State of Colorado

Bill Owens
Governor

Richard Djokic
Director

DPA

Department of Personnel & Administration

State Personnel Board
The Chancery
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Denver, Colorado 80203
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AGENDA
PUBLIC BOARD MEETING
August 17, 2004

A public meeting of the State Personnel Board will be held on **Tuesday, August 17, 2004, at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246**. 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 303-764-1472 by August 12, 2004.

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I. REQUESTS FOR RESIDENCY WAIVERS

A. August 1, 2004 Report on Residency Waivers

Reports are informational only; no action is required.

II. PENDING MATTERS

There are no pending matters before the State Personnel Board this month.

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

There are no Initial Decisions or other final Orders of the Administrative Law Judges or the Director on appeal to the State Personnel Board this month.

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

A. Albert McNeill v. Department of Labor and Employment, State Personnel Board case number 2004G006(C).

Complainant petitions the Board to grant a discretionary, evidentiary hearing to review Respondent's final grievance decision of October 1, 2003, regarding Respondent's denial of his request for mediation training and a corrective action issued August 13, 2003, for questionable long-distance personal telephone calls. Due to an apparent misunderstanding, Respondent denied Complainant's request to attend mediation

training despite the fact that Complainant received an email confirming his registration for the training. On June 23, 2003, the Complainant received a letter from Respondent concluding that the situation resulted from a lack of communication, neither corrective nor disciplinary action was warranted, "no formal action will be taken," and both individuals were "equally responsible for creating this situation" and are required to "work together to establish regular, professional lines of communication."

On July 25, 2003, a Board Rule R-6-10 meeting was conducted to discuss questionable long-distance calls originating from Complainant's extension. When first questioned, Complainant alleged that the calls were business-related but acknowledged, at the R-6-10 meeting, that calls were personal long-distance calls.

Complainant argues that the actions of Respondent are in retaliation against him for having previously filed various grievances and complaints. The actions Complainant asserts are retaliatory include an audit of the telephone system, improper transfer to another unit with CDLE, and issuance of various corrective actions.

Respondent argues the final decision to deny Complainant's request to attend mediation training was not arbitrary or capricious because it is authorized for employees whose employment duties require mediation, dispute resolution or negotiating skills. Complainant's position duties do not include dispute resolution. Respondent's final decision denying Complainant's request to remove the June 23, 2003 letter from his personnel file was not arbitrary or capricious because the letter notified Complainant of the agency's decision not to take corrective or disciplinary action. The letter concluded the dispute was caused by a lack of communication and required both individuals to work together. Respondent invited Complainant to petition for removal of the letter after one year. Respondent further states that the August 13, 2003 corrective action was not arbitrary or capricious because Complainant did not dispute the making of the long-distance calls violated CDLE's policies regarding the use of state resources. Again, Respondent invited Complainant to petition for removal of letter after a year.

The Administrative Law Judge (ALJ) concludes that the agency's decision not to approve the cost of mediation was reasonably affirmed because mediation had no relation to Complainant's job duties and that Respondent's invitation to allow Complainant to petition for removal of the letter after one year was appropriate. The ALJ found that Complainant provided incorrect information at the first R-6-10 meeting regarding his long-distance usage and then admitted he failed to ensure he was not using agency resources for personal business, which constitutes conduct that can warrant a corrective action. While Complainant did allege retaliation in his grievance, Respondent did not address the issue of retaliation in the agency's final grievance decision dated October 1, 2003; however, the Complainant did not provide one witness or document in support of his assertions of retaliation in his Information Sheet. Complainant did not demonstrate the existence of valid issues that merit a hearing and as such, the Administrative Law Judge recommends that a hearing be **denied.**

B. Richard A. Quintana v. Department of Corrections, State Personnel Board case number 2004G067.

Complainant petitions the Board to grant a discretionary, evidentiary hearing to review Respondent's termination of Complainant's probationary employment. Complainant argues that the decision to terminate him as a probationary employee was arbitrary or capricious because he followed all protocols for his absence in notifying his supervisors regarding his inability to report to training due to inclement weather on January 26, 2004. Complainant alleges he was never informed he would be terminated from the Training Academy if he failed to report to training that day and further alleges he was discriminated against based on race, color, and/or creed.

Respondent argues that no valid issues exist that would merit an evidentiary hearing and Complainant's termination was based on his unsatisfactory job performance during his probationary period of employment. Respondent states that Complainant was instructed via telephone on January 26, 2004, to report to the Training Academy and that Complainant did not report to work and alleges Complainant understands that his willingness and ability to report to work in inclement weather was a condition of his employment with the Department of Corrections which Complainant accepted and agreed to as conditions of his employment.

