

State of Colorado



John W. Hickenlooper
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Meeting Minutes April 15, 2014

The State Personnel Board met in public session on Tuesday, April 15, 2014, at the Colorado State Personnel Board, 1525 Sherman Street, 1st Floor Conference Room 103, Denver, Colorado 80203.

The meeting was called to order at 9:05 a.m. Board Members Vonda Hall, Garth Lucero, Neil Peck, Teresa Salerno, and Sally Yerger were present in person.

Mr. Peck disclosed a potential conflict of interest and recused himself from participation in Challans v. Department of Corrections, 2014S009.

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

Kim Burgess, Chief Human Resources Officer, reported to the Board on behalf of Ms. Nesbitt and DHR, as follows:

- DPA is preparing a response to the Denver Post article regarding Amendment S and SES hiring, and is working with the individuals who made the inquiries.
- DPA is reviewing the residency waiver request process. Waiver requests go to the Director of Personnel; if denied, they may then go to the Board on appeal. DPA is comfortable regarding the standards that are in place but will review the “spirit and intent” of the rule. HR consultants are developing an analysis and will make some recommendations.
 - Mr. Lucero asked Ms. Burgess what the process was now for residency waiver requests and how many requests were received

by DPA and granted. Ms. Burgess responded that the residency waiver process requires a form to DPA which is reviewed based on criteria and in accordance with the rule. Ms. Burgess estimated that in the past fiscal year “maybe 30” residency waiver requests were received and all were granted. Thirteen positions were ultimately filled with non-residents.

- DPA/DHR has updated its Technical Guidance documents which may be helpful for the Board Director and staff to have the updates and be aware of the guidance that is provided to employees.

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

There were no Initial Decisions or other Final Orders of the Administrative Law Judges on appeal to the Board this month.

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

- A. Theresa Chavez v. Department of Education, Office of Professional Services and Education Licensure, State Personnel Board case number 2014G011.

Ms. Yerger moved to adopt the Preliminary Recommendation of the Administrative Law Judge; deny Complainant’s petition for hearing as to Complainant’s August 6, 2013 grievance process; and remand the August 14, 2013 grievance to the agency for resolution. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following members: Ms. Hall, Mr. Lucero, Mr. Peck, Ms. Salerno, and Ms. Yerger.

- B. Shantell Honest v. Department of Human Services, Division of Youth Corrections, Platte Valley Youth Service Center, State Personnel Board case number 2014G036.

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

Mr. Peck recused himself and left the meeting room prior to the introduction of the case regarding Department of Corrections.

C. William Harry Challans v. Department of Corrections, State Personnel Board case number 2014S009.

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

Mr. Peck returned to the meeting room after the Board action was completed.

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

A. Terrence M. Sullivan v. Department of Transportation, State Personnel Board case number 2014B003 (March 17, 2014).

Complainant worked for CDOT for 20 years before being administratively discharged on June 25, 2013. Complainant appealed the separation from service arguing that he was discriminated against on the basis of disability, in violation of Colorado Anti-Discrimination Act. He further contends that CDOT violated the Americans with Disabilities Act by failing to engage in the interactive process with him. The ALJ found that CDOT violated the ADA by failing to engage in the interactive process with Complainant, reversed Complainant's separation from service, and ordered CDOT to complete the interactive process with him and to pay him back pay.

Director Shea-Reid informed the Board that Complainant and Respondent have each filed a petition for reconsideration, but as of this date there has been no Notice of Appeal filed by either party.

VI. REVIEW OF THE MINUTES FROM THE MARCH 18, 2014 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Mr. Peck moved to approve the Minutes from the March 18, 2014 meeting as submitted. Mr. Lucero seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Peck, and Ms. Yerger. Ms. Hall and Ms. Salerno abstained from voting as they were not present at the March 18, 2014 meeting.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS MARCH 18, 2014 PUBLIC MEETING:

- A. Mourad Ksouri v. Governor's Office of Information Technology, State Personnel Board case number 2013B076(C)(January 31, 2014; Amended February 26, 2014).

The Board voted to review the Amended Initial Decision of the ALJ at the Board's July 15, 2014 meeting. As part of such review, the parties are asked to brief the issue of whether the ALJ's Conclusion of Law No. 5 should be upheld. Specifically, given the finding that Respondent's disciplinary termination of Complainant was deemed arbitrary and capricious and not within the range of reasonable alternatives, the parties are asked to brief whether the appointing authority should determine the lesser discipline ordered by the ALJ or whether such discipline should be delegated by the appointing authority to a neutral party.

VIII. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts

Board Counsel Faley advised that, since records had not yet been certified in Williams v. Department of Public Safety, 2011G028, and Tesfaye v. Department of Revenue, 2013G026, the Board has not made a decision whether to file a brief in these matters. Board Counsel Faley also stated that a brief in Kirkmeyer v. DOLA, 2007G089, is due April 21, 2014.

B. OTHER BOARD BUSINESS

- Safety and Security

Director Shea-Reid reported that she has twice spoken to state troopers regarding security for the building and showed them the Board's courtroom relative to the public waiting area on the 4th floor. The troopers said they will make a point to walk through the building on a regular basis and will specifically check into the 4th floor and the courtroom on hearing days. Director Shea-Reid noted that recently, an ALJ presiding over a hearing in the in the Board's courtroom reported that a trooper discretely came into the courtroom and stayed a few minutes, and a similar comment was shared with the Director by an ALJ for OAC on that same day. Both judges felt the trooper's presence was reassuring. OAC has arranged to have "panic buttons" installed in all courtroom areas which

connect directly to State Patrol Dispatch. Ms. Shea-Reid has also made a request to DPA that signs indicating that the building is “under surveillance by the State Patrol” are needed in public areas on all floors.

- Recruitment for new Administrative Law Judge

Director Shea-Reid stated the Board had received 66 applications for the Administrative Law Judge position which will be vacant at the end of May with the retirement of the current ALJ. Preliminary screening for minimum qualifications has been completed and the next stage of the process, a written exercise, is underway. The selection will be concluded with an oral board interview of the top candidates on a date to be determined.

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

A. Attorney advice regarding considerations in developing motions

At 9:50 a.m. Mr. Lucero made a motion to enter into Executive Session for the purpose of receiving legal advice on specific legal questions, pursuant to § 24-6-402(3)(a)(II), C.R.S., including attorney advice regarding considerations in developing motions. The motion was seconded by Mr. Peck. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Lucero, Mr. Peck, Ms. Salerno, and Ms. Yerger. Executive Session ended by consensus at 10:15 a.m.

The Board meeting ended by consensus at 10:15 a.m.

DATED THIS 20th DAY OF MAY, 2014.

Garth Lucero, Board Chair

Sally Yerger, Vice Chair

Vonda Hall, Member

Neil Peck, Member

Teresa Salerno, Member