

STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. 2014G013

ORDER OF THE STATE PERSONNEL BOARD

KATHY STARLING,
Complainant,

vs.

DEPARTMENT OF REVENUE, TAX AUDIT AND COMPLIANCE DIVISION,
Respondent.

This matter was before the Colorado State Personnel Board ("Board") in regularly scheduled public sessions held on February 16, 2016 and March 15, 2016, and at a special meeting held on February 26, 2016. During these public sessions, the Board considered the record on appeal, including:

1. Initial Decision of the Administrative Law Judge;
2. Complainant's Opening Brief;
3. Respondent's Answer Brief;
4. Complainant's Reply Brief; and
5. Findings on Limited Remand to Administrative Law Judge.

Based upon the Board's review and consideration,

IT IS HEREBY ORDERED that the Findings of Fact of the Administrative Law Judge are **ADOPTED**.

IT IS FURTHER ORDERED that the Administrative Law Judge's Conclusions of Law 1 (Respondent's actions were not a violation of the Colorado Anti-Discrimination Act) and 2 (Respondent's actions were not arbitrary or capricious or contrary to rule or law) are **REVERSED**. The Board finds that there is a reasonable basis in the law and the record to reverse Conclusions of Law 1 and 2, including but not limited to the following substantial evidence in the record:

- a. The Respondent's actions in denying Complainant's request to submit her application one day after the closing of the application period were arbitrary and capricious or contrary to rule or law;
- b. The Complainant, a female employee, was treated differently from a less qualified male employee, when means were provided to the male employee to enable him to successfully apply for the Tax Examiner II (TE II) position, and such means being denied to the Complainant;
- c. The means included downward reallocation of the position so that the male employee could meet the requirements and receive training to become qualified for the TE II position and also have the advantage of being the incumbent in the position;

d. The means also included providing individual notice to the male employee of the application period to allow him to apply without also providing the same notice to the Complainant to allow her to apply;

e. The male employee was the only person who applied for the TE II position and was placed in the position because Complainant was denied permission to submit a one-day late application. The Respondent had the discretion to allow her late application;

f. History of the TE II position shows Respondent also used a downward allocation and reallocation process in 2010 in which a male was placed in the downwardly allocated TE I position for training, and ultimately selected for the reallocated TE II position. Complainant applied and was interviewed but was not selected.

IT IS FURTHER ORDERED that the matter shall be remanded to the Administrative Law Judge for purposes of determining the appropriate remedy.

Dated this 16th day
of March, 2016.



Neil Peck, 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 16th day of March, 2016, I electronically served a true copy of the foregoing **ORDER OF THE STATE PERSONNEL BOARD** as follows:

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