

State of Colorado



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State Personnel Board
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AGENDA PUBLIC BOARD MEETING AUGUST 20, 2019

A public meeting of the Colorado State Personnel Board will be held on Tuesday, August 20, 2019 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 15, 2019.

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.**

I. **REPORT OF DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA] AND REPORT OF THE DIVISION OF HUMAN RESOURCES [DHR]**

Report not scheduled at this time.

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's for review.

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

- A. Gary Hink v. Department of Human Services, Office of Administrative Solutions, Division of Employment Affairs, State Personnel Board case number 2018G065.

Complainant appeals the termination of his probationary employment by Respondent, alleging retaliation for engaging in protected activity.

Respondent argues that Complainant has failed to establish grounds that merit a hearing. Respondent requests that the Board deny Complainant's petition for hearing and dismiss this petition with prejudice.

On July 17, 2019, the Senior ALJ issued a Preliminary Recommendation granting Complainant's petition for hearing.

- B. Flavio Quintana v. Department of Revenue, State Personnel Board case number 2018G090.

Complainant filed a petition to review Respondent's decision to revert him from a trial Senior Director position to a Director position. ALJ Shandalow granted Respondent's Motion to Dismiss Complainant's petition for lack of jurisdiction. On February 19, 2019, the Board reversed the Dismissal Order and remanded this case to the ALJ for a full discretionary review and preliminary recommendation.

Complainant argues that because his reversion from a trial Senior Director position to a Director position resulted in a reduction of his pay, it constituted a disciplinary action, entitling him to an evidentiary hearing. In addition, Complainant argues that Respondent's decision was based on conduct that allegedly occurred prior to Complainant's trial service, and thus could not constitute grounds for reversion. Complainant requests that a hearing on the merits be granted.

Respondent asserts that Complainant's arguments are without merit. Because Respondent determined that Complainant failed to perform satisfactorily in his trial service position, its decision to revert Complainant is not subject to review under Board Rule 4-43 and § 24-50-112.5(5)(b), C.R.S. Therefore, Respondent argues that Complainant is not entitled to a hearing and requests that Complainant's petition for hearing be denied and dismissed with prejudice.

On July 18, 2019, the Senior ALJ issued a Preliminary Recommendation that Complainant's petition for hearing to review his reversion from a trial service position be denied and dismissed with prejudice.

- C. Joe Golob v. Department of Corrections, State Personnel Board case number 2019S053.

Complainant alleges that Respondent's decision not to select Complainant for a Regional Business Manager position was motivated by discrimination on the basis of gender and age. Complainant argues that Respondent has a history of bypassing him for promotion in favor of younger, less qualified female applicants. Complainant seeks a pay increase comparable to what he would have received if he had been selected for one of the available positions. He also seeks changes in Respondent's interviewing process.

Respondent argues that Complainant has failed to establish a *prima facie* case of discrimination and requests that Complainant's petition for hearing be denied and dismissed with prejudice.

On July 26, 2019, the Senior ALJ issued a Preliminary Recommendation that Complainant's petition for hearing be granted on Complainant's claim of reverse gender discrimination.

- D. Million Kahsay v. Department of Health Care Policy & Financing, State Personnel Board case number 2019S054.

Complainant applied for a position as an Access to Care Rates Analyst. Although he met the minimum qualifications for the position and was interviewed, he was not offered the position. Complainant filed a petition for hearing alleging that Respondent did not offer him the position because of unlawful discrimination based on national origin/ancestry and race/color. As relief, Complainant requests that he be hired for the position.

Respondent argues that Complainant has failed to establish grounds that merit a hearing. Respondent requests that the Board deny Complainant's petition for hearing and dismiss.

On July 31, 2019, the ALJ issued a Preliminary Recommendation that Complainant's petition for hearing be denied, dismissed and referred to the Director for review pursuant to Board Rule 8-75(B).

- E. Dawn Laws Jacobs v. Department of Human Services, Office of Community, Access & Independence, Division of Regional Center Operations, Wheat Ridge Regional Center, State Personnel Board case number 2019G059.

