

State of Colorado



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State Personnel Board
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AGENDA PUBLIC BOARD MEETING September 15, 2015

A public meeting of the State Personnel Board will be held on **Tuesday, September 15, 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 September 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.
- Introduction of new Board Counsel, Leanne DeVoss.

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

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. Michael E. DeLong v. Department of Transportation, State Personnel Board case number 2015G0110.

Complainant, a certified CDOT employee, was the Deputy Director of Maintenance for CDOT's Region 1 before he was given a corrective action on May 1, 2014, after which he was reassigned to the position of Snow and Ice Coordinator, and removed from his executive office to a shared cubicle. The corrective action did not affect Complainant's base pay, status, or tenure. 1 Complainant filed a petition for hearing on August 4, 2014, alleging that the corrective action was the result of age discrimination, and that Respondent violated Board grievance procedures. As relief, Complainant requests that the corrective action be rescinded and

removed from his personnel file, that Respondent issue an apology, and that he be reinstated to his previous position. Alternatively, Complainant requests front pay for four years at \$4,500 per month for a total of \$216,000.

Respondent argues that Complainant has failed to establish grounds that merit a hearing. Respondent contends that Complainant has not shown that his reassignment and corrective action were the result of age discrimination; Respondent further asserts that its decision to issue Complainant a corrective action and to reassign him was justified.

Respondent also denies that it violated any Board grievance procedure. As relief, Respondent requests that the Board deny Complainant's petition for hearing, deny his requested relief and dismiss Complainant's appeal with prejudice.

On August 19, 2015 the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be denied.

B. Suzanne Kelley v. Department of Public Health and Environment, State Personnel Board case number 2015G0005(C).

Complainant, a certified employee holding a General Professional IV position with Respondent, has filed numerous petitions for a hearing, alleging that actions taken by Respondent against her were motivated by discrimination based on age, gender and disability; that Respondent subjected Complainant to ongoing unlawful retaliation and a hostile work environment; and that Complainant was constructively discharged. Petitions filed on July 17, 2014, July 28, 2014, September 16, 2014, September 19, 2014 and October 21, 2014 were consolidated into the present matter. As relief, Complainant seeks a determination that she has been constructively discharged; she seeks lost wages and benefits; she seeks future lost wages and benefits in the event that she is unable to return to work as a result of the emotional distress arising from the manner in which she was treated by Respondent; she seeks an order removing negative material in all her personnel files; she requests a letter from Respondent's Executive Director apologizing for Respondent's treatment of Complainant; she requests that if she returns to work, that she be assigned to a work unit that does not include those employees she accuses of abusive and discriminatory treatment; she requests an order for accommodation of her ADA request; and, finally, she requests attorney fees and costs.

Respondent argues that Complainant's petition presents the question of whether valid issues exist that merit a full evidentiary hearing. Respondent asserts that this matter should not be set for hearing due to Complainant's failure to establish grounds that merit a hearing under State Personnel Board Rule 8-41. As relief, Respondent requests that the Board deny Complainant's petition for hearing and request for relief.

On September 8, 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

A. Douglas Schreffler v. Department of Revenue, Division of Motor Vehicles, State Personnel Board case number 2015B067 (dated August 11, 2015)

Complainant, a certified employee, appeals the termination of his employment on February 13, 2015. Complainant further claims that he was subjected to discrimination on the basis of disability and sex, and to retaliation as a whistleblower. He seeks reinstatement with back pay and benefits, investigation of his allegations of fraud, cessation of bullying by employees, and maintenance of a workplace free of non-prescribed drugs and the illegal action of drugging someone else. Respondent argues that its decision to terminate Complainant's employment was not arbitrary, capricious or contrary to rule or law; was within the range of reasonable alternatives, and should be affirmed. Respondent requests that the Board affirm the termination, dismiss Complainant's appeal with prejudice, and award Respondent its attorney fees and costs incurred in defending against Complainant's frivolous appeal.

The ALJ affirmed Respondent's termination of Complainant's employment. Attorney fees and costs are not awarded.

B. Kathy Starling v. Department of Revenue, Tax Audit and Compliance Division, State Personnel Board case number 2014G013 (dated August 31, 2015)

Complainant appeals Respondent's Step II Grievance Decision holding that she would not be allowed to submit an application for the position of Tax Examiner II (TE II) in the Taxpayer Services Division after the application period had closed. Complainant argues that Respondent's decision was arbitrary or capricious or contrary to rule or law, and constituted unlawful gender discrimination in violation of the Colorado Anti-Discrimination Act (CADA).¹ Complainant asks for an order providing all damages to make her whole, including but not limited to: placement in the TE II position; being given all training opportunities provided to the position; an award of back pay representing a 15% pay increase which Complainant would have earned in the position from the date of the incumbent's placement into the TE II position; front pay in the same amount from the date of judgment to placement in the position; an award of benefits from the date of hire into the position to the date of placement into the position; and an award of attorney fees and costs.

The Department of Revenue, Tax Audit and Compliance Division (Respondent) argues that the TE II selection process was performed fairly and without unlawful discrimination, that the position was properly posted as a reallocation without irregularities and that Complainant's failure to see that posting and apply for it during the application period was not the result of wrongdoing by Respondent. Respondent asks that the decision to deny Complainant's request to submit an application after the application period had closed be upheld; Complainant's claim of gender discrimination be denied; and Respondent's requests for attorney fees and costs to be granted.

The ALJ finds that Respondent did not engage in unlawful gender discrimination and that Respondent's decision not to allow Complainant to submit an application for the position of Tax Examiner II after the application period had closed is affirmed. This matter should be referred to the State Personnel Director for further action, if appropriate.

VI. REVIEW OF THE MINUTES FROM THE JULY 21, 2015 PUBLIC MEETING OF THE STATE PERSONNEL BOARD (Tabled at August meeting for lack of quorum)

REVIEW OF THE MINUTES FROM THE AUGUST 18, 2015 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS AUGUST 18, 2015 PUBLIC MEETING:

- A. Sheldon Reneau v. Department of Corrections, LaVista Correctional Facility, State Personnel Board case number 2015G099.

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

- B. Chad Bauer v. Community Colleges of Colorado, Pikes Peak Community College, State Personnel Board case number 2015G096.

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

- C. Cletus Thiessen v. Department of Transportation, State Personnel Board case number 2015G82

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

- D. Jacqueline Jackson v. Department of Law, State Personnel Board case number 2015S028

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

VIII. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts
Mandate: Order Affirmed, Barbara Kirkmeyer v. Department of Local Affairs, State Personnel Board case number 2007G089, Court of Appeals Number 2013CA1278.

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.

September 15, 2015	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
October 20, 2015	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
November 17, 2015	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
December 15, 2015	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
January 19, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
February 16, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
March 15, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203