

STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. 2011G065(C)

ORDER OF THE STATE PERSONNEL BOARD GRANTING PETITION FOR HEARING

TIMOTHY KOSAK,
Complainant,

vs.

DEPARTMENT OF TRANSPORTATION,
Respondent.

This matter is before the Colorado State Personnel Board ("Board") at its regularly scheduled public session held on November 15, 2011. During this public session, the Board considered the Preliminary Recommendation of the Administrative Law Judge.

Based upon the Board's review and consideration of the Preliminary Recommendation, the Board finds there is a sufficient basis to uphold the Preliminary Recommendation of the Administrative Law Judge in part and to reverse the Preliminary Recommendation of the Administrative Law Judge in part.

IT IS HEREBY ORDERED that the Preliminary Recommendation of the Administrative Law Judge is adopted, and that the petition for hearing is **GRANTED**, as to the following issues:

- The finding of the Administrative Law Judge as to the denial of a hearing on the basis of violations of the Whistleblower Act is upheld;
- The finding of the Administrative Law Judge as to the granting of a hearing to Complainant based on retaliation for filing grievances, in violation of the grievance process and procedures, is affirmed. The resultant adverse actions under consideration include the appointing authority's remand of permission for Complainant to use a facility other than Centura Centers for Occupational Medicine for his medical examinations; the imposition of the second performance document form by his supervisor for Complainant's response to the issuance of the first performance document regarding the damaged truck decal; the manner in which the drug testing of Complainant occurred; and the calling of the police by Respondent to escort Complainant out of the facility following a grievance meeting.

IT IS HEREBY ORDERED that the Preliminary Recommendation of the Administrative Law Judge is reversed, and a petition for hearing is **GRANTED**, as to the following issue:

- The finding by the Administrative Law Judge as to the denial of a hearing on the basis of disability discrimination is reversed, thereby granting Complainant a hearing on the basis of disability discrimination under the Colorado Anti-Discrimination Act, including the issues of perceived disability and reasonable accommodation.

Dated this 18 day
Of November, 2011.


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

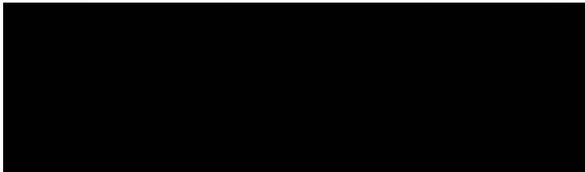
CERTIFICATE OF MAILING

This is to certify that on the 18th day of November, 2011, I electronically served a true copy of the foregoing **ORDER OF THE STATE PERSONNEL BOARD GRANTING PETITION FOR HEARING** as follows:

Timothy Kosak



Michelle Brissette Miller F.A.A.G.




Andrea C. Woods