

# State of Colorado



**John W. Hickenlooper**  
*Governor*

**Garth Lucero**  
*Board Chair*

**Dana Shea-Reid**  
*Board Director*

**State Personnel Board**  
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## Meeting Minutes February 18, 2014

The State Personnel Board met in public session on Tuesday, February 18, 2014, at the Colorado State Personnel Board, 1525 Sherman Street, 4th Floor, State Personnel Board Courtroom 6, Denver, Colorado 80203.

The meeting was called to order at 9:00 a.m. Board Members Vonda Hall, Garth Lucero, Neil Peck, Teresa Salerno, and Sally Yerger were present in person. There were no disclosures of any potential conflicts of interest with regard to present Board business or notices of recusal.

Dana Shea-Reid, Board Director; Assistant Attorney General Andrea Faley, Board Counsel; and Jane Sprague, Legal Assistant, were present in person.

### **I. REPORT OF KATHY NESBITT, STATE PERSONNEL DIRECTOR (EXECUTIVE DIRECTOR, DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA])**

#### **REPORT OF THE DIVISION OF HUMAN RESOURCES [DHR], DPA**

Ken Johnson, Director of Consulting Services and Development, reported to the Board on behalf of Ms. Nesbitt and DHR, as follows:

- Kim Burgess, formerly Chief Operating Officer at the Department of Natural Resources and a state employee for 24 years, has been hired as the new Chief HR Officer.
- The new statewide employee orientation, which launched November 1, 2013, is implemented by most but not all state agencies.
- Statewide online compliance training will launch three 30-minute training modules at the end of the month and are focused on sexual harassment and workplace violence.
- Ms. Nesbitt and consultants with Org Vitality will report the Employee Engagement survey results to the Governor's cabinet on February 27, 2014. On February 28 there will be a presentation to HR Directors followed by

training for action planning. Reports on the survey will go to managers and supervisors on March 3.

- The second Annual "HR University" is scheduled for May 1, 2014, to increase competencies for HR professionals.

## **II. PENDING MATTERS**

There were no pending matters before the Board this month.

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

- A. Joanne Brown v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2012B128 (September 12, 2013).

Ms. Hall moved to adopt the findings of fact in the Initial Decision of the Administrative Law Judge but to reverse the ALJ on the first conclusion of law, declaring that there is reasonable basis in the law to reverse Conclusion of Law 1, "Respondent's action was not arbitrary, capricious or contrary to rule or law," based on the following substantial evidence in the record: (1) none of the statements of duties in Complainant's PDQ include the physical control of others; (2) police officers are always present for physical intervention; (3) Complainant did not constitute a direct threat; (4) CTI/CPR are not essential functions of Complainant's position; and (5) Complainant is able to perform the essential functions of her position with or without reasonable accommodation. Ms. Yerger seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Salerno and Ms. Yerger. Mr. Lucero and Mr. Peck voted in opposition to the motion.

- B. Renee Ryan v. Department of Human Services, Colorado Mental Health Institute at Fort Logan, State Personnel Board case number 2013G025 (September 12, 2013).

Ms. Hall moved to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Lucero, Mr. Peck, Ms. Salerno, and Ms. Yerger.

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

- A. Cheryl Miller v. Department of Personnel & Administration, Division of Finance & Procurement, State Purchasing Office, State Personnel Board number 2013G099.

Ms. Salerno moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant Complainant's petition for hearing. Ms. Hall seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Lucero, Mr. Peck, Ms. Salerno, and Ms. Yerger.

- B. Karen York v. Community Colleges of Colorado, Red Rocks Community College, State Personnel Board case number 2014G024.

Mr. Lucero moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny Complainant's petition for hearing. Mr. Peck seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Lucero, Mr. Peck, Ms. Salerno, and Ms. Yerger.

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

- A. Pamela Montoya v. Department of Public Health and Environment, State Personnel Board case number 2013B113 (January 30, 2014).
- B. Mourad Ksouri v. Governor's Office of Information Technology, State Personnel Board case number 2013B076(C) (January 31, 2014).

Director Shea-Reid advised the Board that an appeal had been filed in Ksouri but that no appeal has been filed in Montoya.

## **VI. REVIEW OF THE MINUTES FROM THE JANUARY 21, 2014 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

Mr. Peck moved to approve the Minutes from the January 21, 2014 meeting as submitted. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Lucero, Mr. Peck, Ms. Salerno, and Ms. Yerger.

## **VII. ACKNOWLEDGMENTS**

### **DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JANUARY 21, 2014 PUBLIC MEETING:**

- A. Request for Limitation of Retention Areas by the Department of Human Services, State Personnel Board case number 2014A001.

The Board voted to deny Respondent's Request for Limitation of Retention Areas.

- B. Brett L. Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2011G028 (July 16, 2012).

The Board voted to adopt the findings of fact and conclusions of law in the Amended Order Awarding Back Pay and Front Pay, dated August 29, 2013, and to make it an Order of the Board.

- C. Elaine Daniloff v. Department of Public Health and Environment, State Personnel Board case number 2014G008.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny Complainant's petition for hearing.

- D. Bruce Marshall v. Auraria Higher Education Center, State Personnel Board case number 2014G012.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny Complainant's petition for hearing.

- E. Donna Webster v. Department of Corrections, State Personnel Board case number 2014G029.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny Complainant's petition for hearing.

## **VIII. ADMINISTRATIVE MATTERS & COMMENTS**

### **A. ADMINISTRATIVE MATTERS**

- Cases on Appeal to the Board and to Appellate Courts

Board Counsel Faley informed the Board that Mr. Tesfaye had filed a Notice of Appeal in the Court of Appeals. In addition, in Kirkmeyer, the Court of Appeals granted Complainant's motion regarding page limits.

### **B. OTHER BOARD BUSINESS**

- Annual Conflict of Interest Disclosure

Director Shea-Reid distributed the annual conflict of interest disclosure form and the conflict of interest policy to the Board for their review and signatures.

- Director Shea-Reid announced that the Senate confirmation hearing for Mr. Peck will be tomorrow, February 19 at 1:30 p.m.

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

There were no comments.

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

**X. EXECUTIVE SESSION**

The Board did not enter Executive Session.

The Board meeting ended by consensus at 11:45 A.M.

**DATED THIS 18th DAY OF MARCH, 2014.**

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Garth Lucero, Board Chair

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Vonda Hall, Member

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Neil Peck, Member

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Teresa Salerno, Member

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Sally Yerger, Vice Chair