

State of Colorado



John W. Hickenlooper
Governor

Neil Peck
Board Chair

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Board Director

State Personnel Board
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AGENDA PUBLIC BOARD MEETING March 20, 2018

A public meeting of the Colorado State Personnel Board will be held on Tuesday, March 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 March 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

There are no Initial Decisions or other Final Orders of the ALJ for review.

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

- A. Curtis Brooks v. Department of Human Services, Office of Children, Youth & Families, Division of Youth Corrections, Lookout Mountain Youth Service Center, State Personnel Board case number 2018G030.

Complainant appeals the termination of his probationary employment by Respondent as the result of alleged erroneous information contained in a background check. Complainant seeks reinstatement and back pay. As an alternative, Complainant seeks reimbursement of six months' lost pay due to Complainant's resignation from the job he held prior to being hired by Respondent.

Respondent argues that Complainant has failed to establish grounds that merit a hearing in this case, therefore, Complainant's petition for hearing and request for relief should be denied.

On January 30, 2018, the Administrative Law Judge issued a recommendation, recommending that Complainant's petition for hearing be granted.

B. Michelle Cordova v. Department of Public Safety, Executive Security Unit, State Personnel Board case number 2018G039.

Complainant alleged that, at the time her employment was terminated on January 10, 2018, she was not a probationary employee. Complainant further alleges that she was subjected to harassment and retaliation and that Respondent violated the Family Medical Leave Act (FMLA) and the Health Insurance Portability and Accountability Act (HIPAA). Complainant seeks reinstatement to her former position and rank, as well as lost wages, attorney fees and cost, pain and suffering and punitive damages

Respondent argues that Complainant has failed to establish grounds that merit a hearing in this case. Respondent seeks dismissal of Complainant's petition for hearing and denial of her request for relief.

On February 28, 2018, the Administrative Law Judge issued a recommendation, recommending that Complainant's petition for hearing be denied and to refer Complainant's claims of alleged FMLA and HIPAA violations to the State Personnel Director for review.

C. David Livesay v. Department of Transportation, State Personnel Board case number 2018G040.

Complainant, a Transportation Maintenance employee (TM I) and a certified state employee, petitions the Board for a hearing to review a final grievance decision, claiming a violation of his federal constitutional rights and a violation of the grievance process. As relief, Complainant seeks removal of Performance Documentation Forms and a corrective action. In addition, Complainant seeks reassignment to his previous work location in Brighton, Colorado.

Respondent argues that Complainant fails to establish grounds for an evidentiary hearing. As relief, Respondent requests that the Board deny all relief requested by Complainant and deny his petition for hearing.

On March 6, 2018, the Administrative Law Judge issued a recommendation, recommending that Complainant's petition for hearing be denied.

D. William Miederhoff v. Department of Transportation, State Personnel Board case number 2018G026.

Complainant alleges Respondent effectively demoted Complainant when it issued a revised position description that allegedly changed his position. Complainant also alleges that Respondent discriminated against him on the basis of his age and retaliated against him. Complainant seeks placement into "a position comparable to the Branch Manager position" and monetary compensation, including compensatory damages and punitive damages.

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

On March 7, 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. Yi Yu v. Department of Public Safety, Colorado State Patrol, Port of Entry Branch, State Personnel Board case number 2017B070.

Complainant, formerly a certified Port of Entry Branch officer, appeals her disciplinary termination. Complainant argues that she did not commit the acts for which she was disciplined or, if she did, she was justified in doing so; that Respondent's decision to terminate her employment was arbitrary, capricious or contrary to rule or law; and that the discipline imposed was not within the range of reasonable alternatives. Complainant also alleges that Respondent discriminated against her on the basis of disability in violation of the Colorado Anti-Discrimination Act. Complainant seeks placement into a different position within the Colorado State Patrol or payment of all damages she incurred as a result of her employment with Respondent.

On February 22, 2018, the Administrative Law Judge issued an Initial Decision to affirming Respondent's disciplinary action.

V. REVIEW OF THE MINUTES FROM THE FEBRUARY 20, 2018 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VI. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS FEBRUARY 20, 2018 PUBLIC MEETING:

A. Laura Saurini v. Department of Corrections, State Personnel Board case number 2016B075.

As a preliminary matter, the Board considered Complainant's Pre-statement issues and Remedies Sought, filed with Complainant's Opening Brief, in which Complainant asserted that the Administrative Law Judge should have specifically disclosed the Judge's prior experience as an Administrative Hearing Officer for the Colorado Department of Corrections from 2007 to 2014, as a conflict of interest. Complainant's remedies included a request for a new hearing. Complainant also requested removal of the Initial Decision of the Administrative Law Judge from the Board's official web site.

The Board found that Complainant did not file a timely motion for a new trial pursuant to C.R.C.P. 59 or a timely motion for disqualification, with the affidavit of personal bias required by Section 24-4-105(3), C.R.S., with the Administrative Law Judge. Further the Board found that Complainant had not alleged well-supported grounds that would have disqualified the Administrative Law Judge from hearing the case. To the extent Complainant has made an untimely motion for a new trial or disqualification of the Administrative Law Judge, the Board

denied Complainant's motion. The Board also, denied Complainant's request to remove the Initial Decision of the Administrative Law Judge from the Board's website.

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

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

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

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

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

No formal action taken.

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

No formal action taken.

VII. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Status of Cases on Appeal to the Board and Appellate Courts
- DPA announces change to bi-weekly payroll from monthly payroll

B. OTHER BOARD BUSINESS

- Board members Michelle Palmquist and Maurie Knaizer were confirmed by the Senate State, Veterans and Military Affairs Committee on March 7, 2018.

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

VIII. PROPOSED LEGISLATION AND/OR RULEMAKING

IX. EXECUTIVE SESSION

Confidential personnel matter: Annual review of Director

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