

# 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  
Denver, Colorado 80203  
Phone (303) 866-3300  
Fax (303) 866-5038

## **AGENDA PUBLIC BOARD MEETING August 21, 2018**

**A public meeting of the Colorado State Personnel Board will be held on Tuesday, August 21, 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 August 17, 2018.

### **CALL TO ORDER**

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

### **ELECTION OF BOARD OFFICERS FOR FY2018-2019**

#### **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. Cassandra Singleton v. Department of Corrections, State Personnel Board case number 2017B078.

Complainant, a certified employee, appeals the termination of her employment. Complainant argues that she did not commit the act for which she was disciplined, and that Respondent's termination decision was arbitrary, capricious, and contrary to rule and law. Complainant further argues that Respondent's actions were groundless, frivolous, in bad faith, constituted harassment or were stubbornly litigious. Complainant seeks rescission of the disciplinary termination, reinstatement to her former position, an award of back pay; with statutory interest, and benefits, and reimbursement of attorney fees and costs.

Respondent argues that its decision to terminate Complainant's employment was appropriate, and was not arbitrary, capricious, or contrary to rule or law.

Respondent seeks affirmance of its decision to terminate Complainant's employment, denial of all relief requested by Complainant, and dismissal of Complainant's appeal with prejudice.

On March 29, 2018, the Administrative Law Judge issued an Initial Decision rescinding the termination of Complainant's employment and reinstating Complainant with full back pay, with statutory interest, and made whole for all lost benefits. Complainant was awarded reasonable attorney fees and costs.

B. Barbara Bloem v. Department of Health Care Policy & Finance, State personnel Board case number 2016G011(c).

Complainant, a certified employee, appeals Respondent's termination of her employment on January 4, 2017. Complainant argues that this termination decision was arbitrary and capricious, was not properly based on the factors enumerated in Board Rule 6-9, and was contrary to rule and law. Complainant also alleges that she was subjected to disability discrimination and retaliation.

Prior to the termination of Complainant's employment, Complainant filed five Petitions for Review. These five Petitions for Review were consolidated with Complainant's appeal of Respondent's termination of her employment.

Complainant seeks rescission of the disciplinary termination, corrective actions and written warnings administered by Respondent; reinstatement to her prior position; an award of back pay and benefits; reimbursement of attorney fees and costs; and an order that Respondent cease and desist from engaging in discriminatory and retaliatory acts.

Respondent denies all allegations of discrimination and retaliation, and contends that it properly reviewed and responded to Complainant's grievances pursuant to Board Rules. Respondent argues that its decision to terminate Complainant's employment was a proper progressive disciplinary action based on the factors set forth in Board Rule 6-9. Respondent seeks affirmance of its decision to terminate Complainant's employment; denial of Complainant's claims of discrimination, retaliation and failure to follow the grievance procedure; denial of all relief requested by Complainant, and dismissal of Complainant's appeal with prejudice.

On February 22, 2018, the Administrative Law Judge issued an Initial Decision to affirming Respondent's disciplinary action and because the Rule 6-10 process was flawed and deprived Complainant of a full and fair review of the factors enumerated in Board Rule 6-9, Complainant is awarded back pay, with interest, and restoration of benefits through January 24, 2018, the date the evidentiary record in this case was closed.

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

A. Kory Bond v. University of Colorado at Colorado Springs, Student Financial Services, State Personnel Board case number 2018G079.

Complainant appeals Respondent's imposition of a corrective action, alleging discrimination on the basis of race, as well as Respondent's violation of applicable procedures during Complainant's pursuit of a related grievance. As

relief, Complainant seeks rescission of the corrective action, return to the position he would have been in if the corrective action had not occurred, and an award of attorneys' fees.

Respondent argues that Complainant cannot demonstrate a *prima facie* case of discrimination or grievance violations, and thus has failed to meet his burden of showing that grounds exist under § 24-50-123(3), C.R.S., that merit a full hearing. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On July 30, 2018, the Administrative Law Judge issued a Preliminary Recommendation denying the petition for hearing.

B. Janevere Idika v. Department of Human Services, State Personnel Board case number 2018G064.

Complainant, a certified employee, petitions the Board for a hearing to review her claims of discrimination based on national origin/ancestry and race/color, as well as her claim of a hostile work environment. As relief, Complainant seeks a new supervisor, back pay and benefits "at the rate a Bachelor of Science, Nursing is paid on average in the State of Colorado," withdrawal of the negative performance review issued in May 2018, withdrawal of the 2018 Performance Improvement Plan, and attorney fees and costs.

Respondent argues that this matter should not be set for hearing due to Complainant's failure to establish grounds that merit a hearing. As relief, Respondent requests this Board deny Complainant's petition for hearing, deny her requested relief and dismiss Complainant's appeal with prejudice.

