

State of Colorado



John W. Hickenlooper
Governor

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Board Director

State Personnel Board
1525 Sherman Street, 4th Floor
Denver, Colorado 80203
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AGENDA PUBLIC BOARD MEETING February 18, 2014

A public meeting of the State Personnel Board will be held on **Tuesday, February 18, 2014, at the Colorado State Personnel Board, 1525 Sherman Street, 4th Floor, State Personnel Board Courtroom 6, Denver, CO 80203.** The public meeting will commence at **9:00 a.m.**

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-866-3300 by February 12, 2014.

CALL TO ORDER

- Attendance.
- Disclosure of any potential conflicts of interest with regard to present Board business and notice of recusal, if applicable.

I. REPORT OF KATHY NESBITT, STATE PERSONNEL DIRECTOR (EXECUTIVE DIRECTOR, DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA])

REPORT OF THE DIVISION OF HUMAN RESOURCES [DHR], DPA

II. PENDING MATTERS

There are no pending matters before the Board this month.

III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD

- A. Joanne Brown v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2012B128 (September 12, 2013).

Complainant worked at CMHIP as a Psychiatric Admissions staffer on graveyard shift. She became disabled and was no longer able to perform physical take-downs or CPR or train for these duties. She requested an accommodation by removing those duties from her position; her request was denied and she was administratively separated after exhaustion of leave. She alleged disability discrimination. The ALJ held that performance of those duties was an essential function of her position because of the serious consequences that could result if the need for a take-down during her isolated shift occurred.

- B. Renee Ryan v. Department of Human Services, Colorado Mental Health Institute at Fort Logan, State Personnel Board case number 2013G025 (September 12, 2013).

Complainant, a probationary Nurse I with the Colorado Mental Health Institute at Fort Logan, appealed the termination of her employment on the grounds that the decision violated the State Employee Protection Act (Whistleblower Act). Complainant specifically alleged that she was retaliated against for refusing to provide emergency medications under circumstances that did not meet her nursing judgment, for critiquing the treatment team's treatment protocols as insufficiently grounded in recovery model treatment principles, and for complaining that the facility did not provide adequate treatment plans for patients or provide adequate skill training for patients. After hearing, the ALJ found that Complainant had met her burden of proving by a preponderance of the evidence that certain of her statements which questioned the quality of the psychiatric treatment services provided by Ft. Logan were disclosures of information entitled to protection under the Whistleblower Act, and that these disclosures were a substantial or motivating factor in the decision to terminate Complainant's employment. The ALJ also found that Respondent then met its burden to prove by a preponderance of the evidence that Complainant would have been terminated even without the protected disclosures. The ALJ found that Complainant's actions in failing to administer emergency or involuntary medications was not a protected disclosure subject to protection and that such actions were contrary to the applicable standards which governed the administration of medications. These actions alone would warrant the termination of a probationary nurse. The ALJ also found that Complainant's other actions in not working well as a member of a treatment team, complaining about the treatment provided by her team during an internal interview, and leaving the impression with various staff members that she had no intention of taking their perspectives into account in the manner in which she presented her arguments, were all factors which supported termination of her employment. As a result, The ALJ found that there had been no violation of the Whistleblower Act and the termination of Complainant's employment was affirmed.

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES TO GRANT OR DENY PETITIONS FOR HEARING

A. Cheryl Miller v. Department of Personnel & Administration, Division of Finance & Procurement, State Purchasing Office, State Personnel Board number 2013G099.

Complainant, a certified General Professional IV employed by the Department of Personnel and Administration, Division of Finance and Procurement (DFP), State Purchasing Office, filed a petition for hearing on June 27, 2013, arguing that she was denied relief in the final grievance decision and that decision was arbitrary and capricious because she was being subjected to retaliation, a creation of a hostile work environment, age discrimination, retaliation for taking FMLA leave, and a Whistleblower violation. As relief, Complainant seeks a finding of whistleblower violation; an order for full remediation, including a reevaluation of job performance; removal of sanctions being placed on her; payment of attorney fees and costs and an order that her supervisors be sanctioned or given corrective actions for their misconduct. Complainant seeks additional remedies that can be provided by Board Order, including any out-of-pocket expenses, payment of medical or counseling fees and other expenses incurred.

Respondent argues that Complainant failed to meet her burden of showing that grounds exist under § 24-50-123(3), C.R.S. and/or Board Rule 8-46, 4 CCR 801, that merit a full hearing; the Step II Grievance Response has not been challenged and is therefore undisputed final agency action under C.R.S. § 24-50-123; Complainant did not establish a *prima facie* case for a valid Whistleblower claim; therefore, a hearing must be denied; and Complainant did not establish a *prima facie* case for a valid discrimination claim; therefore, a hearing must be denied. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On February 5, 2014, the Administrative Law Judge issued a recommendation that Complainant's petition for hearing be granted.

B. Karen York v. Community Colleges of Colorado, Red Rocks Community College, State Personnel Board case number 2014G024.

Complainant, a certified Administrative Assistant III employed by Red Rocks Community College, filed a petition for hearing on September 20, 2013, arguing that she was denied relief in the final grievance decision and that decision was arbitrary and capricious because she was denied a Step One grievance process, in violation of the Board's or agency's grievance procedures. As relief, Complainant requests Removal of the corrective action completely from her file with all the others that have occurred under the supervision of Bill Dial; a change of reporting chain for Complainant from Bill Dial to Peggy Morgan or Michele Haney or Deb Houser or a combination of Ms. Morgan or Ms. Haney and Ms. Houser; the opportunity to transfer; correction, accountability and training for Mr. Dial for his continual attack towards Complainant; and better communication within the HR office with no demeaning infractions from Mr. Dial or other co-workers toward Complainant.

