

# State of Colorado



**John W. Hickenlooper**  
*Governor*

**Neil Peck**  
*Board Chair*

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

**State Personnel Board**  
1525 Sherman Street, 4<sup>th</sup> Floor  
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## **AGENDA PUBLIC BOARD MEETING March 15, 2016**

**A public meeting of the State Personnel Board will be held on Tuesday, March 15, 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.

Findings on Limited Remand to the Administrative Law Judge on Order of the State Personnel Board dated March 2, 2016, regarding an Initial Decision by the Administrative Law Judge on appeal to the Board.

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

- A. Tamsen Kincaid v. Department of Human Services, State Veteran's Community Center at Fitzsimmons, State Personnel Board case number 2016G013.

Complainant, a certified employee of the Department of Human Services, was employed

as a part time Health Care Technician III - Licensed Practical Nurse (LPN) at the State Veteran's Community Living Center at Fitzsimmons (Fitzsimmons). In 2014 and 2015, Complainant sent numerous emails to managers at Fitzsimmons raising concerns about various alleged violations of policies and procedures, some of which she believed placed the residents at risk. On July 16, 2015, Respondent issued a corrective action, as well as two memoranda of understanding, including a directive that Complainant cease emailing complaints to upper management. Complainant argues that these actions constitute unlawful retaliation for her whistleblowing activities, as well as discrimination on the basis of race and color. She seeks modification of these actions, injunctive relief, recovery of non-economic damages to be proven at hearing, and an award of attorney fees and costs.

Respondent argues that Complainant has failed to establish that she is entitled to protection as a whistleblower, as her emailed complaints did not concern matters of public interest, and that Complainant has failed to establish a prima facie case of retaliation. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed with prejudice.

On February 19, 2016, the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be denied.

B. Scott M. Grover v. Department of Corrections, Arkansas Valley Correctional Facility, State Personnel Board case number 2016G034.

Complainant, a certified employee of the Department of Corrections (DOC) at the Arkansas Valley Correctional Facility (AVCF), seeks a hearing to review Respondent's processing of his grievance concerning monthly discretionary performance reviews and other employment actions, and alleges that these employment actions constitute continuing retaliation against him as a whistleblower. Complainant seeks revision of Complainant's performance evaluations and any other related documents from April 2014 to the present; rescission of Complainant's reassignment from AVCF Physical Plant Manager to Administrative Services Manager; transfer of Complainant to a vacancy or new position for which he is qualified; and reimbursement for any costs, including attorney fees, incurred in the grievance procedure and this proceeding before the Board.

Respondent argues that Complainant has failed to establish a prima facie case of violations of the grievance procedure or whistleblower retaliation. As relief, Respondent respectfully requests that the Board deny Complainant's petition for hearing, deny his requested relief, and dismiss his appeal with prejudice.

On February 26, 2016, 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. Greg Goldman v. Department of Transportation, State Personnel Board case number 2015B108. (March 4, 2016)

Complainant, a former certified employee, appeals the disciplinary termination of his employment by Respondent, effective May 21, 2015. Complainant argues that the termination was not within the range of reasonable alternatives, considering his excellent work record, the failure of Respondent to apply progressive discipline, and the dysfunctional work environment that existed. Complainant further argues that the

authority to investigate and make a determination concerning discipline was not properly delegated to Herman Stockinger by the appointing authority, and that such discipline constituted retaliation for protected disclosures Complainant made under the State Employee Protection Act, § 24-50.5-101 *et seq.* C.R.S. Complainant seeks all damages to make him whole, including but not limited to reinstatement to his position at the current classification or front pay in lieu of reinstatement, back pay from the effective date of the disciplinary action to the date of the final agency order, front pay from the date of the final agency order to the date of reinstatement to his position, reinstatement of all lost back benefits, including but not limited to PERA service credits, and an award of attorney fees and costs.

Respondent argues that its decision to terminate Complainant was not arbitrary, capricious or contrary to rule or law; that the authority to investigate and make this disciplinary decision was properly delegated; that this termination was not retaliation for protected disclosures Complainant made under the Whistleblower Act; and that this termination was within the range of reasonable alternatives, and should be affirmed. Respondent argues that all relief sought by Complainant should be denied.

On March 4, 2016, the ALJ affirmed the disciplinary action terminating employment of Complainant.

**VI. REVIEW OF THE MINUTES FROM THE FEBRUARY 16, 2016 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

**REVIEW OF THE MINUTES FROM THE FEBRUARY 26, 2016 SPECIAL PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

**VII. ACKNOWLEDGMENTS**

**1. DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS FEBRUARY 16, 2016 PUBLIC MEETING:**

A. Kathy Starling v. Department of Revenue, Tax Audit and Compliance Division, State Personnel Board case number 2014G013.

The Board voted to table the discussion and schedule a special meeting to conclude the matter.

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

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

C. Vicki Jaramillo v. Department of Corrections, State Personnel Board case number 2016G029.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing and refer the petition to the State Personnel Director for any action deemed appropriate concerning the Respondent's decision to transfer Complainant.

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

No formal action was taken by the Board.

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

No formal action was taken by the Board.

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

No formal action was taken by the Board.

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

No formal action was taken by the Board.

## **2. DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS FEBRUARY 26, 2016 SPECIAL PUBLIC MEETING:**

A. Kathy Starling v. Department of Revenue, Tax Audit and Compliance Division, State Personnel Board case number 2014G013.

The Board voted to remand to the Administrative Law Judge for the limited purpose of making findings as follows: 1) whether or not there was testimonial evidence at hearing that the male applicant was given notice concerning reallocation and posting of his position; and 2) the date, recipient, sender and content of Hearing Exhibit 12 and whether Exhibit 12 was admitted as evidence at the hearing.

## **VIII. ADMINISTRATIVE MATTERS & COMMENTS**

### **A. ADMINISTRATIVE MATTERS**

- Cases on Appeal 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**

## **ADJOURN:**

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

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