

# State of Colorado



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

**Rich Djokic**  
*Board Chair*

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

**State Personnel Board**  
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## **AGENDA PUBLIC BOARD MEETING April 15, 2008**

A public meeting of the State Personnel Board will be held on **Tuesday, April 15, 2008, at Colorado State University, Lory Student Center, Room 210, Fort Collins, Colorado 80523.** 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 April 10, 2008.

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

**II. REQUESTS FOR RESIDENCY WAIVERS**

April 1, 2008 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**

**A. John Conte v. Department of Natural Resources, Division of Wildlife, State Personnel Board case number 2008G004.**

Complainant appealed the denial of a grievance by filing a petition for hearing with the Board on July 13, 2007. After the ALJ issued an order to serve a copy of his pleadings on the Assistant Attorney General assigned to the case, Complainant served the materials, as ordered. However, after reviewing the materials Complainant filed with the Board, the ALJ dismissed the case, issuing an Amended Dismissal Order on October 24, 2007. The ALJ found that Complainant's petition for hearing did not assert a violation of the Colorado Anti-Discrimination Act, the Colorado State Employee Protection (Whistleblower) Act, the federal or state constitution, or the grievance procedures adopted by the Board or the agency. Therefore, the ALJ concluded, the Board lacks subject matter jurisdiction over the case. Complainant timely appealed the dismissal order.

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

- A. Pervaiz K. Sulehria v. Department of Corrections, Division of Adult Parole, Community Corrections and Youthful Offender System, State Personnel Board case number 2007G095.

Complainant, a probationary employee at the time of termination from employment by the Department of Corrections, Division of Adult Parole, Community Corrections and Youthful Offender System, claims that Respondent terminated him due to discrimination based on religion.

Respondent counters that Complainant is not entitled to a hearing as a probationary employee who was terminated for unsatisfactory performance, which is not reviewable by the Board, and that Complainant's termination was not discriminatory.

On April 3, 2008, a Preliminary Recommendation of the Administrative Law Judge was issued, recommending that a hearing be denied.

- B. Donald Wayne v. Department of Human Services, Division of Youth Corrections, State Personnel Board case number 2008G055.

Complainant, a Correctional Youth Services Officer I at the Department of Human Services, Division of Youth Corrections, filed a petition for hearing on February 12, 2008. Complainant alleges that Respondent violated the grievance procedure.

Respondent did not file an information sheet. Therefore, the Preliminary Recommendation of the Administrative Law Judge will be based solely on the information submitted by Complainant. Board Rule 8-50(F).

On April 3, 2008, a Preliminary Recommendation of the Administrative Law Judge was issued, recommending that a hearing be granted.

- C. De'Edra Dangerfield v. Department of Labor & Employment, Department of Quarterly Census Employment Wages, State Personnel Board case number 2007S002.

Complainant, a Program Assistant II at the Colorado Department of Labor and Employment, Department of Quarterly Census Employment Wages (QCEW), appealed her non-selection for the position of General Professional III. She argues that Respondent has subjected her to inequitable treatment with regard to advancement and promotion within QCEW and that biased judgment by the oral board occurred prior to and during the oral exam. In addition, Complainant alleges that her non-selection was due to discrimination based on race, creed or color.

Respondent counters that Complainant cannot establish a *prima facie* case of discrimination; the appointing authority's reasons for selecting another employee for the position were legitimate, non-discriminatory business reasons and not pretext for unlawful discrimination; and Complainant's non-selection had nothing to do with her race, creed or color.

On April 3, 2008, a Preliminary Recommendation of the Administrative Law Judge was issued, recommending that a hearing be denied.

- D. Bobby Espinoza v. Department of Corrections, Colorado Territorial Correctional Facility, State Personnel Board case number 2008G009(C).

Complainant, a Correctional Officer II at the Department of Corrections, Colorado Territorial Correctional Facility, initially grieved the creation of a discriminatory and hostile work environment, including the imposition of a corrective action and retaliation for having filed a grievance. He requested a transfer. Following the removal of the corrective action from his file and his new assignment away from CTCF, Complainant appealed DOC's refusal to compensate him for attorney fees and medical expenses and to return all of his leave to him, claiming that such denials were retaliatory for his claim that he had been unlawfully discriminated against on the basis of his race or national origin.

