

State of Colorado



John W. Hickenlooper
Governor

Neil Peck
Board Chair

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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 16, 2016

A public meeting of the State Personnel Board will be held on **Tuesday, February 16, 2016** 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 February 12, 2016.

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

- A. Kathy Starling v. Department of Revenue, Tax Audit and Compliance Division, State Personnel Board case number 2014G013 (August 21, 2015).

Complainant appealed 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 argued 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). Complainant asked 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) argued 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 asked 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 Administrative Law Judge affirmed Respondent's decision not to allow Complainant to submit an application for the position of Tax Examiner II after the application period had closed and affirmed the Respondent's Step II grievance decision. No attorney's fees were awarded and the case was dismissed with prejudice and referred to the State Personnel Director for further action if appropriate.

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

A. Clarence Roberts v. University of Northern Colorado, Housing & Residential Education, State Personnel Board case number 2016G020.

Complainant, a certified Custodian I, appeals his reassignment to the Arlington Park Apartments, an off-campus residence, arguing that the motivation for the reassignment was to isolate Complainant from his co-workers, impose extra, and unusually difficult, assignments on him, and open him up to harassment through extra supervision. Complainant argues that Respondent's actions are in retaliation for his union activity and are discriminatory on the basis of Complainant's race/color. As relief, Complainant requests that he be reassigned to his previous work area, that his supervisors be required to attend racial diversity training to prevent further discrimination and stereotyping, and that University of Northern Colorado ("UNC") management issue a statement that UNC will not retaliate against union members. Respondent argues that Complainant has failed to establish grounds that merit a hearing in this case. As relief, Respondent requests that the Board deny Complainant's petition for hearing and dismiss Complainant's appeal with prejudice.

On January 7, 2016, the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be denied.

B. Vicki Jaramillo v. Department of Transportation, State Personnel Board case number 2016G029.

Complainant, a certified employee of the Department of Corrections, argues that her transfer from La Vista Correctional Facility (LVCF) in Pueblo to Canon Minimum Centers (CMC) in Canon City constitutes gender discrimination, as well as retaliation for confronting the Director of Prisons' wife, Lisa Hager, due to Ms. Hager's negative attitude and comments during a fire drill. Complainant seeks reimbursement of \$37,642 for the time and expense incurred by her additional commute from Pueblo to Canon City, as well as \$60,000 for the pain, suffering and mental anguish she has suffered. Complainant further requests that all acts of discrimination and retaliation against her cease. Respondent argues that Complainant has failed to establish a prima fade case of discrimination or retaliation. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed with prejudice.

On January 27, 2016, the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be denied and referred the petition to the State Personnel Director for any action deemed appropriate concerning Respondent's decision to transfer Complainant to the CMC in Canon City, effective July 1, 2015.

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

A. Veronica A. Garrett v. Department of Corrections, Sterling Correctional Facility, State Personnel Board case number 2014B118. (January 11, 2016)

Complainant, a Correctional Officer I (CO I) with the Department of Corrections, appealed the disciplinary action resulting in her separation from employment effective June 16, 2014, arguing that she did not engage in inappropriate sexual contact with offenders during pat searches. Complainant would like the remedy of the termination being retracted along with all criminal charges being dropped. Complainant also asked for back pay, attorney fees, emotional distress, punitive sanctions, and any other remedies or sanctions available to Complainant by law. Respondent, Department of Corrections, Sterling Correctional Facility, argued that Complainant engaged in the conduct for which she was disciplined; principles of progressive discipline were followed; the disciplinary action was not arbitrary and capricious; and that the discipline should be upheld.

On January 11, 2016, the ALJ affirmed the disciplinary action terminating employment of Complainant and dismissed the appeal with prejudice.

B. James Jimerson v. Department of Corrections, Buena Vista Correctional Facility, State Personnel Board case number 2015B003. (January 11, 2016)

Complainant, currently a Correctional Officer IV (Captain) with the Department of Corrections, appealed the June 30, 2014 disciplinary action resulting in his demotion from the position of Correctional Officer V (Major), Custody and Control Manager. Complainant argued that on March 12, 2014, he did not order an offender to be placed in Special Control and, if he had made such an order, it would have been warranted as Offender H was engaging in disruptive behavior. Complainant asked for the reversal of his demotion and restoration of his salary commensurate with the rank of Major, as well as removal of all documentation and/or any mention of his demotion and discipline arising from the March 12 incident in his performance evaluations, personnel file and administrative file. Complainant also asked for back pay, lost salary increases and benefits, and attorney fees and costs.