Complainant's petition for review included claims of discrimination on the basis of age and organizational membership, as well as a whistleblower complaint. In her information sheet, Complainant requests that "all complaints be dismissed except for the grievance on the corrective action dated 12/28/19 [sic]." Complainant's information sheet contains no information about these matters. Therefore, Complainant's discrimination claims and whistleblower complaint are deemed abandoned.

Complainant alleges that Respondent did not comply with the grievance procedures contained in Board Rule 8-8. Complainant seeks removal of the corrective action or downgrading of the corrective action to a memorandum.

Respondent argues that Complainant's petition for hearing was untimely and that Complainant has failed to establish any issues meriting a hearing. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed with prejudice.

On August 6, 2019, the Senior ALJ issued a Preliminary Recommendation that Complainant's petition for hearing be denied and dismissed with prejudice.

- F. Michael "Milo" A. Vigil v. Department of Transportation, State Personnel Board case number 2019G052.

Complainant alleges that Respondent's termination of his probationary employment was motivated by discrimination and retaliation for engaging in protected activity, including whistleblower disclosures. Complainant seeks reinstatement; recovery of back pay, vacation, sick leave, and compensatory

damages; expungement of his personnel record; and no further retaliation moving forward.

Respondent argues that Complainant has failed to establish 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 August 6, 2019, the Senior ALJ issued a Preliminary Recommendation that Complainant's petition for hearing be granted.

- G. Ruby Gonzalez v. Department of Health Care Policy & Financing, Office of Community Living, Policy Innovation & Engagement Division, State Personnel Board case number 2019S045.

Complainant applied for the position of Access Unit Manager but was not selected. She filed this petition for hearing, alleging that Respondent discriminated against her in her compensation based on gender and that Respondent's decision not to select her for the position resulted from retaliation for whistleblowing. As relief, Complainant requests that the Access Unit Manager position be posted again and the top candidates should be re-determined. Alternatively, Complainant requests that an accurate Program Development and Evaluation manager job be posted.

Respondent asserts 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 that the Board deny Complainant's petition for hearing and dismiss this matter with prejudice.

On August 8, 2019, the ALJ issued a Preliminary Recommendation that Complainant's petition for hearing be granted for her gender discrimination claim and denied for her whistleblower claim. Complainant's objection to the hiring process will be referred to the State Personnel Director for a Director's review.

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

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

V. REVIEW OF THE MINUTES FROM THE JUNE 18, 2019 PUBLIC MEETING OF THE STATE PERSONNEL BOARD (tabled at the July 16, 2019 meeting).

REVIEW OF THE MINUTES FROM THE JULY 16, 2019 PUBLIC MEETING OF THE STATE PERSONNEL BOARD.

VI. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JULY 16, 2019 PUBLIC MEETING:

- A. John M. Artuso v. University of Colorado at Colorado Springs, Department of Parking and Transportation Services, State Personnel Board case number 2019G067.

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

- B. Antoinette Johns v. Department of Local Affairs, State Personnel Board case number 2019G044.

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

- C. Seth Downs v. Department of Personnel & Administration, Office of State Controller, Central Collection Services, State Personnel Board case number 2018G056.

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

- D. Tabari Totty v. Department of Human Services, Office of Children, Youth & Families, Division of Youth Services, State Personnel Board case number 2019S049.

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

- E. Dean Copley v. Department of Corrections, Sterling Correctional Facility, State Personnel Board case number 2019B034.

No formal action taken.

- F. Jacque Anderson v. Department of Human Services, State Veterans Community Living Center at Fitzsimons, State Personnel Board case number 2018B056(c).

No formal action taken.

VII. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Status of Cases on Appeal to the Board and Appellate Courts
- Mandate/Order Affirmed in Miederhoff v. Department of Transportation, State Personnel Board case number 2018G026, Court of Appeals No. 2018CA868
- Mandate in Purdue v. Department of Regulatory Agencies, State Personnel Board case number 2018G047(c), Court of Appeals No. 2018CA1754

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:

2019 REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.

January 15, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
February 19, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
March 19, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
April 16, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
May 21, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
June 18, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
July 16, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
August 20, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
September 17, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
October 15, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
November 19, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
December 17, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203