Respondent argues that Complainant failed to meet her burden of showing that grounds exist under § 24-50-123(3), C.R.S. and/or Board Rule 8-46, 4 CCR 801, that merit a full hearing; the Board lacks subject matter jurisdiction to grant a hearing; Complainant waived her rights to raise Whistleblower and discrimination claims; Complainant did not provide notice of violations of federal or state constitutional rights and therefore waived those claims; and Complainant has not met her burden of proof regarding a grievance process violation. As relief, Respondent requests that the Board deny all relief requested by Complainant, deny Complainant's petition for hearing, and dismiss the case with prejudice.

On February 5, 2014, the Administrative Law Judge issued a recommendation that Complainant's petition for hearing be denied.

V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES

A. Pamela Montoya v. Department of Public Health and Environment, State Personnel Board case number 2013B113 (January 30, 2014).

Complainant appeals the termination of her employment as a Health Professional IV. Complainant asks for reinstatement to her position, back pay, and other relief as determined by the ALJ. CDPHE) argued that the termination was properly imposed after Complainant violated information security procedures and policies, made untruthful statements, eavesdropped on private conversations, and was untimely in her work. After hearing, the ALJ found that the evidence was insufficient to sustain many of the violations alleged by Respondent, but sufficient to sustain that Complainant violated the security protocols for confidential medical information and made untruthful statements during the Board Rule 6-10 process. The ALJ additionally found that, while Respondent utilized an improper procedure in the Board Rule 6-10 meeting process by having more than one assistant to the appointing authority in the meeting, this error had no material effect on the process and did not warrant a modification of the outcome of the case. Finally, the ALJ found that, given that Respondent's ability to carry out its public health duties depends upon the agency's ability to securely handle confidential medical information (and particularly sensitive information concerning communicable diseases), Complainant's violations of security protocols and her statements concerning those matters created a fundamental trust issue for Complainant's continued employment. Termination of employment was within the range of reasonable disciplinary alternatives under such circumstances, as the ALJ concluded, and Respondent's termination of

Complainant's employment was affirmed.

- B. Mourad Ksouri v. Governor's Office of Information Technology, State Personnel Board case number 2013B076(C) (January 31, 2014).

Complainant appealed a corrective action, a disciplinary pay reduction, and his termination of employment. The ALJ found that Complainant did not commit the acts upon which the disciplinary pay reduction was based; the action was arbitrary and capricious; and Respondent retaliated against Complainant for engaging in protected conduct under the Colorado Anti-Discrimination Act, reversing the corrective action and pay reduction. The ALJ also found that Complainant committed some of the acts upon which the discipline was based; therefore, the termination was modified to lesser discipline, to be determined by the appointing authority.

VI. REVIEW OF THE MINUTES FROM THE JANUARY 21, 2014 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JANUARY 21, 2014 PUBLIC MEETING:

- A. Request for Limitation of Retention Areas by the Department of Human Services, State Personnel Board case number 2014A001.

The Board voted to deny Respondent's Request for Limitation of Retention Areas.

- B. Brett L. Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2011G028 (July 16, 2012).

The Board voted to adopt the findings of fact and conclusions of law in the Amended Order Awarding Back Pay and Front Pay, dated August 29, 2013, and to make it an Order of the Board.

- C. Elaine Daniloff v. Department of Public Health and Environment, State Personnel Board case number 2014G008.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny Complainant's petition for hearing.

- D. Bruce Marshall v. Auraria Higher Education Center, State Personnel Board case number 2014G012.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny Complainant's petition for hearing.

- E. Donna Webster v. Department of Corrections, State Personnel Board case number 2014G029.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny Complainant's petition for hearing.

VIII. ADMINISTRATIVE MATTERS & COMMENTS

- A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts

B. OTHER BOARD BUSINESS

- Annual Conflict of Interest Disclosure

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS,
PERSONNEL ADMINISTRATORS, AND THE PUBLIC

IX. PROPOSED LEGISLATION AND/OR RULEMAKING

X. EXECUTIVE SESSION

REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.

March 18, 2014	Colorado State Personnel Board 1525 Sherman Street, 4th Floor, SPB Courtroom 6 Denver, CO 80203
April 15, 2014	Colorado State Personnel Board 1525 Sherman Street, 4th Floor, SPB Courtroom 6 Denver, CO 80203
May 20, 2014	Colorado State Personnel Board 1525 Sherman Street, 4th Floor, SPB Courtroom 6 Denver, CO 80203
June 17, 2014	Colorado State Personnel Board 1525 Sherman Street, 4th Floor, SPB Courtroom 6 Denver, CO 80203
July 15, 2014	Colorado State Personnel Board 1525 Sherman Street, 4th Floor, SPB Courtroom 6 Denver, CO 80203
August 19, 2014	Colorado State Personnel Board 1525 Sherman Street, 4th Floor, SPB Courtroom 6 Denver, CO 80203
September 16, 2014	Colorado State Personnel Board 1525 Sherman Street, 4th Floor, SPB Courtroom 6 Denver, CO 80203
October 21, 2014	Colorado State Personnel Board 1525 Sherman Street, 4th Floor, SPB Courtroom 6 Denver, CO 80203
November 18, 2014	Colorado State Personnel Board 1525 Sherman Street, 4th Floor, SPB Courtroom 6 Denver, CO 80203
December 16, 2014	Colorado State Personnel Board 1525 Sherman Street, 4th Floor, SPB Courtroom 6 Denver, CO 80203