

# 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 October 17, 2017**

**A public meeting of the Colorado State Personnel Board will be held on Tuesday, October 17, 2017 at 1525 Sherman Street, 1st Floor Conference Room 104, Denver, Colorado 80203. The public meeting will commence AFTER THE COMPLETION OF THE PUBLIC HEARING FOR RULEMAKING WHICH PRECEDES THE BOARD MEETING.**

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 October 12, 2017.

### **CALL TO ORDER**

- Attendance.
- Disclosure of any potential conflicts of interest with regard to present Board business and notice of recusal, if applicable.

### **IA. RULEMAKING OF BOARD RULES-CHAPTER 8**

Discussion and adoption of proposed change to Board Rules

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

Next quarterly report scheduled for December 19, 2017.

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

There are no Initial Decision of Other Final Orders before the Board this month.

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

- A. Luke Ewing v. Department of Agriculture, State Personnel Board case number 2017S009

Complainant applied unsuccessfully for the position of Brand Inspector with Respondent. He petitions the Board for a hearing of the non-selection decision. As grounds, Complainant alleges that Respondent discriminated on the basis of disability. Complainant seeks placement to a Brand Inspector position and monetary compensation.

Respondent denies Complainant's allegations. Respondent asserts that this matter should not be set for hearing due to Complainant's failure to state a claim over which the Board has jurisdiction and for failure to present a *prima facie* case of discrimination. Respondent requests that Complainant's petition for hearing be denied and dismissed.

On September 26, 2017, the Administrative Law Judge issued a Preliminary Recommendation that Complainant's petition for hearing be granted on his claim of disability discrimination but denied a petition for hearing as to his other claims.

B. Jeffreyson R. Gieck v. Governor's Office of Information Technology, State Personnel Board case number 2017G074.

Complainant is an employee of the Governor's Office of Information Technology and requests an evidentiary hearing to review his whistleblower claim. Complainant seeks protection of his employment under the State Personnel System and of his ability to raise fiscal inconsistencies without the threat of retaliation. Complainant also seeks rescission of any negative job actions and an award of attorney fees and costs.

Respondent asserts that Complainant has failed to establish the existence of a valid dispute that merits a hearing. As relief, Respondent requests that Complainant's petition for hearing be denied and that Respondent be awarded its attorney fees and costs.

On September 29, 2017, the Administrative Law Judge issue a Preliminary Recommendation to grant Complainant's petition for hearing.

C. LaVerne J. Matthew v. Department of Local Affairs, State Personnel Board case number 2017G046.

Complainant appeals the manner in which Respondent handled her complaints, lodged over a series of months, that she was being bitten by insects in her office. Complainant contends that Respondent's actions constituted unlawful discrimination on the basis of race and national origin. As relief, Complainant requests that Respondent retain the services of professionals with specialized expertise in environmental conditions in the workplace to detect, identify and treat for tiny insects, potential allergens, pathogens and irritants in Complainant's office. Complainant also requests that the State re-open her workers' compensation claim that has been denied by the State's workers' compensation insurance carrier.

Respondent argues that this matter should not be set for hearing due to Complainant's alleged failure to establish grounds that merit a hearing. More specifically, Respondent asserts that Complainant's allegations are merely

conclusory statements unsupported by facts, and that Complainant has failed to establish any basis for a discretionary hearing.

On October 4, 2017, the Administrative Law Judge issue a Preliminary Recommendation to deny Complainant's petition for hearing

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

- A. Laura Saurini v. Department of Corrections, Office of Clinical & Correctional Services, Division of Clinical Services, State Personnel Board case number 2016B075.

Complainant worked for the Department of Corrections (DOC) as a Social Work/Counselor III. She was administratively discharged on February 29, 2016. Complainant alleges that Respondent violated the Director's Administrative Procedure 5-6 (Rule 5-6) by failing to grant her request to accommodate her medical condition by allowing her to work part time in Denver and failed to properly calculate her Family Medical Leave (FML) in determining whether she had exhausted that leave. Complainant also alleges that her separation from employment constituted retaliation for protected disclosures, in violation of the State Employee Protection Act (Whistleblower Act), §24-50.5-101, *et seq.*, C.R.S. Complainant requests that her administrative separation be rescinded. She further requests that Respondent be ordered to either allow her to return to work at her prior position with accommodations as needed or to identify a position within the DOC for which she is qualified, with or without accommodation.

Respondent counters that it did not retaliate against Complainant and that its administrative discharge of Complainant for exhaustion of her accrued leave complied with Administrative Procedure 5-6. Respondent requests that the Board affirm its administrative discharge of Complainant and deny her requested relief.

On September 25, 2017, the Administrative Law Judge issued an Initial Decision affirming Respondent's decision to administratively discharge Complainant's employment.

- B. Vicki Armstrong v. Department of Human Services, Office of Children, Youth & Families, Division of Youth Corrections, Adams Youth Services Center, State Personnel Board case number 2017B016.

Complainant, formerly a certified Dining Services III employee at AYSC, appeals her disciplinary termination. Complainant argues that she did not commit the acts for which she was disciplined; that Respondent's decision to terminate her was arbitrary, capricious or contrary to rule or law; and that the discipline imposed was not within the range of reasonable alternatives. Complainant requests reinstatement with back pay and benefits.

Respondent argues that Complainant committed the acts for which she was disciplined; that Respondent's decision to terminate Complainant's employment was not arbitrary or capricious or contrary to rule or law; that the discipline

imposed was within the range of reasonable alternatives; that the decision to terminate Complainant should be upheld; and that Complainant is entitled to any of the relief she has requested.

On October 2, 2017, the Administrative Law Judge issued an Initial Decision affirming Respondent's termination of Complainant's employment.

**V. REVIEW OF THE MINUTES FROM THE SEPTEMBER 19, 2017 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

**VI. ACKNOWLEDGMENTS**

**DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS SEPTEMBER 19, 2017 PUBLIC MEETING:**

- A. David Scherbarth v. Department of Corrections, Sterling Correctional Facility, State Personnel Board case number 2016B087(C).

The Board voted to adopt the Order on Remand Awarding Back Pay and Benefits and made an Order of the Board.

- B. Matthew Stiles v. Department of Corrections, State Personnel Board case number 2016B034.

The Board voted to adopt the Order on Remand Clarifying the Award of Benefits and made an Order of the Board.

- C. Rose Perez and Jack Haynes v. Department of Public Safety, Colorado Bureau of Investigations, State Personnel Board case number 2017G030(c).  
The Board voted to adopt the Preliminary Recommendation of the ALJ and grant Complainants' petition for hearing

- D. Francesca Giongo v. Department of Natural Resources, Colorado Parks & Wildlife, State Personnel Board case number 2017S037.

The Board voted to adopt the Preliminary Recommendation of the ALJ and deny the petition for hearing.

- E. Kelly Pickering v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2017B045.

No formal action was taken

**VII. ADMINISTRATIVE MATTERS & COMMENTS**

- A. ADMINISTRATIVE MATTERS

- Status of Cases on Appeal to the Board and Appellate Courts

- B. OTHER BOARD BUSINESS

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

**VIII. PROPOSED LEGISLATION AND/OR RULEMAKING**

**IX. EXECUTIVE SESSION**

**ADJOURN:**

**2017 REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.**

<b>January 17, 2017</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>February 21, 2017</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>March 21, 2017</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>April 18, 2017</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>May 16, 2017</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>June 20, 2017</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>July 18, 2017</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>August 15, 2017</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>September 19, 2017</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>October 17, 2017</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>November 21, 2017</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>December 19, 2017</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>