

State of Colorado



John W. Hickenlooper
Governor

Neil Peck
Board Chair

Dana Shea-Reid
Board Director

State Personnel Board
1525 Sherman Street, 4th Floor
Denver, Colorado 80203
Phone (303) 866-3300
Fax (303) 866-5038

AGENDA PUBLIC BOARD MEETING February 20, 2018

A public meeting of the Colorado State Personnel Board will be held on Tuesday, February 20, 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 February 15, 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. Laura Saurini v. Department of Corrections, 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Act (Whistleblower Act), §24-50.5-101, *et seq.*, C.R.S. Complainant requests that her administrative separation be rescinded.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.

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

A. Lori Baumgardner v. Department of Transportation, State Personnel Board case number 2018S015.

Complainant applied unsuccessfully for the position of Transportation Maintenance II. She petitions the Board for a hearing on the non-selection decision. As grounds, Complainant alleges that Respondent discriminated against her on the basis of gender. Complainant seeks placement to a TM II position and monetary compensation.

Respondent denies Complainant's allegations. Respondent requests that the Board deny Complainant's petition for hearing and dismiss the matter.

On January 24, 2018, the Administrative Law Judge issued a recommendation, recommending that Complainant's petition for hearing be granted on Complainant's claims of gender discrimination.

B. Michael Harris v. Department of Public Health & Environment, Water Quality Control Division, State Personnel Board case number 2018G028.

Complainant, an Environmental Protections Specialist in Respondent's Clean Water Enforcement Unit, and a certified state employee, petitions the Board for a hearing to review Respondent's alleged violation of the grievance process. As relief, Complainant seeks a summary judgment that the Step Two grievance decision is flawed and/or was untimely pursuant to Board Rule 8-8, and an order dismissing the Step Two grievance decision or requiring Respondent to formally withdraw the decision.

Respondent argues that it did not violate the grievance process and, in any event, Complainant was granted the relief he requested. As relief, Respondent requests that the Board deny Complainant's petition for hearing and dismiss this matter.

On February 1, 2018, the Administrative Law Judge issued a recommendation, recommending that Complainant's petition for hearing be denied.

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

- A. Richard Dale Helmick v. Department of Transportation, State Personnel Board case number 2017B053.

Complainant, a former certified state employee, appeals his dismissal. Complainant asserts the dismissal was arbitrary, capricious, and contrary to rule or law and that it was discriminatory on the basis of disability. Complainant requests that the State Personnel Board reverse the dismissal, award him back pay and lost benefits, award him attorney fees and costs, and award him other damages.

Respondent denies Complainant's allegations and argues that the dismissal was not arbitrary, capricious, contrary to rule or law, or discriminatory. Respondent requests that the Board affirm the dismissal.

On January 31, 2018, the Administrative Law Judge issued an Initial Decision to rescind Complainant's dismissal and reversed the disciplinary action.

As a result of the improper and discriminatory dismissal, Respondent shall pay Complainant back pay and concomitant benefits with statutory interest from the effective date of the dismissal (March 13, 2017) until Respondent reinstates Complainant to an Equipment Operator III position. (The benefits shall include but not be limited to PERA contributions, health, life and dental contributions, service credit and leave that would have accumulated from the date of termination through the date of reinstatement.) 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 calculation of back pay shall be reduced by any compensation and benefits Complainant has earned from other sources after his termination, including any unemployment benefits.

Independently as a result of Respondent's violations of Board Rule 6-10, Respondent shall pay Complainant back pay and benefits with statutory interest from the effective date of the termination (March 13, 2017) until completion of the evidentiary hearing (December 29, 2017). 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 improper dismissal.

Respondent shall pay Complainant his reasonable attorney fees and costs as discussed in Section IV of the Initial Decision.

- B. Michael Dodson v. University of Colorado Boulder, University of Colorado Police Department, State Personnel Board case number 2018B004.

Complainant has appealed Respondent's July 11, 2017 imposition of an indefinite disciplinary suspension without pay, pursuant to Board Rule 6-12(6)(A), pending the final disposition of a felony charge against Complainant. Complainant argues that this suspension without pay was arbitrary, capricious and contrary to rule or law. Complainant seeks modification of the suspension without pay to administrative leave with pay and an award of back pay and

benefits from July 11, 2017 to the date Complainant is placed on administrative leave with pay.

Respondent seeks affirmance of its decision to place Complainant on indefinite disciplinary suspension without pay under Board Rule 6-12(6)(A).

On January 19, 2018, the Administrative Law Judge issued an Initial Decision affirming Respondent's July 11, 2017 decision to place Complainant on indefinite disciplinary suspension without pay and dismissed Complainant's appeal with prejudice.

V. REVIEW OF THE MINUTES FROM THE JANUARY 16, 2018 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VI. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JANUARY 16, 2018 PUBLIC MEETING:

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

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.

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

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

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

No formal action was taken.

VII. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Status of Cases on Appeal to the Board and Appellate Courts
- Order Affirmed in Rome v. University of Colorado at Colorado Springs, State Personnel Board Case No. 2016B069, Court of Appeals No. 17CA0414

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.

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