

State of Colorado



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Governor

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Board Director

State Personnel Board
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AGENDA PUBLIC BOARD MEETING December 15, 2015

A public meeting of the State Personnel Board will be held on Tuesday, December 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 December 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 (possible Board action)

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. Barbara Famy v. Department of Labor & Employment, Division of Workers' Compensation, State Personnel Board case number 2016G022.

Complainant seeks a hearing to review Respondent's processing of her grievance concerning the issuance of a warning letter on May 15, 2015. Complainant argues that the attendance of both her first and second level supervisors at her informal grievance meeting was improper, and that Respondent's representative failed to investigate the conditions leading to her grievance and failed to consider relevant evidence during the second step of the grievance. Complainant requests that the May 15, 2015 warning letter be rescinded, and that her position description be rewritten to reflect clear lines of accountability, professional relationships, and

actionable value behaviors. Respondent argues that Complainant has failed to establish grounds that merit a hearing in this case; therefore, Complainant's petition for a hearing should be denied.

On November 10, 2015, the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be denied.

Complainant seeks a hearing to review Respondent's processing of her grievance concerning the issuance of a warning letter on May 15, 2015. Complainant argues that the attendance of both her first and second level supervisors at her informal grievance meeting was improper, and that Respondent's representative failed to investigate the conditions leading to her grievance and failed to consider relevant evidence during the second step of the grievance. Complainant requests that the May 15, 2015 warning letter be rescinded, and that her position description be rewritten to reflect clear lines of accountability, professional relationships, and actionable value behaviors. Respondent argues that Complainant has failed to establish grounds that merit a hearing in this case; therefore, Complainant's petition for a hearing should be denied.

On November 10, 2015, the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be denied.

B. Monyett Ellington v. Department of Human Services, Office of Early Childhood, State Personnel Board case number 2015G052.

Complainant appeals the termination of her probationary employment as a Program Assistant 2 in the Race to the Top Early Learning Challenge Grant / Child Care Quality Unit (RTT-CC) in the Office of Early Childhood (OEC), Department of Human Services (DHS). Complainant argues that she was terminated due to discrimination on the basis of race/color, age and union membership. Complainant requests that her termination be officially classified as a layoff due to reorganization of the position's roles and duties in all state and related pertinent records, to have any and all bans on future employment with the State lifted, and to be compensated for 26 months of lost wages she would have earned through the end of the grant funding in December 2016. Complainant also requests "a clear and targeted effort mounted by CDHS's Human Resources to work with all CDHS staff to demonstrably and effectively reduce the incivility, and rule-breaking of the type that I experienced and have heard reports of, as it seems to be too common at the Colorado Department of Human Services, and as research has shown, adversely affects the ability to recruit and maintain an engaged and committed workforce." Respondent argues that Complainant has failed to establish grounds that merit a hearing in this case; therefore, Complainant's petition for a hearing and request for relief should be denied.

On November 18, 2015, the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be denied.

C. Israel Espiricueta v. Department of Human Services, Office of Behavioral Health, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2016G008.

Complainant, who was a full-time probationary Mental Health Clinician I at the Colorado Mental Health Institute at Pueblo, filed a petition for a hearing on July 15, 2015, arguing that Respondent terminated his employment during his probationary period due to his alleged disclosure of unsafe conditions and potential patient abuse. Complainant asserts that his termination violated The State Employee Protection Act, § 24-50.5-101, et seq., C.R.S ("Whistleblower Act" or "Act"), which provides that "no appointing authority or supervisor shall initiate or administer any disciplinary action against an employee on account of the employee's disclosure of information." § 24-50.5-103(1), C.R.S. As relief, Complainant seeks reinstatement, back pay, benefits, sanctions for violation of the Whistleblower Act, and attorney fees.

Respondent asserts that this matter should not be set for hearing because Complainant fails to

establish grounds that merit a hearing and that Complainant's probationary employment was terminated because of Complainant's unsatisfactory performance. Respondent also notes that Complainant's Information Sheet provides no facts upon which the Board may conclude that a hearing is warranted, and that Complainant's purported disclosures were not protected under the Whistleblower Act and were not a motivating or substantial factor in Respondent's decision to terminate Complainant's employment. As relief, Respondent requests that the Board deny Complainant's petition for a hearing and dismiss Complainant's appeal with prejudice.

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

- D. Y'Evette Thomas v. Department of Human Services, Office of Children, Youth & Families, Division of Youth Corrections, Marvin W. Foote Youth Services Center, State Personnel Board case number 2016G023.

Complainant, a certified Correctional Youth or Clinical Security Officer I, filed a petition for hearing on August 19, 2015, arguing that her supervisor is discriminating against her based on her sexual orientation, and that she is the subject of a hostile work environment. As relief, Complainant seeks immediate transfer to a position out of the reach of her current chain of command, with equal or greater pay, compensation for pain, suffering and mental enslavement, and disciplinary action for those who have abused their authority in dealing with Complainant.

Respondent argues that Complainant has failed to allege facts establishing a prima facie case of either sexual orientation or hostile work environment and that therefore Complainant has failed to establish the existence of valid issues that merit a full evidentiary hearing. As relief, Respondent requests that the Board deny Complainant's petition for hearing, deny her requested relief and dismiss her appeal with prejudice.

On November 24, 2015, the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be denied.

- E. John O'Toole v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2016G032.

Complainant seeks a hearing to review Respondent's processing of his grievance concerning the issuance of a corrective action on July 8, 2015. Complainant argues that he is entitled to a hearing because this corrective action lodged against him by Director Kirstie Nixon was arbitrary and capricious. Complainant seeks complete reversal of the corrective action lodged against him by Director Nixon.

Respondent argues that Complainant has failed to establish grounds that merit a hearing in this case; therefore, Complainant's petition for a hearing should be denied. Respondent also requests that it be awarded attorneys' fees and costs under Board Rule 8-33 and C.R.S. § 24-50-125.5 at the conclusion of this proceeding.

On December 2, 2015, the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be denied and further recommended that Respondent be awarded its reasonable attorney fees and costs incurred in responding to the frivolous appeal pursued by Complainant's counsel, pursuant to Board Rule 8-33 and C.R.S. §214-50-125.5.

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 OCTOBER 20, 2015 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

THERE ARE NO MINUTES RECORDED FOR NOVEMBER 17, 2015 AS THE PUBLIC BOARD MEETING WAS CANCELLED.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS OCTOBER 20, 2015 PUBLIC MEETING:

- A. Julie Maestas v. Department of Human Services, Office of Early Childhood, Background Investigation Unit; State Personnel Board case number 2015G105.

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

- B. David Xu v. Department of Transportation, State Personnel Board case number 2015S033.

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

- C. Zachary Cartaya v. Department of Human Services, Office of Performance Management & Strategic Outcomes, Division of Budget & Policy, 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.

- D. Richard Bassett v. Department of Revenue, Tax Auditing & Compliance, Field Audit Section, State Personnel Board case number 2015G0108.

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

- E. Maureen O'Keefe v. Department of Corrections, State Personnel Board case number 2015G048.

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

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.

December 15, 2015	1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203 Colorado State Personnel Board
January 19, 2016	1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203 Colorado State Personnel Board
February 16, 2016	1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203 Colorado State Personnel Board
March 15, 2016	1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203 Colorado State Personnel Board
April 19, 2016	1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203 Colorado State Personnel Board
May 17, 2016	1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203 Colorado State Personnel Board
June 21, 2016	1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203 Colorado State Personnel Board