Respondent, Department of Corrections, Buena Vista Correctional Facility, argued that Complainant engaged in the conduct for which he was disciplined; Complainant's conduct, ordering the use of Special Controls as a form of punishment and when unjustified, violated Administrative Regulation (AR) 1450-01 Code of Conduct; AR 100-07 Reportable Incidents; AR 300-56 Special Controls and the DOC Code of Ethics; the disciplinary action was not arbitrary and capricious; the discipline should be upheld; and Complainant was not entitled to any of the requested relief.

On January 11, 2016 The Administrative Law Judge affirmed the Respondent's disciplinary action demoting Complainant from a Correctional Officer V to a Correctional Officer IV and a salary reduction to \$6412 per month. The appeal was dismissed with prejudice.

C. Richard Reinhardt v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2014G088. (January 11, 2016)

Complainant, a Registered Nurse I (RN I) with the Department of Human Services, appealed a final agency order affirming the issuance of a Corrective Action dated April 11, 2014, transferring Complainant to a different unit, changing his days off, and ordering that he review several policies and attend a class on Workplace Violence. In addition, Complainant appealed the score he received on his 2014 Performance Management and Pay Evaluation (PMAP), for April 1, 2013, through March 31, 2014. Complainant argued that he was issued the corrective action and overall rating of Level 2: Proficient, Successful and Occasionally Exceeds Expectations, in retaliation for protected disclosures made under the State Employee Protection Act (Whistleblower Act), §24-50.5-101, et. seq., C.R.S. Complainant asked for all damages to

make him whole, including rescission of the corrective action and related documentation, re evaluation of his 2014 PMAP, and attorney fees and costs. Respondent, Department of Human Services, Colorado Mental Health Institute at Pueblo, argued that Complainant engaged in the conduct for which the corrective action was issued; the corrective action was not arbitrary and capricious and should be upheld; Respondent did not engage in retaliation against Complainant and did not violate the Whistleblower Act; and the final agency decision resulting from Complainant's Step II grievance of the April 11, 2014 Corrective Action should be upheld.

On January 11, 2016, the Administrative Law Judge affirmed the Respondent's final agency decision upholding the corrective action. The appeal was dismissed with prejudice.

D. Justin Sturtevant v. Department of Corrections, Colorado Territorial Correctional Facility, State Personnel Board case number 2016B007. (January 29, 2016)

Complainant, a certified employee, appealed his disciplinary demotion on July 1, 2015 from a Correctional Officer (CO) II to a CO I, resulting in a reduction in base pay. Complainant argued that he did not commit the act for which he was disciplined; as a result, this disciplinary demotion was arbitrary and capricious, and was not within the reasonable range of alternatives. He asked for damages to make him whole, including but not limited to reinstatement to the classification of CO II; back pay lost as a result of the disciplinary action from the effective date of the disciplinary action, July 1, 2015, to the date of judgment; front pay from the date of judgment to the date of reinstatement to the classification of CO II; reinstatement of lost back benefits, including but not limited to PERA service credits, and an award of attorney fees and costs.

Respondent argued that its decision to disciplinarily demote Complainant was reasonable, and not arbitrary and capricious; it did a full and thorough investigation of the incident for which Complainant was demoted, and followed principles of progressive discipline, pursuant to Board Rule 6-2. Respondent requests that its action be affirmed as reasonable.

On January 29, 2016 the Administrative Law Judge reversed the Respondent's disciplinary decision to demote Complainant and ordered Respondent to restore Complainant to Correctional Officer II and reimburse any resulting loss in pay and benefits resulting from the July 1, 2015 demotion. Complainant was not entitled to attorney fees and costs.

VI. REVIEW OF THE MINUTES FROM THE JANUARY 19, 2016 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JANUARY 19, 2016 PUBLIC MEETING:

A. Brett Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2012011G028. Court of Appeals No. 14VA0390.

The Board determined not to take any further action at this time.

B. Douglas Schreffler v. Department of Revenue, Division of Motor Vehicles, State Personnel Board case number 20015BB067.

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

C. Edgar Carlis v. Department of Human Services, Division of Youth Corrections, State Personnel Board case number 2016B002. (December 16, 2015).

No formal action was taken by the Board.

D. David R. Martinez v. Department of Corrections, Arkansas Valley Correctional Facility, State Personnel case number 2015B092. (December 4, 2015).

No formal action was taken by the Board.

VIII. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to Appellate Courts

B. OTHER BOARD BUSINESS

Staff update: F.J. "Rick" Dindinger has joined the SPB as an Administrative Law Judge.

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

IX. PROPOSED LEGISLATION AND/OR RULEMAKING

X. EXECUTIVE SESSION

ADJOURN:

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

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
April 19, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
May 17, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
June 21, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
July 19, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
August 16, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
September 20, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
October 18, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
November 15, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
December 20, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203