

State of Colorado



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Meeting Minutes October 21, 2014

The State Personnel Board met in public session on Tuesday, October 21, 2014, at the Colorado State Personnel Board, 1525 Sherman Street, First Floor Conference Room 104, Denver, Colorado 80203.

The meeting was called to order at 9:50 a.m. Board Members Vonda Hall, Michelle Palmquist, Neil Peck, Teresa Salerno, and Sally Yerger were present in person.

Ms. Hall disclosed that if the Board discussed or took any action involving Jack Chen v. Department of Human Services, Office of Economic Security, Food Distribution Programs, State Personnel Board case number 2014B034 (October 2, 2014) she would recuse herself from participation.

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

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 to the Board on behalf of DPA and DHR as follows:

- DPA will be conducting rulemaking in November which will be cleanup of Administrative Procedures 5-19 and 5-20 regarding the Family Medical Leave Act in order to comport with the Family Care Act, including civil unions and domestic partnerships.

II. PENDING MATTERS – CASES AT THE COURT OF APPEALS AND ON REMAND

- A. Shantell Honest v. Department of Human Services, Division of Youth Corrections, Platte Valley Youth Service Center, State Personnel Board case number 2014G036, Court of Appeals Number 2014CA934.

The Board tabled this matter until after they could meet in Executive Session and obtain legal advice from Board Counsel.

- B. Arthur Robinson v. University of Colorado Denver, Information Technology Services, State Personnel Board case number 2012B131, Court of Appeals Number 2013CA1147, Order Reversed and Case Remanded with Directions, May 22, 2014; Mandate Issued July 25, 2014.

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

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 (May 28, 2014).

The Board tabled this matter until after they could meet in Executive Session and obtain legal advice from Board Counsel.

- B. Rodney Smith v. Colorado State University, Police Department, State Personnel Board case number 2014B019 (May 27, 2014).

Ms. Yerger made a motion to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to make the Initial Decision of the Administrative Law Judge an order of the Board. Ms. Palmquist seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Palmquist, Ms. Salerno, and Ms. Yerger. Ms. Hall and Mr. Peck voted in opposition to the motion.

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

- A. Adel W. Edward v. Department of Transportation, State Personnel Board case number 2014S020.

Mr. Peck 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 members: Ms. Hall, Ms. Palmquist, Mr. Peck, Ms. Salerno, and Ms. Yerger.

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

- A. Jack Chen v. Department of Human Services, Office of Economic Security, Food Distribution Programs, State Personnel Board case number 2014B034 (October 2, 2014).

The Board took no action in this matter.

VI. REVIEW OF THE MINUTES FROM THE SEPTEMBER 16, 2014 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Ms. Yerger moved to approve the Minutes from the September 16, 2014 meeting as submitted. Mr. Peck seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Palmquist, Mr. Peck, and Ms. Yerger. Ms. Salerno abstained because she was not present at the September 16, 2014 meeting.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS SEPTEMBER 16, 2014 PUBLIC MEETING:

- A. Arthur Robinson v. University of Colorado Denver, Information Technology Services, State Personnel Board case number 2012B131, Court of Appeals Number 2013CA1147, Order Reversed and Case Remanded with Directions, May 22, 2014; Mandate Issued July 25, 2014.

The Board voted to remand the matter to the Administrative Law Judge for clarification as to whether submittals by Complainant, including Exhibits A-W to Complainant's August 29, 2014 Reply Brief to University's Answer Brief and Complainant's Response to the University's Response to the Sept. 3, 2014 Order, filed by Complainant on September 8, 2014, were reviewed by the Administrative Law Judge in her consideration of the sufficiency of the administrative record. The ALJ is authorized to stay the Amended Briefing Schedule or to amend the Amended Briefing Schedule, as needed.

- B. Kristina M. Grubb v. Department of Corrections, La Vista Correctional Facility, State Personnel Board case number 2014B069.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing.

- C. Carl Jesse Elston v. Department of Natural Resources, Division of Water Resources, Office of State Engineer, State Personnel Board case number 2014G058.

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

- D. Brett Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2011G028, Court of Appeals Number 2014CA390.

