

# State of Colorado



John W. Hickenlooper  
*Governor*

Neil Peck  
*Board Chair*

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*Board Director*

State Personnel Board  
1525 Sherman Street, 4<sup>th</sup> Floor  
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## AGENDA PUBLIC BOARD MEETING January 16, 2018

A public meeting of the Colorado State Personnel Board will be held on Tuesday, January 16, 2018 at 1525 Sherman Street, 1st Floor Conference Room 104, 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 January 11, 2018.

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

- A. Don Harris v. Department of Corrections, State Personnel Board case number 2017B065.

Complainant, a certified employee with the Department of Corrections, filed a Notice of Appeal seeking review of Respondent's disciplinary termination of Complainant's employment for several violations and pending criminal charges. On August 8, 2017 the Administrative Law Judge issued an Order of Dismissal and Notice of Appeal Rights based on Complainant's failure to appear at the commencement and failure to show good cause for abandonment.

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

- A. Gary D. Pacheco v. Department of Corrections, Division of Adult Parole, State Personnel Board case number 2017S019(c).

Complainant petitions the Board for a discretionary hearing to review Respondent's decision to not select Complainant for several Community Parole Officer positions. Complainant contends that Respondent's actions arise from discrimination based on actual or perceived disability and retaliation for opposing purported disability discrimination. As relief, Complainant requests that the interview process be conducted in a lawful manner and that the individual who Complainant identified as the perpetrator of unlawful discrimination be excluded from future interviews.

Respondent argues that this matter should not be set for hearing due to Complainant's failure to establish valid issues that merit a full evidentiary hearing. More specifically, Respondent asserts that Respondent did not unlawfully discriminate against Complainant in not selecting him for Community Parole Officer positions, nor did it retaliate against him for alleging unlawful discrimination. Respondent argues that it had legitimate, non-discriminatory reasons for its decisions concerning Complainant's employment applications. As relief, Respondent requests that the Board deny Complainant's petition for hearing and dismiss this matter with prejudice.

On January 4, 2018, the Administrative Law Judge issued a recommendation, recommending that Complainant's petition for a full evidentiary hearing be granted on Complainant's claims of disability discrimination and retaliation.

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

A. Christina Labazzetta v. Department of Corrections, Colorado Territorial Correctional Facility, State Personnel Board case number 2016B036.

Complainant, a certified state employee, appeals her demotion from Correctional Support Trades Supervisor III to Correctional Support Trades Supervisor II. Complainant asserts the demotion was arbitrary, capricious, or contrary to rule or law and that it was discriminatory on the basis of race and/or national origin. Complainant requests that the State Personnel Board reverse the demotion.

Respondent argues that the demotion was not arbitrary, capricious, contrary to rule or law, or discriminatory. Respondent requests the Board to affirm the discipline.

On December 28, 2017, the Administrative Law Judge issued an Initial Decision to modify Respondent's disciplinary action and rescinded Complainant's demotion; replaced with a ten percent (10%) reduction in pay for six months, retroactive to December 1, 2015.

As a result of the modification, Respondent shall pay Complainant's back pay and benefits with statutory interest from the effective date of the demotion (December 1, 2015) until Respondent reinstates Complainant to a CSTS III position. The calculation of back pay should reflect that Complainant's rate of pay during the period from December 1, 2015 through May 31, 2016, is reduced by ten percent (10%). The calculation of back pay should include any pay increases adopted by Respondent for the class and normal pay raises given by

Respondent to employees meeting expectations during the period covered by the award.

The amount owed to Complainant as a result of the violations of Board Rule 6-10 is not cumulative to the amount owed to Complainant as a result of the modification of the discipline. Attorney fees and costs are not awarded.

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

**VI. ACKNOWLEDGMENTS**

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

- A. Damian Macias v. University of Northern Colorado, State Personnel Board case number 2016B021.

No formal action taken.

- B. Brittney Cisneros v. Department of Personnel & Administration, State Personnel Board case number 2017G080.

The Board voted to adopt the findings of fact and conclusions of law in the ALJ's Order of Dismissal and made an Order of the Board.

- C. Edwin Herndon v. Department of Corrections, Office of Inspector General, State Personnel Board case number 2017G056(c).

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

- D. Jennifer Lopez v. Department of Human Services, Office of Children, Youth & Families, Division of Youth Corrections, Gilliam Youth Service Center, State Personnel Board case number 2018G002.

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

**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:**

**2018 REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.**

<b>January 16, 2018</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>February 20, 2018</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>March 20, 2018</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>April 17, 2018</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>May 15, 2018</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>June 19, 2018</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>July 17, 2018</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>August 21, 2018</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>September 18, 2018</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>October 16, 2018</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>November 20, 2018</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>
<b>December 18, 2018</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 104 Denver, CO 80203</b>