

State of Colorado



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Meeting Minutes November 18, 2014

The State Personnel Board met in public session on Tuesday, November 18, 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 9:00 a.m. Board Members Vonda Hall, Michelle Palmquist, Neil Peck, Teresa Salerno, and Sally Yerger were present in person.

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

Mr. Peck recused himself from participation in Kathi Dean-Lee v. Department of Corrections, State Personnel Board case number 2014G027.

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:

- Ms. Burgess introduced Joyelle Camilli, the new Manager of Consulting Services for DHR, who will act as liaison with state agencies.
- DPA conducted rulemaking in November, for Director's Administrative Procedures 5-19 and 5-20 in order to comport with the Family Care Act legislation that includes civil unions and domestic partnerships.
- DHR is developing a scheduled review of Director's Administrative Procedures with a targeted implementation date next fall. Ms. Burgess will work with Director Shea-Reid to coordinate with Board Rules.
- DHR is working informally with agencies to provide guidance on appeals for Director's review and to monitor any trends in appeals.

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

- A. Terrence M. Sullivan v. Department of Transportation, State Personnel Board case number 2014B003.

The Board tabled Respondent's Motion to Stay until after they would meet in Executive Session and obtain legal advice from Board Counsel.

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. Richard Reinhardt v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2014G088.

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

- B. Kathi Dean-Lee v. Department of Corrections, State Personnel Board case number 2014G027.

Mr. Peck left the meeting room having recused himself from participation in this case.

Ms. Salerno moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant Complainant's petition for hearing on the issue of discrimination based on race. Ms. Hall seconded the motion. The motion passed on the affirmative vote of the following members: Ms. Hall, Ms. Palmquist, Ms. Salerno, and Ms. Yerger. Following the vote on this matter, Mr. Peck returned to the meeting room.

- C. Shaun Crowley v. Community Colleges of Colorado, Front Range Community College, State Personnel Board case number 2014G109.

Mr. Peck moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant Complainant's petition for hearing on the issue of discrimination based on disability. Ms. Hall seconded the motion. The motion passed on the affirmative vote of the following members: Ms. Hall, Ms. Palmquist, Mr. Peck, and Ms. Yerger. Ms. Salerno voted in opposition to the motion.

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

Mr. Peck moved to adopt the Recommended Order regarding Complainant's Motion for Reconsideration of State Personnel Board's October 22, 2014 Order. Ms. Salerno 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

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

VI. REVIEW OF THE MINUTES FROM THE OCTOBER 21, 2014 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Mr. Peck moved to approve the Minutes from the October 21, 2014 meeting as amended to correct two typographical errors on page 5, paragraph 4 ("Board declined to take action"). Ms. Hall 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.

Ms. Hall moved to approve the Minutes from the October 21, 2014 Rulemaking as submitted. Ms. Yerger 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

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS OCTOBER 21, 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 adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to make the Initial

Decision an order of the Board.

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

The Board voted 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 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 Reinstatement Complainant to Her Position filed on June 6, 2014.

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

The Board voted 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 an order of the Board.

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

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

VIII. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts

In addition to the above, Board Counsel Faley updated the Board on cases in the Court of Appeals. She noted that the agency filed an answer brief in the Shantell Honest case and Ms. Honest has been ordered to file a certificate of mailing; Arthur Robinson has filed a new appeal in the Court; and Board Counsel Faley filed a brief on behalf of the Board on November 10, 2014 in the Brett Williams case, and both sides have requested oral argument.

B. OTHER BOARD BUSINESS

There was no 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

At 9:48 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 Board Counsel regarding the pending appeal and the legal basis for the Board's defense regarding Terrence M. Sullivan v. Department of Transportation, State Personnel Board case number 2014B003.

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 10:04 a.m.

XI. BOARD DELIBERATION

Following Executive Session and having received advice from Board Counsel, Mr. Peck made a motion to inform the parties in Terrence M. Sullivan v. Department of Transportation, State Personnel Board case number 2014B003, that, in view of Respondent's filing of an appeal at the Colorado Court of Appeals simultaneous with the filing of Respondent's Motion for Stay of Final Agency Order Pending Appeal at the Board, the Board is providing notice that it has declined to act upon or to address Respondent's Motion for Stay of Final Agency Order Pending Appeal as the Board no longer has jurisdiction over this matter. Ms. Yerger 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 10:07 a.m.

DATED THIS 16TH DAY OF DECEMBER, 2014.

Sally Yerger, Board Chair

Neil Peck, Vice Chair

Teresa Salerno, Member

Vonda Hall, Member

Michelle Palmquist, Member