

# State of Colorado



**John W. Hickenlooper**  
*Governor*

**Sally Yerger**  
*Board Chair*

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

**State Personnel Board**  
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## Meeting Minutes July 15, 2014

The State Personnel Board met in public session on Tuesday, July 15, 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 9:02 a.m. Board Members Vonda Hall, Michelle Palmquist, Teresa Salerno, and Sally Yerger were present in person. Board Member Neil Peck was present via teleconferencing. Director Shea-Reid introduced Ms. Palmquist and welcomed her to the Board.

Ms. Palmquist disclosed that she would recuse herself from discussion regarding Mourad Ksouri v. Governor's Office of Information Technology. Mr. Peck disclosed that he would recuse himself from discussion regarding Randy Smith v. Department of Corrections.

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

### **ANNUAL ELECTION OF BOARD CHAIR AND VICE-CHAIR FOR FISCAL YEAR 2014 – 2015**

Mr. Peck moved to nominate Ms. Yerger for Chair of the Board for Fiscal Year 2014-2015. Ms. Hall seconded the motion. The nominations for Board Chair were closed by consensus.

Ms. Yerger moved to nominate Mr. Peck for Vice-Chair of the Board for Fiscal Year 2014-2015. Ms. Salerno seconded the motion. The nominations for Board Vice-Chair were closed by consensus. The nominations of Ms. Yerger as Board Chair and Mr. Peck as Board Vice-Chair each passed unanimously.

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

Kim Burgess, State Chief Human Resources Officer, reported on the following:

- The new financial system, CORE, has launched successfully, replacing the current COFRS financial system. Over 5,000 employees from around the state will use the system.
- The timeline for study of the General Professional (GP) series has been adjusted to FY16-17 and will impact more than 3,000 employees.
- The total compensation letter will go to the Governor August 1 for his review and will include recommendations on pay, leave, and benefits.
- DHR is tracking Director's appeals and will share data with the Board on the issues that go to the Director for review and what DHR is seeing in those appeals, including assessment and selection activities, selection decisions and timeliness of appeals.
- DHR has provided input to Director Shea-Reid as requested on changes to the Colorado Personnel System consolidated appeal/dispute form.
- DHR wants to focus on training state agencies in effective processes.

Ms. Salerno inquired about mechanisms to categorize grievances and certain "themes" in grievances that are elevated to the State Personnel Board. Ms. Burgess stated that DHR has not previously been tracking trends, although it would be helpful information. She stated that having an "enterprise HR system" will enhance their ability to do so.

Mr. Peck remarked that it would be interesting to know the outcomes for Whistleblower complaints and incidents of retaliation. Director Shea-Reid advised that each August, Board staff prepares an annual report for the Governor on Whistleblower complaints that includes the complaints filed in the past fiscal year, hearings held and actions taken. A copy of the August, 2014 report will be provided to the Board.

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

On March 18, 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. In response, on June 9, 2014, the parties filed a Stipulated Brief in Support of Upholding Amended Initial Decision.

Ms. Palmquist recused herself from discussion in this matter.

Mr. Peck began the discussion by expressing his concern that the Board is sending the case back to the same appointing authority, for determination of a lesser penalty after this individual terminated Complainant. Mr. Peck noted for the record Complainant's poor treatment by the appointing authority in the first place and said that the process should be transparent and fair for Complainant.

At 9:35 a.m., Ms. Yerger 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., regarding Mourad Ksouri v. Governor's Office of Information Technology, State Personnel Board case number 2013B076(C). The motion was seconded by Mr. Peck. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Peck, Ms. Salerno, and Ms. Yerger. Executive Session ended by consensus at 9:50 a.m.

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

Ms. Palmquist returned to the meeting room after the vote.

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

- A. Randy Smith v. Department of Corrections, State Personnel Board case number 2014S010.

Mr. Peck recused himself from participation in this matter and the teleconference call was terminated.

Ms. Hall moved to adopt the Preliminary Recommendation of the Administrative Law Judge, deny Complainant's petition for hearing, and refer the matter to the State Personnel Director for further action, as

appropriate. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following members: Ms. Hall, Ms. Palmquist, Ms. Salerno, and Ms. Yerger.

The Board resumed the teleconference call with Mr. Peck following the vote.

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

There were no Initial Decisions or other final Orders of the Administrative Law Judges this month.

**VI. REVIEW OF THE MINUTES FROM THE JUNE 17, 2014 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

Ms. Yerger moved to approve the Minutes from the June 17, 2014 meeting as submitted. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Salerno, and Ms. Yerger. Ms. Palmquist and Mr. Peck abstained because they were not in attendance at the June 17, 2014 meeting.

**VII. ACKNOWLEDGMENTS**

**DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JUNE 17, 2014 PUBLIC MEETING:**

- A. Doug Wanker v. Department of Transportation, State Personnel Board case number 2013B092 (December 27, 2013).

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge.

- B. Stephanie Sisneros v. Department of Corrections, Clinical Services, State Personnel Board case number 2014G055.

The Board voted to deny Complainant's petition for hearing.

- C. Nancy Fey v. Department of Human Services, Colorado State Veteran's Nursing Home at Fitzsimons, State Personnel Board case number 2014G067.

The Board voted to grant Complainant's petition for hearing.

- D. Joshua Powell v. Colorado School of Mines, Facilities Management, State Personnel Board case number 2014G075.

The Board voted to deny Complainant's petition for hearing.

- E. Richard Medina v. Office of Information Technology, State Personnel Board case number 2014G044.

The Board voted to grant Complainant's petition for hearing.

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

### **A. ADMINISTRATIVE MATTERS**

- Cases on Appeal to the Board and to Appellate Courts

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

- Brett L. Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2011G028, Court of Appeals No.2014CA390.

Board Counsel Faley stated that the Board may choose to do a brief in this case depending on what issues are highlighted. The Opening Brief is due in July and the Answer Brief is due in September; this matter may be discussed at the August meeting.

- Director Shea-Reid reported that she and Ms. Yerger had attended the Legislative Audit Committee meeting on July 14. Director Shea-Reid provided the committee with a status report on audit recommendations made to the SPB. She reported that the recommendation for the Board to improve its electronic case management system and processes and the second recommendation to establish safeguards to manage potential conflicts of interest had both been fully implemented by the Board in early 2013. There were no follow-up questions by members of the LAC.

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

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

- Director Shea-Reid stated that she and Board Counsel Faley had conducted a review of Board Rules to make minor corrections and update rules to correspond with changes in statutes. A list of proposed Board Rules requiring "housekeeping" changes will be sent electronically to the Board for their review. Stakeholders will also have an opportunity to

provide comment on the proposed rule changes prior to the actual rulemaking session. Director Shea-Reid will present timelines after staff has reviewed the Secretary of State's calendar for rulemaking. Ideally, the rulemaking will take place on one of the Board's regularly scheduled meetings and will not necessitate a special meeting.

**X. EXECUTIVE SESSION**

See Section III, above.

Prior to adjournment, Mr. Peck extended his personal welcome to Ms. Palmquist, who was attending her first Board meeting and to new ALJ, Pamela Sanchez, who began employment with the Board on July 1, 2014.

The Board meeting ended by consensus at 10:20 a.m.

**DATED THIS 19th DAY OF AUGUST, 2014.**

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Sally Yerger, Board Chair

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Neil Peck, Vice Chair

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Vonda Hall, Member

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Michelle Palmquist, Member

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Teresa Salerno, Member