

State of Colorado



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State Personnel Board
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AGENDA PUBLIC BOARD MEETING March 18, 2014

A public meeting of the State Personnel Board will be held on **Tuesday, March 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 March 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

There are no Initial Decisions or other final Orders of the Administrative Law Judges on appeal to the Board this month.

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

- A. Kaysee Maltbie v. Department of Corrections, Denver Women's Correctional Facility, State Personnel Board case number 2014G009.

Complainant, a certified Correctional Officer employed by the Department of Corrections, Denver Women's Correctional Facility, filed a petition for hearing on August 12, 2013, arguing that she was denied relief in the final grievance decision and that decision was arbitrary and capricious because it was retaliatory and discriminatory based on gender, including sexual harassment. As relief, Complainant requests removal from all files and records of the assertions that her claims are unfounded and are without merit concerning sexual harassment by Capt. Cowens; an end to retaliation, including removal from her file

and records of all reference to the Board Rule 6-10 meeting, the performance documentation and the of filing grievances concerning such; no future retaliation, including denial of promotion or advancement for exercising her rights; an order that DOC be ordered to instruct Capt. Cowens that he is to apologize to her for his conduct and behavior toward her and to take responsibility for the behavior and conduct; an order that DOC establish proper rules, regulations, and procedures where witnesses who have made complaints of discrimination or support claims of discrimination are not coerced or pressured into recanting their claims or charges; an order that DOC put in place rules and regulations allowing individuals who have made charges of discrimination to have access to their own recorded statements and transcribed statements; payment from DOC for the medical treatment and counseling that she received concerning this situation, together with prescription medication; an order from DOC to pay her attorney's fees and costs related to this matter, including costs for undergoing the Board Rule 6-10 process; and a full and complete hearing in that DOC be immediately ordered to turn over all of the Investigator General material and other materials that it has relating to her claims of discrimination, and the IG investigation and information about Capt. Cowens' inappropriate actions with other females or staff, which have been withheld to date.

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. Respondent requests that Complainant's petition for hearing be denied and dismissed.

On March 6, 2014, the Administrative Law Judge issued a preliminary recommendation that Complainant's petition for hearing be granted on the issue of retaliation.

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

- A. Mourad Ksouri v. Governor's Office of Information Technology, State Personnel Board case number 2013B076(C)(January 31, 2014; Amended February 26, 2014).

Complainant appealed a corrective action, a disciplinary pay reduction, and his termination of employment. The ALJ found that Complainant did not commit most of the acts upon which the disciplinary pay reduction was based; the January 2013 disciplinary action was arbitrary, capricious and violated Board Rule 6-10; Respondent's September 2012 corrective action and the January 2013 disciplinary and corrective actions were retaliatory in violation of the Colorado Anti-Discrimination Act; Respondent lacked just cause for the April 2013 disciplinary termination because Complainant did not commit some of the acts upon which it was based; the April 2013 termination was arbitrary, capricious and not within the range of reasonable alternatives; Respondent did not create a hostile work environment nor did it discriminate against Complainant. The ALJ rescinded the September 2012 and January 2013 corrective and disciplinary actions; modified the April 2013 termination to a lesser discipline; reinstated Complainant to his IT Pro III position with back and benefits; and ordered Respondent to pay Complainant's attorney fees and costs in bringing his appeal to the Board.

VI. REVIEW OF THE MINUTES FROM THE FEBRUARY 18 AND FEBRUARY 24, 2014 PUBLIC MEETINGS OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS FEBRUARY 18, 2014 PUBLIC MEETING:

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

The Board voted to adopt the findings of fact in the Initial Decision of the ALJ; reversed Conclusion of Law 1, "Respondent's action was not arbitrary, capricious or contrary to rule or law"; ordered that Complainant is to be reinstated to her position; awarded back pay and benefits such as to make her whole; remanded the matter ALJ for a determination of the amount of back pay and benefits; and denied attorney fees.

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

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to make it an order of the Board.

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

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

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

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

- Review of letter to Board regarding Limitation of Retention Areas
- Cases on Appeal to the Board and to Appellate Courts

B. OTHER BOARD BUSINESS

- Recruitment for new Administrative Law Judge

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

IX. PROPOSED LEGISLATION AND/OR RULEMAKING

X. EXECUTIVE SESSION

- Attorney advice regarding considerations in developing motions

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

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