

**STATE PERSONNEL BOARD, STATE OF COLORADO**  
**Case No. 2012B016**

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**ORDER OF THE STATE PERSONNEL BOARD**

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**WILLIAM A. BUCKLEY,**

Complainant,

vs.

**FRONT RANGE COMMUNITY COLLEGE,**

Respondent.

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This matter came before the Colorado State Personnel Board ("Board") at a regularly scheduled public session held on August 21, 2012, and a specially scheduled public session held on September 5, 2012. During these public sessions, the Board considered the record on appeal, including but not limited to:

1. Initial Decision of the Administrative Law Judge;
2. Complainant's Brief in Support of Appeal of Initial Decision of Administrative Law Judge;
3. Respondent's Answer Brief; and
4. Complainant's Reply Brief.

Based upon the Board's review and consideration, by the affirmative vote of at least three members of the Board,

**IT IS HEREBY ORDERED** that the Findings of Fact and Conclusions of Law 1 and 4 in the Initial Decision of the Administrative Law Judge are **ADOPTED**; and

**IT IS FURTHER ORDERED** that Conclusion of Law 2 ("Respondent's action was not arbitrary, capricious, or contrary to rule or law") is **REVERSED**. There was insufficient and reasonable connection between the July 5, 2011 disciplinary action and the one on August 15, 2011, that resulted in termination of Complainant's employment. Therefore, the Board concludes that Respondent failed to use progressive discipline. Respondent's failure to use progressive discipline prior to terminating Complainant's employment was arbitrary, capricious, and contrary to rule. Further, based upon the findings of fact regarding Complainant's behavior, the Board concludes his conduct was not serious and flagrant enough to warrant termination absent progressive discipline. The Board further concludes that Respondent's action was arbitrary and capricious and contrary to law, given the nature of Complainant's actions and the circumstances of this case, including the nature of the property taken on August 5, 2011 (cloth storage bags.)

**IT IS FURTHER ORDERED** that Conclusion of Law 3 ("The discipline imposed was within the range of reasonable alternatives") is **REVERSED**. Given Complainant's long employment history and good employment record until Summer 2011, as well as Respondent's failure to use progressive discipline, termination of his employment was not within the range of reasonable

alternatives available to the appointing authority. The Board concludes that Respondent failed to prove that termination of Complainant's employment was for just cause.

**IT IS FURTHER ORDERED** that based upon the above conclusions, the Initial Decision of the Administrative Law Judge is modified to reinstate Complainant to his position as Security Guard I as of the date of the initial termination of his employment. Respondent Front Range Community College is entitled to determine what corrective or disciplinary action to impose, if any, against Complainant, up to but not including termination of employment, consistent with this decision. Complainant is entitled to back pay and lost benefits, less interim income, consistent with this decision and Respondent's imposition of corrective or disciplinary action, if any.



Dated this 12th day of  
**September, 2012.**

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

**NOTICE OF APPEAL**

Each party has the following rights:

1. To abide by this decision of the State Personnel Board; or
2. To appeal this decision to the Colorado Court of Appeals within 45 days pursuant to section 24-4-106(11), C.R.S., as provided in section 24-50-125.4(3), C.R.S.

In the event the decision is appealed, pursuant to section 24-4-106(11)(b), C.R.S., the party filing the appeal with the Court of Appeals must serve the State Personnel Board with a copy of the Notice of Appeal at: 633 17th Street, Suite 1320, Denver, Colorado 80202-3604. In addition to serving the State Personnel Board with a copy of the Notice of Appeal, the party filing the appeal with the Court of Appeals must name the State Personnel Board as a party (appellee) to the appeal. Section 24-4-106(11)(d), C.R.S.

**CERTIFICATE OF MAILING**

This is to certify that on the 12<sup>th</sup> day of **September, 2012**, I electronically served true copies of the foregoing **ORDER OF THE STATE PERSONNEL BOARD**, addressed as follows:

William P. Buckley, Esq.



Berenbaum Weinshienk, P.C.  
Michael J. Belo, Esq.



Eric Freund



Jane F. Sprague