

# State of Colorado



**John W. Hickenlooper**  
*Governor*

**Sally Yerger**  
*Board Chair*

**Dana Shea-Reid**  
*Board Director*

**State Personnel Board**  
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## **AGENDA PUBLIC BOARD MEETING March 17, 2015**

A public meeting of the State Personnel Board will be held on **Tuesday, March 17, 2015, at the Colorado State Personnel Board, 1525 Sherman Street, 1st Floor Conference Room 103, Denver, Colorado 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 11, 2015.

### **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 DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA] AND REPORT OF THE DIVISION OF HUMAN RESOURCES [DHR]**

#### **II. PENDING MATTERS AT THE COURT OF APPEALS**

- A. Arthur Robinson v. University of Colorado Denver, Information Technology Services, State Personnel Board case number 2012B131, Current Court of Appeals Number 2014CA2108.
- B. Terrence M. Sullivan v. Department of Transportation, State Personnel Board case number 2014B003, Court of Appeals Number 2014CA1996.

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

- A. Jack Chen v. Department of Human Services, Office of Economic Security, Food Distribution Program, State Personnel Board case number 2014B034 (October 2, 2014).

Complainant, a General Professional IV, appealed his termination and requested reinstatement to his position, back pay, and other relief as determined by the Administrative Law Judge. After hearing, the ALJ concluded that Complainant committed the acts for which he was disciplined, including the conduct of audits in May and June of 2013 that were deficient; Respondent's disciplinary action was not arbitrary, capricious or contrary to rule of law; and the discipline imposed was within the range of reasonable alternatives. Affirming the termination of Complainant's employment, the ALJ dismissed Complainant's appeal with prejudice.

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

- A. Anthony Beauford v. Department of Human Services, Colorado State Veteran's Home at Fitzsimons, State Personnel Board case number 2014G085.

Complainant, a probationary Pipe/Mechanical Trades II employed by the Department of Human Services, Colorado State Veteran's Home at Fitzsimons, filed a petition for hearing on April 18, 2014, arguing that he was improperly terminated and that the termination decision was arbitrary and capricious because it was discriminatory based on race/color and his appearance as a large African American man. As relief, Complainant requests a hearing on his improper termination.

Respondent argues that Complainant failed to meet his 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; Complainant has not demonstrated a valid dispute that merits a hearing; Complainant's termination was for unsatisfactory performance.; Complainant cannot establish his claim of race/color discrimination; Complainant cannot establish a claim of Hostile Work Environment/Harassment; and Complainant cannot establish his claim of Retaliation. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On February 27, 2015, the Administrative Law Judge issued a preliminary recommendation that the petition for hearing be granted.

- B. Todd C. Crow v. Department of Corrections, State Personnel Board case number 2015G029.

Complainant, a probationary employee at the Department of Corrections, Corrections Training Academy, was terminated during the probationary period for sexual harassment of Lora Chace, Correctional Officer I. Complainant is a veteran who sustained a traumatic brain injury while in the military and has a hearing impairment which requires he wear hearing aids. Complainant asserts that he did not intend to make any inappropriate comments to Ms. Chace, but that his traumatic brain injury interferes with his ability to say what he actually is thinking. During an exchange on September 8, 2014, Complainant told Ms. Chace, "You're fat" and, while apologizing for that comment, told her that she was pretty.

Five days later, the incident was raised during another exchange between Complainant and Ms. Chace. Complainant admits that he knew Ms. Chace was upset but explains that "his ego had kicked in and he put his hand up in the air roughly 5 to 6 inches from Chace's face, called out 'Bullshit,' and said he didn't want to talk about it anymore." The end of this exchange was observed by Lt. Harry Campbell, who discussed the situation with Ms. Chace and Complainant. Complainant explained to Lt. Campbell that he suffers from traumatic brain injury and at times this prevented him from expressing what he was actually thinking. Complainant also informed Lt. Campbell that he felt his fellow trainees, including Ms. Chace, made fun of him because he asked so many questions. Complainant maintains he asks questions because of his difficulty hearing and his traumatic brain injury. Complainant told Lt. Campbell that he did not wish to pursue any discrimination charges. Complainant did not request an accommodation of any kind based on his traumatic brain injury or difficulty hearing during his employment with DOC.

Lt. Campbell told Complainant that he had to report the exchange with Ms. Chace up the chain of command. Ultimately, the matter was brought to the attention of Rick Thompkins, Chief Human Resources Officer, who determined that Complainant's employment should be terminated for violation of the DOC's Administrative Regulations

regarding Code of Conduct, unlawful discrimination/sexual harassment, and Board Rule 6-12, willful misconduct.