The Board voted to authorize Board Counsel to prepare and file a brief at the Court of Appeals on behalf of the Board and to obtain an extension of time, if necessary, within which to file the brief. The brief of the Board will address two issues: (1) the Board's jurisdiction relative to the allegations that Colorado State Patrol acted in an arbitrary and capricious manner; and (2) the award of front pay to Complainant.

VIII. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts

B. OTHER BOARD BUSINESS

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

There were no comments.

IX. PROPOSED LEGISLATION AND/OR RULEMAKING

X. EXECUTIVE SESSION

Attorney advice regarding Shantell Honest v. Department of Human Services, Division of Youth Corrections, Platte Valley Youth Service Center, State Personnel Board case number 2014G036, Court of Appeals Number 2014CA934.

Attorney advice regarding Joanne Brown v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2012B128 (May 28, 2014).

At 10:59 a.m., Ms. Yerger made a motion to enter into Executive Session for the purpose of discussing disputes that are the subject of pending or imminent court action, pursuant to § 24-6-402(3)(a)(II), including discussion with counsel regarding the pending appeal and the legal basis for the Board's defense regarding Shantell Honest v. Department of Human Services, Division of Youth Corrections, Platte Valley Youth Service Center, State Personnel Board case number 2014G036, Court of Appeals Number 2014CA934; as well as receiving legal advice on specific legal questions, pursuant to § 24-6-402(3)(a)(II) regarding Joanne Brown v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2012B128 (May 28, 2014).

The motion was seconded by Mr. Peck. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Palmquist, Mr. Peck, Ms. Salerno, and Ms. Yerger. Executive Session ended by consensus at 11:39 a.m.

IX. BOARD DELIBERATION

- A. Shantell Honest v. Department of Human Services, Division of Youth Corrections, Platte Valley Youth Service Center, State Personnel Board case number 2014G036, Court of Appeals Number 2014CA934

Following Executive Session and having received advice from Board Counsel, the Board declined to take action in this matter.

- B. Joanne Brown v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2012B128 (May 28, 2014).

Following Executive Session and having received advice from Board Counsel, Ms. Salerno made a motion to amend the Order of the State Personnel Board of February 26, 2014, to require that Complainant be reinstated to her former position or an equivalent position no later than November 1, 2014. If Complainant is not reinstated as per this Board order, damages will continue to accrue to the date of Complainant's reinstatement. All other matters addressed in the Board's Order of February 26, 2014, stand as previously ordered by the Board. The Board also voted to adopt the Findings of Fact and Conclusion of Law-1 of the Administrative Law Judge's Order on Remand Awarding Back Pay and Benefits as of 5-28-2014, but to reverse Conclusion of Law-2 to the extent that it requires an offset for the PERA disability benefits Complainant received. This portion of Conclusion of Law- 2 is contrary to law because Complainant's PERA disability benefits are collateral benefits and cannot count as an offset against Complainant's recovery. Damages are also awarded through October 31, 2014, rather than through February 2014.

Specifically, the Board ordered the following damages: Respondent shall pay Complainant \$116,805.24 in back pay and benefits, which represents the amount due between the time of separation and this final judgment. Respondent shall make PERA employer contributions on behalf of Complainant to PERA at the rate of 7.65% of Complainant's gross salary from June 13, 2012, through June 30, 2012, and at the rate of 10.15% of Complainant's gross salary from July 1, 2012, to the date of Complainant's reinstatement. Complainant shall make PERA employee contributions accruing from June 13, 2012, to the date of reinstatement, as determined by PERA, to be deducted from the back pay award. Complainant shall reimburse PERA for disability retirement benefits as may be required by PERA pursuant to statute and rule. Respondent shall credit Complainant for 10 hours of annual leave and 6.6 hours of sick leave per month to reinstatement. Finally, the Board voted to deny Complainant's Motion to Enforce Order of the State Personnel Board to Reinstate Complainant to Her Position filed on June 6, 2014.

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

The Board meeting ended by consensus at 11:56 a.m.

DATED THIS 18TH DAY OF NOVEMBER, 2014.

Sally Yerger, Board Chair

Neil Peck, Vice Chair

Teresa Salerno, Member

Vonda Hall, Member

Michelle Palmquist, Member

