

# State of Colorado

---



**John W. Hickenlooper**  
*Governor*

**Neil Peck**  
*Board Chair*

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

**State Personnel Board**  
1525 Sherman Street 4<sup>th</sup> Floor  
Denver, Colorado 80203  
Phone (303) 866-3300  
Fax (303) 866-5038

Meeting Minutes  
February 20, 2018

The State Personnel Board met in public session on Tuesday, February 20, 2018, at 1525 Sherman Street, First Floor Conference Room 104, Denver, Colorado 80203.

The meeting was called to order at 9:03 a.m. Board Members Vonda Hall, Nora Kelly, Maurie Knaizer, Michelle Palmquist and Neil Peck were present in person.

Dana Shea-Reid, Board Director, and Leanne De Vos, Board Counsel, were present in person.

Director Shea-Reid reported that Board members Maurie Knaizer and Michelle Palmquist had asked to recuse themselves from the deliberation in today's meeting regarding the case of Lori Baumgardner v. Department of Transportation.

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

No quarterly report this month.

## **II. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD**

- A. Laura Saurini v. Department of Corrections, State Personnel Board case number 2016B075.

Complainant worked for the Department of Corrections (DOC) as a Social Work/Counselor III. She was administratively discharged on February 29, 2016. Complainant alleges that Respondent violated the Director's Administrative Procedure 5-6 (Rule 5-6) by failing to grant her request to accommodate her medical condition by allowing her to work part time in Denver and failed to properly calculate her Family Medical Leave (FML) in determining whether she had exhausted that leave. Complainant also alleges that her separation from employment constituted retaliation for protected disclosures, in violation of the

State Employee Protection Act (Whistleblower Act), §24-50.5-101, *et seq.*, C.R.S. Complainant requests that her administrative separation be rescinded. She further requests that Respondent be ordered to either allow her to return to work at her prior position with accommodations as needed or to identify a position within the DOC for which she is qualified, with or without accommodation.

Respondent counters that it did not retaliate against Complainant and that its administrative discharge of Complainant for exhaustion of her accrued leave complied with Administrative Procedure 5-6. Respondent requests that the Board affirm its administrative discharge of Complainant and deny her requested relief.

On September 25, 2017, the Administrative Law Judge issued an Initial Decision affirming Respondent's decision to administratively discharge Complainant's employment.

The Board tabled discussion in this matter until the end of the Board meeting and after the Board has received legal guidance in Executive Session. (See "Section X Board Deliberation")

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

A. Lori Baumgardner v. Department of Transportation, State Personnel Board case 2018S015.

Mr. Knaizer and Ms. Palmquist recused themselves from deliberation in this matter and left the Board meeting room. After the Board's discussion, Mr. Peck moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing. Ms. Hall seconded the motion. The motion carried on the affirmative vote of the following Board members: Ms. Hall, Ms. Kelly, and Mr. Peck.

Mr. Knaizer and Ms. Palmquist returned to the Board meeting room.

B. Michael Harris v. Department of Public Health & Environment, Water Quality Control Division, State Personnel Board case number 2018G028.

Mr. Peck moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Knaizer seconded the motion. The motion carried on the affirmative vote of the following Board members: Ms. Hall, Ms. Kelly, Mr. Knaizer, Ms. Palmquist and Mr. Peck.

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

- A. Richard Dale Helmick v. Department of Transportation, State Personnel Board case number 2017B053.

No formal action was taken.

- B. Michael Dodson v. University of Colorado Boulder, University of Colorado Police Department, State Personnel Board case number 2018B004.

No formal action was taken.

#### **V. REVIEW OF THE MINUTES FROM THE JANUARY 16, 2018 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

Ms. Palmquist moved to approve the minutes as submitted. Mr. Knaizer seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Kelly, Mr. Knaizer, Ms. Palmquist and Mr. Peck.

#### **VI. ACKNOWLEDGMENTS**

##### **DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JANUARY 16, 2018 PUBLIC MEETING:**

- A. Don Harris v. Department of Corrections, State Personnel Board case number 2017B065.

The Board voted to adopt the findings of fact and conclusions of law in the ALJ's Order of Dismissal and made an Order of the Board.

- B. Gary Pacheco v. Department of Corrections, Division of Adult Parole, State Personnel Board case number 2017S019(c).

The Board voted to adopt the Preliminary Recommendation of the ALJ and grant the petition for hearing.

- C. Christina Labazzetta v. Department of Corrections, Colorado Territorial Correctional Facility, State Personnel Board case number 2016B036.

No formal action was taken.

#### **VII. ADMINISTRATIVE MATTERS & COMMENTS**

##### **A. ADMINISTRATIVE MATTERS**

- Board Counsel De Vos updated the Board on cases on appeal to the appellate courts: The Board Order was affirmed by COA for Rome v. University of Colorado; mandate has not yet been issued; Stiles- the record has been certified, briefing

schedule to be determined; Muller- has concluded briefing; McCauley- is in cross appeal.

#### B. OTHER BOARD BUSINESS

None.

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

None.

### VIII. PROPOSED LEGISLATION OR RULEMAKING

Director Shea-Reid advised the Board of potential legislative action by Republican party members that would defund the Colorado Civil Rights Division (CCRD). Earlier in February, the JBC deadlocked 3-3 on a vote to fund the CCRD and unless that vote is revisited, the agency would not be funded as of July 1, 2018. Director Shea-Reid said that if that should happen, there could be repercussion affecting the SPB. The Board would have to revise Board Rules that relate to processes the SPB shares with CCRD; statutory language would require revision as well; if the division is defunded, layoffs may occur and the Board would handle those cases on appeal; cases currently being investigated by the CCRD would have to be returned to SPB for adjudication without a finding issued by CCRD.

Director Shea-Reid will monitor developments and report back to the Board.

### IX. EXECUTIVE SESSION

At 9:24 a.m. Mr. Peck 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 the appeal of Laura Saurini v. Department of Corrections. Ms. Palmquist seconded the motion and the motion passed on the affirmative vote of the Board.

Executive Session ended by consensus at 9:51 a.m.

### X. BOARD DELIBERATION

- A. Laura Saurini v. Department of Corrections, State Personnel Board case number 2016B075.

As a preliminary matter, the Board considered Complainant's Pre-statement issues and Remedies Sought, filed with Complainant's Opening Brief, in which Complainant asserted that the Administrative Law Judge should have specifically disclosed the Judge's prior experience as an Administrative Hearing Officer for the Colorado Department of Corrections from 2007 to

2014, as a conflict of interest. Complainant's remedies included a request for a new hearing. Complainant also requested removal of the Initial Decision of the Administrative Law Judge from the Board's official web site. The Board denied Complainant's motion.

Mr. Knaizer moved to adopt the findings of fact and conclusions of law of the Administrative Law Judge's Initial Decision affirming Respondent's decision to administratively terminate Complainant's employment. The motion was seconded by Mr. Peck. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Kelly, Mr. Knaizer, Ms. Palmquist and Mr. Peck.

The Board meeting adjourned by consensus at 10:23 a.m.

**DATED THIS 20th DAY OF MARCH, 2018.**

**SIGNATURES**

---

Neil Peck, Board Chair

---

Michelle Palmquist, Vice Chair

---

Vonda Hall, Member

---

Nora Kelly, Member

---

Maurie Knaizer, Member

---