

ORDER OF THE STATE PERSONNEL BOARD GRANTING PETITION FOR
HEARING

JOANN ARGUELLO,

Complainant,

vs.

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT,

Respondent.

This matter is before the Colorado State Personnel Board ("Board") at its regularly scheduled public session held on December 15, 2009. During this public session, the Board considered the Preliminary Recommendation of the Administrative Law Judge.

Based upon the Board's review and consideration, the Board finds there is not a sufficient basis to uphold the Preliminary Recommendation of the Administrative Law Judge.

IT IS HEREBY ORDERED that the Preliminary Recommendation of the Administrative Law Judge is rejected, and that the petition for hearing is **GRANTED**, based on the following. The first three prongs of a *prima facie* case of discrimination based on age and race have been met, as outlined by the Administrative Law Judge in the Preliminary Recommendation. However, the information provided demonstrates that the fourth prong of a *prima facie* case of discrimination, an inference of discrimination, has also been met based on the fact that two positions at the agency were filled with employees who were not within either of the protected classes of Complainant. In addition, the Board is in disagreement with the conclusion of the Administrative Law Judge that this matter is moot. The Board finds that the issue of lost wages is not moot, given that Complainant potentially sustained approximately five months of lost wages, due to her non-selection for one of the positions.

Dated this 16th day of
December, 2009.


Rich Djokic, Board Chair
State Personnel Board
633 17th Street, Suite 1320
Denver, Colorado 80202-3604

CERTIFICATE OF MAILING

This is to certify that on the 17th day of December, 2009, I electronically served true copies of the foregoing **ORDER OF THE STATE PERSONNEL BOARD GRANTING PETITION FOR HEARING**, addressed as follows:

JoAnn Arquello



Joseph Haughain



Andrea C. Woods