

STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. 2012B128

FINAL AGENCY ORDER OF THE STATE PERSONNEL BOARD

JOANNE BROWN,
Complainant,

vs.

DEPARTMENT OF HUMAN SERVICES, COLORADO MENTAL HEALTH INSTITUTE AT PUEBLO,
Respondent.

This matter was before the Colorado State Personnel Board ("Board") in a public session held on October 21, 2014. During this public session, the Board considered the record on appeal, including:

1. Order of the State Personnel Board, 2-26-2014;
2. Order on Remand Awarding Back Pay and Benefits, 5-28-2014;
3. Respondent's Opening Brief to State Personnel Board, 9-2-2014;
4. Complainant's Opening Brief Concerning Order on Remand, 9-2-2014;
5. Respondent's Answer Brief, 9-12-2014;
6. Complainant's Response Brief Concerning Order on Remand, 9-12-2014;
7. Respondent's Reply Brief, 9-17-2014;
8. Complainant's Reply Brief Concerning Order on Remand, 9-17-2014;
9. Complainant's Motion to Enforce Order of the State Personnel Board to Reinstate Complainant to Her Position, 6-6-2014; and
10. Respondent's Objection to Complainant's Motion to Enforce Order of the State Personnel Board to Reinstate Complainant to Her Position, 6-16-2014.

Based upon the Board's review and consideration,

IT IS HEREBY ORDERED that the Order of the State Personnel Board of February 26, 2014, is **AMENDED** to require that Complainant be reinstated to her former position or an equivalent position no later than November 1, 2014. If Complainant is not reinstated as per this Board order, damages will continue to accrue to the date of Complainant's reinstatement. All other matters addressed in the Board's Order of February 26, 2014, stand as previously ordered by the Board.

IT IS FURTHER ORDERED that the Findings of Fact and Conclusion of Law 1 of the Administrative Law Judge's Order on Remand Awarding Back Pay and Benefits of 5-28-2014 are **ADOPTED**, but Conclusion of Law 2 is **REVERSED** to the extent that it requires an offset for the PERA disability benefits Complainant received. This portion of Conclusion of Law 2 is contrary to law because Complainant's PERA disability benefits are collateral benefits and cannot count as an offset against Complainant's recovery. Damages are also awarded through October 31, 2014, rather than through February of 2014. Specifically, the following damages are **ORDERED**:

Respondent shall pay Complainant \$116,805.24 in back pay and benefits, which represents the amount due between the time of separation and this final judgment. Respondent shall make PERA employer contributions on behalf of Complainant to PERA at the rate of 7.65% of Complainant's gross salary from June 13, 2012, through June 30, 2012, and at the rate of 10.15% of Complainant's gross salary from July 1, 2012, to the date of Complainant's reinstatement. Complainant shall make PERA employee contributions accruing from June 13, 2012, to the date of reinstatement, as determined by PERA, to be deducted from the back pay award. Complainant shall reimburse PERA for disability retirement benefits as may be required by PERA, pursuant to statute and rule. Respondent shall credit Complainant for 10 hours of annual leave and 6.6 hours of sick leave per month to reinstatement.

The calculation of the back pay award and benefits due to Complainant is as follows:

Back Pay and Benefits

- ½ June 2012 \$2101.00 base pay + \$188.00 health premium
+ \$8.42 STD and life insurance = \$2,297.42
- 7/12 – 6/13 \$4203.00 base pay + \$428.46 health
premium + \$16.84 STD and life insurance x 12 mo. = \$55,779.60
- 7/13 – 6/14 \$4364.23 base pay + \$460.02 health
premium + 16.84 STD and life insurance x 12 mo. = \$58,093.08
- 7/14 – 10/14 \$4516.98 base pay + \$460.02 health
premium + \$16.84 STD and life insurance x 4 mo. = \$19,975.36

TOTAL BACK PAY AND BENEFITS: = \$136,145.46

Offsets

- Convergys - \$6,938.46 in 2013 and \$1152.00 per mo. x 10 mo. in 2014 = \$18,458.46
- Unemployment benefits = \$9,534.00

TOTAL OFFSETS: = \$27,992.46

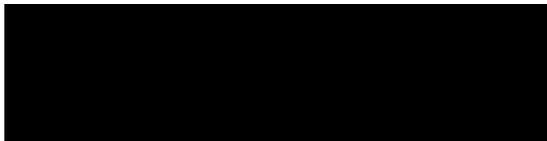
TOTAL BACK PAY AND BENEFITS MINUS OFFSETS: = \$108,153.00

Interest at 8% = \$8,652.24

TOTAL DUE TO COMPLAINANT = **\$116,805.24**

IT IS FURTHER ORDERED that Complainant's Motion to Enforce Order of the State Personnel Board to Reinstate Complainant to Her Position filed on June 6, 2014, is hereby DENIED as moot in light of the above orders.

Dated this 22 day
of October, 2014.



Sally Yerger, Board Chair
State Personnel Board
1525 Sherman Street, 4th Floor
Denver, CO 80203

NOTICE OF APPEAL

Each party has the following rights:

1. To abide by the decision of the State Personnel Board; or
2. To appeal this decision to the Colorado Court of Appeals within 49 days pursuant to Section 24-50-125.4(3), C.R.S., in the method described at Section 24-4-106(11), C.R.S., and in accordance with applicable Colorado Appellate Rules.

In the event this decision is appealed, the party filing the appeal with the Court of Appeals must name in the appeal and serve such appeal upon the State Personnel Board and all other parties who have appeared as parties to this action. See Section 24-4-106(11)(d), C.R.S. The State Personnel Board can be served at: 1525 Sherman Street, 4th Floor, Denver, Colorado 80203.

CERTIFICATE OF MAILING

This is to certify that on the 23rd day of October, 2014, I electronically served a true copy of the foregoing **FINAL AGENCY ORDER OF THE STATE PERSONNEL BOARD** as follows:

Mark Schwane Esq.

[REDACTED]

Heather Smith A.A.G.

[REDACTED]

[REDACTED]

Andrea C. Woods