

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 August 19, 2008

A public meeting of the State Personnel Board will be held on Tuesday, August 19, 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 August 14, 2008.

ANNUAL ELECTION OF BOARD CHAIR AND VICE-CHAIR FOR FISCAL YEAR 2008 – 2009

- I. **MARTIN E. FLAHIVE, GOVERNOR'S DESIGNEE FOR EMPLOYEE PARTNERSHIPS**
- II. **REPORT OF RICH GONZALES, STATE PERSONNEL DIRECTOR (EXECUTIVE DIRECTOR, DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA])**
- III. **REQUESTS FOR RESIDENCY WAIVERS**
August 1, 2008 Report on Residency Waivers
- IV. **PENDING MATTERS**
There are no Pending Matters before the Board this month.
- V. **REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD**
 - A. Peter S. Herrera v. Department of Human Services, Division of Youth Corrections, State Personnel Board case number 2008S013.

Complainant filed a petition for hearing challenging his termination of employment during the probationary period. The Administrative Law Judge issued an order to show cause, stating, "An appeal is timely if it is received or postmarked within 10 days after receipt of the written notice of action. Board Rule 8-41. Respondent's termination notice is dated March 10, 1999. The Board received Complainant's petition on February 13, 2008." After receiving Complainant's response to the order to show cause, the Administrative Law Judge dismissed the matter for lack of timeliness. Complainant then filed a Notice of Appeal of the dismissal order.

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

There are no Preliminary Recommendations of the Administrative Law Judges before the Board this month.

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

- A. Sean McGuire v. Department of Revenue, State Personnel Board case number 2004G080(C) (July 28, 2008).

Complainant, a revenue agent, appealed the selection procedure used by the Division of Gaming in the selection of a Criminal Investigator II position, seeking appointment to the position of Criminal Investigator II; an award of back pay, benefits, and interest; and reimbursement of attorney fees and costs. After hearing, the ALJ found that Respondent's actions, with regard to this position, were arbitrary, capricious or contrary to rule or law, based on the following: (1) By statute, an eligible list shall remain in effect for six months, or longer if the list is extended; and (2) Respondent's decision to cancel the January 2004 eligible list in February 2004 because Complainant was the only person on the eligible list and failing to interview Complainant for the position of Criminal Investigator II once he had been referred for that position were contrary to state law. The ALJ also found that Complainant had not met his burden of proving that his non-selection for the Criminal Investigator II position was the product of intentional age discrimination or retaliation. The ALJ declined to award attorney fees because Respondent's decision to cancel the January 2004 eligible list had been the product of a long-standing practice advocated by the Division of Human Resources of the Department of Personnel and Administration and, therefore, was not the type of personnel action which would warrant an award of fees. The ALJ ordered that Respondent's decision to cancel the January 2004 eligible list is rescinded and the remedy the ALJ awarded to Complainant is that Complainant is to be placed on the next Criminal Investigator II referral list and allowed to fully and fairly compete for openings in that class over the six-month (or more) period for which that list is in operation, in the same manner as if he had tested within the top three candidates for that eligible list.

VIII. REVIEW OF THE MINUTES FROM THE JULY 15, 2008 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

IX. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JULY 15, 2008 PUBLIC MEETING:

- A. Judy Wilday-O'Neill v. Department of Human Services, Colorado State Veteran's Home at Fitzsimons, State Personnel Board case number 2008G065.

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

- B. Lee Burkholder v. Department of Human Services, Trinidad State Nursing Home, State Personnel Board case number 2008G071.

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

- C. Kelly Smith v. Department of Corrections, State Personnel Board case number 2008G074.

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

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

XI. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts
- Annual Whistleblower Report to the Governor
- Mandate - Order Affirmed, Ward v. Department of Natural Resources, State Personnel Board case number 2004B143, Court of Appeals No. 06CA2496
- Case Remanded with Directions, Maggard v. Department of Human Services, Colorado State Veterans Home at Fitzsimons, State Personnel Board case number 2006B058, Court of Appeals No. 07CA0866

B. OTHER BOARD BUSINESS

- Staff Activities

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

XII. PROPOSED LEGISLATION AND/OR RULEMAKING

XIII. EXECUTIVE SESSION

- A. Case Status Report
- B. Minutes of the July 15, 2008 Executive Session
- C. Other Business

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

September 16, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
October 21, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
November 18, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
December 16, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
January 20, 2009	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
February 17, 2009	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
March 17, 2009	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
April 21, 2009	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
May 19, 2009	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
June 16, 2009	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604