The Administrative Law Judge (ALJ) concludes that prior to Complainant's employment with DOC and the Training Academy, he signed forms indicating his willingness and ability to report for work during inclement weather; as an essential function of Complainant's position, and could face termination if he did not report. Further, the ALJ found that Respondent terminated Complainant for unsatisfactory performance, lack of commitment to his job of a Correctional Officer, failure to follow directives given by a supervisor, and unwillingness to report to work as required by conditions of Complainant's employment.

Complainant's failure to report to work on January 26, 2004, could form a basis of unsatisfactory performance; however, the Board is without jurisdiction to determine whether the discharge was arbitrary or capricious. Complainant provided no information in his Information Sheet regarding the allegation of discrimination. Given that Complainant did not demonstrate there were other grounds for his termination other then unsatisfactory performance, there are no valid issues that merit a hearing. The ALJ recommends that a hearing be **denied.**

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

A. Fidel Kelly v. Trustees of the State Colleges in Colorado, Mesa State College, State Personnel Board case number 2004B094.

Complainant, a custodian, appealed the termination for "his consistent and long term pattern of unacceptable harassing and threatening behavior," which constituted failure to perform competently, willful misconduct and inability to perform. Complainant had engaged in an ongoing pattern of aggressiveness and confrontation with a complete stranger on campus. The ALJ found that the appointing authority was justified in assuring the protection of students and other individuals on campus, because she could not be sure Complainant would cease his violent behavior. Complainant argues that working with cleaning agents with toxic chemicals had caused his violent outbursts at work. The ALJ found that he neglected to wear safety equipment and failed to demonstrate a causal connection between his exposure to the chemicals and his behavior on the job. The ALJ found that Complainant committed the acts upon which discipline was bases and concluded that Respondent's action was not arbitrary, capricious or contrary to rule or law. The ALJ affirmed Respondent's disciplinary termination and dismissed Complainant's appeal with prejudice.

Complainant has until August 11, 2004, to file an appeal of the Initial Decision of the Administrative Law Judge.

B. Fred Neal v. Department of Transportation, State Personnel Board case number 2003B015.

Complainant, a materials handler, appealed his termination for a "history of corrective actions and needs improvement ratings, none of which had resulted in a change of his

behavior at work," and for making comments comparing himself to a previous co-worker who had shot and killed his supervisor and injured a co-worker at a pre-disciplinary meeting. The ALJ found that Complainant's comments amounted to a veiled threat constituting an extremely serious violation of CDOT Workplace Violence Policy Directive 10.0; he committed the acts for which he was disciplined; the appointing authority did a thorough investigation before terminating Complainant's employment; his refusal to respect authority contributed to his termination; he posed too great a threat to remain in his position; and he is not entitled to an award of attorney fess and costs.

Complainant has until August 23, 2004, to file an appeal of the Initial Decision of the Administrative Law Judge.

VI. REVIEW OF THE MINUTES FROM THE JULY 20, 2004 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JULY 20, 2004 PUBLIC MEETING:

A. Robert Gallardo v. Department of Corrections, Division of Adult Parole and Community Corrections, State Personnel Board case number 2004G04.

The Board voted to reject the Preliminary Recommendation of the Administrative Law Judge and grant Complainant's petition for hearing on the following issues: (1) the parties' compliance with the grievance process; and (2) Complainant's claim of hostile work environment.

B. Rita Kelly v. Department of Human Services, State Personnel Board case number 2004G061.

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

C. Judith Schweitzer v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2003G057.

The Board voted to adopt the Preliminary Recommendations of the Director and deny the petition for hearing.

VIII. REPORT OF THE STATE PERSONNEL DIRECTOR

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases Scheduled for Preliminary Review and Web Site will be reported on a quarterly basis, with the next report for the quarter ending September 30, 2004, at the October 2004 Board meeting.
- Budget Report and Revenue and Expense Report.
- Cases on Appeal to the Board and to Appellate Courts
- July 16, 2004 Notice of Public Hearing to Consider Adoption of Permanent Rules for the Risk Management Division of Department of Administration, 1 CCR 105-1 & Notice of Public Hearing to Consider Adoption of Permanent Administrative Procedures, 4 CCR 801

- Mandate/ Order Affirmed in Velasquez v. Department of Higher Education, State Personnel Board Case No. 2002B040, Court of Appeals No. 02CA1740

B. OTHER BOARD BUSINESS

1. CIVIL SERVICE REFORM
2. BOARD MEETINGS/ TRAINING; OUTSIDE THE DENVER AREA

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

X. EXECUTIVE SESSION

A. Case Status Report

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

September 21, 2004	**Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222**
October 19, 2004	**Colorado Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246**
November 16, 2004	**Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222**
December 21, 2004	**Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222**
January 18, 2005	**Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222**
February 15, 2005	**Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222**
March 15, 2005	**Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222**
April 19, 2005	**Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222**
May 17, 2005	**Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222**
June 21, 2005	**Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222**