On March 5, 2015, the Administrative Law Judge issued a preliminary recommendation that the petition for hearing be denied.

C. Joel F. Wade v. Department of Public Health & Environment, Center for Health & Environmental Data, State Personnel Board case number 2015G056.

Complainant is a certified Fraud Prevention & Security Officer in the Office of the State Registrar of Vital Statistics, Department of Public Health & Environment, Center for Health & Environmental Data. On October 15, 2014, he was issued a corrective action by his supervisor, Ron Hyman, pursuant to Board Rule 6-11. Complainant was concerned that this corrective action was authored by his appointing authority, Dana Erpelding, Director of the Center for Health & Environmental Data, against the wishes of Mr. Hyman. After unsuccessfully pursuing an informal grievance with Mr. Hyman, Complainant wished to file a formal grievance, but was concerned about whether he would receive an objective review of his grievance if he submitted it to Ms. Erpelding.

After talking with DPHE's Human Resources Manager, Jim Davidson, Complainant filed his formal grievance with Ms. Erpelding's supervisor, Joni Reynolds, the Director of Public Health Programs. This grievance was referred to Ms. Erpelding, as the appointing authority, to review and respond. Ms. Erpelding denied Complainant's grievance and upheld the October 15, 2014 corrective action. Her final grievance decision was issued to Complainant at 4:00 p.m. on November 21, 2014, when she knew he would be leaving for a one week vacation. On December 4, 2014, Complainant submitted a petition for hearing, arguing that Ms. Erpelding's review of and response to his formal grievance was a violation of the Board's and the agency's grievance procedures.

On February 18, 2015, the Administrative Law Judge issued a preliminary recommendation that the petition for hearing be denied.

D. Jennie Sinclair v. Department of Natural Resources, Colorado Parks & Wildlife, State Personnel Board case number 2015S009.

Complainant was employed as a temporary Park Ranger with the Department of Natural Resources at Barr Lake State Park in the summer of 2014. On July 9, 2014, with the encouragement of Park Manager Michelle Seubert, Complainant applied for a full time Park Manager I position.

On August 1, 2014, at 4:02 p.m., Complainant called the Colorado Office of State Auditor Fraud Reporting Hotline to report concerns about the misuse of state resources by Ms. Seubert and a co-worker, Amy Brandenburg. Complainant left her contact information; no one contacted her to follow up on her report. Following her call to the Hotline, Complainant states that she was treated very differently by Ms. Seubert. Prior to her call, she was encouraged by Ms. Seubert to apply for a full time position. Following this call, Complainant was treated disrespectfully by Ms. Seubert, was removed from a project, and was told by her immediate supervisor, Park Ranger Michael Zieker, that if she had a problem with anything or anyone in the park, it should be solved within the park.

Complainant made it to the final list of candidates for the Park Manager I position. Training Officer Jacob Brey contacted Ms. Seubert for a recommendation. Ms. Seubert told Mr. Brey that Complainant was not well suited to be a Park Ranger. Mr. Brey subsequently removed Complainant from the candidate list for the Park Manager I position. On October 8, 2014, Complainant was notified of her removal from this list.

Following clarification of the appeal process by Human Resource Specialist Mary Vigil on October 16, 2014, Complainant filed a petition for hearing on October 21, 2014, arguing that she was removed from a final candidate list in retaliation for protected disclosures she made under the State Employee Protection Act (Whistleblower Act), § 24-50.5-101, C.R.S. *et seq.*

On March 4, 2015, the Administrative Law Judge issued a preliminary recommendation that the petition for hearing be granted.

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

There are no Initial Decisions or other Final Orders of the Administrative Law Judges this month.

**VI. REVIEW OF THE MINUTES FROM THE FEBRUARY 17, 2015 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

**VII. ACKNOWLEDGMENTS**

**DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS FEBRUARY 17, 2015 PUBLIC MEETING:**

- A. Natalie Van Note v. Department of Corrections, Denver Women's Correctional Facility, State Personnel Board case number 2015G018(C).

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

- B. Damian Macias v. University of Northern Colorado, State Personnel Board case number 2015G045.

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

**VIII. ADMINISTRATIVE MATTERS & COMMENTS**

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts

B. OTHER BOARD BUSINESS

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.**

<b>March 17, 2015</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>April 21, 2015</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>May 19, 2015</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>June 16, 2015</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>July 21, 2015</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>August 18, 2015</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>September 15, 2015</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>October 20, 2015</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>November 17, 2015</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>December 15, 2015</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>