On July 31, 2018, the Administrative Law Judge issued a Preliminary Recommendation denying the petition for hearing and referring the matter to the State Personnel Director for a Director's review.

C. Tasha Dobbs v. Department of Corrections, State Personnel Board case number 2018S051.

Complainant applied unsuccessfully for the position of Community Parole Team Leader in Respondent's Grand Junction location. She petitions the Board for a hearing of her non-selection. Complainant asserts discrimination on the basis of gender. As relief, Complainant seeks promotion into the position, an award of back pay and PERA service credits, and an award of attorney fees and costs.

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

On August 1, 2018, the Administrative Law Judge issued a Preliminary Recommendation denying the petition for hearing and referring the matter to the State Personnel Director for a Director's review.

D. Jason Purdue v. Department of Regulatory Agencies, Division of Professions & Occupations, State Personnel Board case number 2018G047(c).

Following an altercation at work, Respondent issued Complainant a Performance Improvement Plan (herein, the "PIP") and changed his work location to another

floor. Complainant disputes the actions, alleging discrimination on the basis of disability, gender, race/color, sexual orientation, and "Black Male Bearded w/deep voice." Complainant also alleges that Respondent violated the Whistleblower Act. As relief, Complainant requests a written apology, training, reimbursement for costs, ten years of salary, and a donation to charity.

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

On August 7, 2018, the Administrative Law Judge issued a Preliminary Recommendation denying the petition for hearing.

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

*In order to preserve the Board's ability to review an Initial Decision within 30 days of issuance the Board, on its own motion, voted on July 17, 2018 to defer to August 21, 2018 its review of the Initial Decision issued by the Administrative Law Judge on July 13, 2018 regarding Ricci v. Department of Military and Veteran's Affairs, Division of Veteran Affairs.*

A. Diana Ricci v. Department of Military and Veteran's Affairs, Division of Veteran Affairs, State Personnel Board case number 2018B019.

Complainant, a certified employee, filed an appeal with the State Personnel Board (Board) on October 26, 2017. Complainant seeks review of a Performance Discussion and Documentation form and Corrective Action / Performance Improvement Plan she received on October 20, 2017, removing her supervisory responsibilities and reassigning her to a new work location with different duties. Complainant argues that these actions constitute a disciplinary demotion that was arbitrary, capricious and contrary to rule or law. Complainant further argues that Respondent's action was motivated by discrimination on the basis of gender and military status,<sup>1</sup> as well as retaliation directed against her as a whistleblower in violation of the State Employee Protection Act, § 24-50.5-101, *et seq.*, C.R.S. (Whistleblower Act). Complainant seeks reassignment to her former position.

Respondent argues that its October 20, 2017 actions do not constitute discipline. If these action are determined to be disciplinary, Respondent argues that they were justified by Complainant's performance problems. Respondent denies that it discriminated or retaliated against Complainant. Respondent seeks denial and dismissal of Complainant's appeal, discrimination claims and whistleblower complaint.

On July 13, 2018, the Administrative Law Judge issued an Initial Decision affirming Respondents actions as they do not meet the Board's definition of discipline, and were not motivated by discrimination or retaliation.

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<sup>1</sup> On her appeal form, Complainant also claimed discrimination on the basis of religion/creed. Complainant subsequently withdrew that claim and it was dismissed by the ALJ.

**V. REVIEW OF THE MINUTES FROM THE JULY 17, 2018 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

**VI. ACKNOWLEDGMENTS**

**DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JULY 17, 2018 PUBLIC MEETING:**

- A. Rickard D. Helmick v. Department of Corrections, State Personnel Board case number 2017B053.

The Board voted to adopt the findings of fact and conclusions of law of the Administrative Law Judge but to reverse the order of the ALJ regarding attorney fees to also include the award of attorney fees for Complaint's claims of accommodation and harassment and to remand the matter to the Administrative Law Judge to determine the award of back pay and attorney fees.

- B. Yi Yu v. Department of Public Safety, State Personnel Board case number 2017B070

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge.

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

The Board voted to adopt the findings of fact and conclusions of law in the Administrative Law Judge's Order of Dismissal for Lack of Jurisdiction.

**VII. ADMINISTRATIVE MATTERS & COMMENTS**

- A. ADMINISTRATIVE MATTERS

- Status of Cases on Appeal to the Board and Appellate Courts
- Introduction of newly assigned Board Counsel, AAG Amy Lopez.

- B. OTHER BOARD BUSINESS

- Reports to Board on appeals in the last fiscal year.

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

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

**IX. EXECUTIVE SESSION**

Training by Board Counsel on legal implications of U.S. Supreme Court decision regarding Masterpiece Cakes.

**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>