

State of Colorado



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Governor

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Board Chair

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Board Director

State Personnel Board
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Denver, Colorado 80203
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AGENDA PUBLIC BOARD MEETING July 17, 2018

A public meeting of the Colorado State Personnel Board will be held on Tuesday, July 17, 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 July 12, 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]

Quarterly report.

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

- 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. Yi Yu v. Department of Public Safety, Colorado State Patrol, 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.

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

On February 1, 2018, the Administrative Law Judge held an evidentiary hearing following Respondent's Motion to Dismiss for lack of jurisdiction. Complainant Jeffreyson R. Gieck represented himself. Michelle Brissette Miller, Esq. (First Assistant Attorney General) and Jack D. Patten, III, Esq. (Assistant Attorney General) represented Respondent.

Complainant asserts a claim under the Colorado State Employee Protection Act, commonly referred to as the “Whistleblower Act”. Complainant filed his claim with the State Personnel Board. Respondent asserts that the Board does not have jurisdiction over the claim because Complainant is an at-will, non-classified employee who is not part of the state personnel system. The issue is whether Complainant is an employee in the state personnel system.

Pursuant to Colorado Rule of Civil Procedure 12(h)(3), “[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.”

On March 9, 2018, given the ALJ’s finding that Complainant is exempt from the state personnel system, this matter was dismissed with prejudice for lack of subject matter jurisdiction.

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

There are no Preliminary Recommendations of the Administrative Law Judges for review.

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

There are no Initial Decisions or other Final Orders of the Administrative Law Judges for review.

V. REVIEW OF THE MINUTES FROM THE JUNE 19, 2018 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VI. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JUNE 19, 2018 PUBLIC MEETING:

- A. Janet R. Kipp v. Department of Corrections, State Personnel Board case number 2018S031.

The Board voted to adopt the Preliminary Recommendation of the ALJ and deny the petition for hearing and referred the matter to the State Personnel Director for review.

- B. Kevin Sanchez v. Department of Corrections, State Personnel Board case number 2018S042.

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

- C. Katherine Forde v. Department of Corrections, State Personnel Board case number 2018G035.

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

- Election outcome for Board position.

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

VIII. PROPOSED LEGISLATION AND/OR RULEMAKING

IX. EXECUTIVE SESSION

Training for Board members by Board Counsel to discuss legal implications of U.S. Supreme Court decision regarding Masterpiece Cakes.

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