

# State of Colorado



John W. Hickenlooper  
*Governor*

Neil Peck  
*Board Chair*

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State Personnel Board  
1525 Sherman Street, 4<sup>th</sup> Floor  
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## AGENDA PUBLIC BOARD MEETING November 20, 2018

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

Agenda item pending until further notice.

### 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 on appeal 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. Cassandra Clemons v. Department of Revenue, Tax Audit and Compliance Division, State Personnel Board case number 2018S065(c).

On July 11, 2018, Complainant filed a petition for review of Respondent's decision not to select her for a reallocated Auditor III position. Complainant alleges that she was improperly denied this position because of discrimination on the basis of race and retaliation for engaging in protected activity. Complainant seeks a review of the selection and comparative analysis process for the Auditor III position. As relief,

Complainant requests equal promotion and compensation with her colleagues and an award of attorney fees and costs.

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

On October 17, 2018, the ALJ issued a Preliminary Recommendation that Complainant's petition for hearing be denied and referred to the State Personnel Director for review of Respondent's selection process for the allocated Auditor III position under §24-50-112.5(4), C.R.S.

B. Ben Cappa v. Department of Public Health and Environment, Air Pollution Control Division, State Personnel Board case number 2018G088.

Complainant seeks review of his whistleblower complaint and request that negative remarks concerning his protected communications be removed from his performance review. Complainant also seeks an order directing Respondent to allow an emissions investigation to be completed "without unsubstantiated interference by political figures" or by Respondent's "Executive Leadership."

Respondent argues that Complainant failed to meet his burden of showing that grounds exist that merit a full hearing, and that Complainant cannot demonstrate a *prima facie* case of whistleblower retaliation. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed with prejudice.

On October 31, 2018, the ALJ issued a Preliminary Recommendation that Complainant's petition for hearing be granted.

C. Andrea Bonino v. Department of Human Services, Office of Behavioral Health, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2019G015.

Complainant disputes Respondent's rescission of a compression pay increase. Complainant asserts that Respondent failed to participate in the grievance process and violated her rights under the Equal Protection Clause. As relief, Complainant's petition requests a pay increase, with back pay and interest and an award of attorney fees.

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

On November 1, 2018, the ALJ issued a Preliminary Recommendation to deny Complainant's petition for hearing and refer appeal to the State Personnel Director of further review.

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

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

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

**VI. ACKNOWLEDGMENTS**

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

There were no decisions on the part of the Board made at the October 16, 2018 public meeting.

**VII. ADMINISTRATIVE MATTERS & COMMENTS**

**A. ADMINISTRATIVE MATTERS**

- Status of Cases on Appeal to the Board and Appellate Courts

**B. OTHER BOARD BUSINESS**

Director's Report:

- Board staff met with CCRD managers and staff on November 1 to discuss how to improve the referral process on discrimination claims. Issues included statutory timelines, implementing electronic notifications rather than forms and improving process communications to help eliminate confusion on the part of complainants. Modifications are underway.
- Handout: "What Case File Content Board Members Can Request and How to Request It". Guidelines for the Board for requesting additional information that would not, otherwise, be in a Board packet.

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>