

# State of Colorado



John W. Hickenlooper  
*Governor*

Garth Lucero  
*Board Chair*

Dana Shea-Reid  
*Board Director*

State Personnel Board  
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## Special Meeting Minutes February 24, 2014

The State Personnel Board met in special public session on Monday, February 24, 2014, at the Ralph Carr Colorado Judicial Center, 1300 Broadway, Room 1-F, Denver, Colorado 80203.

The meeting was called to order at 3:00 p.m. Board Members Vonda Hall, Garth Lucero, Neil Peck, Teresa Salerno, and Sally Yerger were present via teleconferencing.

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

### **I. 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).

This matter was initially discussed at the Board's February 18, 2014 public meeting. In light of the Board's decision on February 18, 2014, the purpose of this meeting was to discuss remedy related to this case.

Board Counsel Faley inquired if the Board wished to be advised on options for remedy in Executive Session or discuss them in public session. The Board members agreed unanimously not to go into Executive Session. Board Counsel Faley provided the options for remedy, in view of the reversal of Conclusion of Law 1, as decided on February 18, 2014 which included: remand to ALJ for determination of relief to be granted; reinstatement or front pay; back pay to make Complainant whole; other equitable relief; attorney fees and costs.

Ms. Salerno moved to reinstate Complainant to her position, to award back pay and benefits such as to make Complainant whole, and to

remand this matter to the Administrative Law Judge for a determination of the amount of back pay and benefits to be awarded. Ms. Hall 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.

Ms. Salerno then moved to amend the Board's original decision of February 18, 2014 regarding the fifth evidentiary basis, "Complainant was able to perform the essential functions of her position with or without reasonable accommodation." The revision deletes the words "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.

Mr. Lucero moved that the Board deny attorney fees because the action of Respondent was not frivolous, in bad faith, malicious, was a means of harassment, or was otherwise groundless. Ms. Yerger seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Lucero, Ms. Salerno and Ms. Yerger. Mr. Peck voted in opposition to the motion.

Board Counsel Faley asked counsel for the parties, Heather Smith and Mark Schwane, if they had any requests for further clarification of issues. The attorneys said they had nothing further.

## **II. EXECUTIVE SESSION**

The Board did not enter Executive Session.

The Board meeting ended by consensus at 4:10 P.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