action. Respondent, the ALJ concluded, proved by a preponderance of the evidence that it would have taken the same disciplinary action even if Complainant had not filed his complaint. Affirming Respondent's disciplinary action, the ALJ declined to award attorney fees.

**VII. REVIEW OF THE MINUTES FROM THE FEBRUARY 19, 2008 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

**VIII. ACKNOWLEDGMENTS**

**DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS FEBRUARY 19, 2008 PUBLIC MEETING:**

- A. Leo Bellio v. Department of Revenue and State Personnel Board, Court of Appeals No. 06CA1377, State Personnel Board case number 2005B052(C).

In response to the January 4, 2008 Order Reversed and Case Remanded with Directions of the Court of Appeals and Mandate, the Board reversed the Initial Decision of the Administrative Law Judge, with regard to the November 2004 disciplinary action; rescinded the November 2004 disciplinary action in its entirety; and remanded the matter to the Administrative Law Judge for a determination of attorney fees awarded to Complainant, in compliance with the Court of Appeals' order. The Board also ordered that Board staff set a briefing schedule on the issue of the award of attorney fees to Complainant, to be determined by the Administrative Law Judge.

- B. Sean McGuire v. Department of Revenue and State Personnel Board, Court of Appeals No. 06CA1532, State Personnel Board case number 2004G80(C).

In response to the January 25, 2008 Mandate from the Court of Appeals, Order Reversed and Case Remanded with Directions, Opinion Modified and Petition for Rehearing Denied and in compliance with the Court of Appeals' order, the Board remanded this matter to the Administrative Law Judge for an evidentiary hearing regarding Complainant's constitutional claim and whether Complainant was discriminated against on the basis of age or disability when he was not hired for the Criminal Investigator II position.

- C. Robert Gonser v. Department of Transportation, State Personnel Board case number 2007B098.

The Board voted to strike Complainant's Amended Briefing for Board Appeal for lack of timeliness, to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge, and to adopt the Initial Decision.

- D. Samuel Forte, Jr. v. Department of Human Services, Division of Youth Corrections, Spring Creek Service Center, State Personnel Board case number 2008G016.

The Board voted to deny the Motion to Recuse Board Member Robert Thompson, to grant the Motion to Strike the transcript of an October 23, 2007 unemployment insurance hearing, and to adopt the Dismissal Order of the Administrative Law Judge.

- E. John Redding v. Department of Natural Resources, Division of Water Resources, State Personnel Board case number 2008S002.

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

- F. Kathleen Schultz v. Colorado State University, College of Agriculture Sciences, State Personnel Board case number 2008G029.

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

- G. Mathew Christensen v. Department of Public Health and Environment, State Personnel Board case number 2008G034.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for 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 - Order Affirmed, Lanphier v. Department of Public Health and Environment, State Personnel Board case number 2003B017, Court of Appeals No. 05CA1960
- Mandate - Order Affirmed, Muragara v. Department of Revenue, State Personnel Board case number 2006B001, Court of Appeals No. 06CA1015

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 February 19, 2008 Executive Session
- C. Other Business

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

<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>
<b>July 15, 2008</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>August 19, 2008</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>September 16, 2008</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>October 21, 2008</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>November 18, 2008</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>December 16, 2008</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>