Respondent argues that the decision to deny attorney fees, medical expenses, and all leave was not an unfair or discriminatory act as defined by the Colorado Anti-Discrimination Act; Complainant cannot establish that DOC's decision not to pay his attorney fees, medical expenses, or his leave was a result of national origin discrimination; and the decision to deny Complainant's request for attorney fees, medical expenses, and all of his leave was not in retaliation for filing a claim of discrimination.

This matter is before the Board only on the issue of whether Associate Director Lou Archuleta's final grievance decision on the amount of leave to return to Complainant, and the decision not to pay Complainant for attorney fees and medical expenses, could constitute retaliation under the Colorado Anti-Discrimination Act. Respondent's decision to grant Complainant all of his requested relief, other than these three items, has resolved the remainder of Complainant's issues.

On April 3, 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 Bushrow v. Department of Transportation, State Personnel Board case number 2008B038 (March 13, 2008).

Complainant, a transportation maintenance worker, appealed his disciplinary action of a one-time \$500 reduction in pay, seeking rescission of the disciplinary pay reduction. After hearing, the ALJ found that Respondent proved by a preponderance of evidence that Complainant used rock chips which belonged to Respondent to place in his driveway and failed to stop two co-workers when he saw them with Respondent's equipment and property, even though he suspected that they were using the equipment and materials for personal use. Affirming the disciplinary reduction in pay, which was roughly equivalent to the value of the rock chips which Complainant converted for personal use, the ALJ concluded that Complainant committed the acts for which he was disciplined; Respondent's action was not arbitrary, capricious, or contrary to rule or law; and the discipline imposed was within the range of reasonable alternatives.

- B. Christopher Olson v. Department of Local Affairs, State Personnel Board case number 2008B013 (March 20, 2008).

Complainant appealed the termination of his Senior Executive Service (SES) contract with Respondent for the position of Director of the Division of Emergency Management (DEM) at DOLA, seeking reinstatement to the position of DEM Director, back pay, and an award of attorney fees and costs. After hearing, the ALJ determined that the preponderance of evidence demonstrated that Complainant gave a false statement of fact to the Governor's Chief Legal Counsel on June 27, 2007, by stating he did not know what the Governor's Chief Legal Counsel was talking about with regard to any gender discrimination claims, or that he was not aware of anything about that; Complainant's conduct on June 27, therefore, constituted an appropriate basis for disciplinary action under Board Rule 6-12(3); and Complainant did not produce evidence to rebut the

conclusion that he violated Board Rule 6-12(3). In addition, the ALJ found that Respondent proved by preponderant evidence that when Complainant made a false representation of a material existing fact to Respondent, he knew at the time of its falsity and of his duty in equity and good conscience to disclose the truth; and since Respondent proved all of the elements of a fraudulent inducement claim, it was therefore entitled to rescind the SES contract with Complainant. With regard to Complainant's allegation of discrimination based on age, the ALJ concluded that Respondent and the Governor determined that Complainant had concealed material information from the Governor's Chief Legal Counsel during the vetting process; the Executive Director of DOLA and the Governor had lost trust in Complainant; the Governor determined that Complainant lacked the management judgment and credibility to effectively function as DEM Director; and Complainant neither argued nor produced any evidence that age motivated the Governor's decision. Additionally, the ALJ found that: (1) Complainant's SES contract did not create a property interest in continued employment; therefore, in the absence of a property right, Complainant has no claim to a deprivation of due process; (2) Respondent did not deprive Complainant of his liberty interest in his reputation without due process of law; and (3) Respondent's action was not arbitrary, capricious, or contrary to rule or law. Affirming Respondent's action, the ALJ dismissed Complainant's appeal with prejudice.

**VII. REVIEW OF THE MINUTES FROM THE MARCH 18, 2008 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

**VIII. ACKNOWLEDGMENTS**

**DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS MARCH 18, 2008 PUBLIC MEETING:**

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

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

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

The Board voted to reverse the Preliminary Recommendation of the Administrative Law Judge and grant 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 of Dismissal in MacDonald v. Department of Transportation, State Personnel Board case number 2007B030, Court of Appeals No. 07CA1964

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 March 18, 2008 Executive Session
- C. Other Business

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

<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>