

State of Colorado



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Meeting Minutes
March 19, 2019

The State Personnel Board met in public session on Tuesday, March 19, 2019, at 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, Maurie Knaizer, Michelle Palmquist and Neil Peck were present in person; Nora Kelly was absent.

Dana Shea-Reid, Board Director and Amy Lopez, Board Counsel were present in person.

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

Agenda item pending until further notice.

II. 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 on appeal or other Final Orders of the ALJ's for review.

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

- A. Valerie Bishop v. Department of Human Services, State Veteran's Community Living Center at Fitzsimons, State Personnel Board case number 2019G012(c).

Mr. Peck moved to adopt the Preliminary Recommendation of the ALJ 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, Mr. Knaizer, Ms. Palmquist and Mr. Peck.

- B. Vrlina Nozlic v. Department of Human Services, State Personnel Board case number 2019S039.

Ms. Hall moved to adopt the Preliminary Recommendation of the ALJ and deny the petition for hearing and refer the matter to the State Personnel Director for review of Respondent's selection process. Ms. Palmquist seconded the motion.

The motion carried on the affirmative vote of the following Board members: Ms. Hall, Mr. Knaizer, Ms. Palmquist and Mr. Peck.

- C. Michael Peterson v. Community Colleges of Colorado, Pikes Peak Community College, State Personnel Board case number 2019G007.

The Board discussed the arbitrary and capricious argument made by the Complainant's attorney which the ALJ described as "frivolous". That argument mirrored the same arguments presented by the same attorneys in two prior cases (O'Toole v. Department of Public Safety and Farley v. Department of Local Affairs), each of which were rejected by the Board as non-jurisdictional. Previously another ALJ awarded attorney fees to the department in *O'Toole* because the same argument that was used in O'Toole was rejected earlier in *Farley*. The Board noted that attorney fees in the present case were not requested by the Respondent, and questioned whether the Board had the authority to make the award.

The matter was tabled in order for the Board receive legal advice from Board Counsel. *See agenda item IX.*

IV. 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 for review.

V. REVIEW OF THE MINUTES FROM THE FEBRUARY 19, 2019 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Mr. Knaizer noted incorrect information in section VII (Administrative Matters & Comments). The Director apologized as it appeared section VII duplicated content from the January minutes and she noted the corrections to be made. Ms. Palmquist moved to approve the minutes as amended. Ms. Hall seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Knaizer and Ms. Palmquist. Mr. Peck abstained.

VI. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS FEBRUARY 19, 2019 PUBLIC MEETING:

- A. Flavio Quintana v. Department of Revenue, State Personnel Board case number 2018G090.

The Board voted to adopt the findings of fact of the ALJ but reversed one or more conclusions of law, finding that there is a reasonable basis in law regarding Board Rule 8-41(a) to reverse the ALJ's dismissal of the petition for hearing for lack of Board jurisdiction and reversed the ALJ's decision that Complainant must allege another basis for a discretionary hearing. It was ordered that the matter be remanded to the ALJ for a full discretionary review and preliminary recommendation.

- B. Richard Paar v. Department of Corrections, Sterling Correctional Facility, State

Personnel Board case number 2019G027.

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

- C. Leanna Bernabei v. Department of Corrections, Arkansas Valley Correctional Facility, State Personnel Board case number 2019G019.

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

- D. Jason Soltani v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2019G026.

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

VII. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Status of Cases on Appeal to the Board and Appellate Courts
- Board Counsel Lopez informed the Board that regarding Stiles v. DOC, Respondent made another request to the court of appeals for an extension, requesting a 3-week extension of time to file a petition for writ of certiorari. Counsel noted that Respondent is including over a dozen state agencies and higher education who will file an amicus brief. The extended deadline would be April 11, 2019.
- Quintana v. Department of Revenue- Respondent filed a Designation of Record with the court of appeals. In February, the Board had remanded Quintana to the ALJ for a discretionary review.

B. OTHER BOARD BUSINESS

Director's Report:

- Director Shea-Reid updated the Board on the OAC e-filing issue: An OIT team is developing "work arounds" in order for the new e-filing system to accommodate Board needs. These adjustments are intended to give the Board basic access to the system to meet its most critical needs, but, the Director added, in some respects the "work arounds" are moving the Board backwards in technology rather than forward. A May, 2019 deadline for the Board's use of Legal Files seems imminent.

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

VIII. PROPOSED LEGISLATION OR RULEMAKING

IX. EXECUTIVE SESSION

At 9:25 a.m., Mr. Peck made a motion to enter into Executive Session for purposes of receiving legal advice on specific legal questions pursuant to § 24-6-402(3)(a)(II), C.R.S. regarding the Board's authority to award attorney fees sua sponte. Ms. Palmquist seconded the motion. The motion carried by the affirmative vote of the full Board.

The Board re-entered open session at 9:36 a.m.

Michael Peterson v. Community Colleges of Colorado, Pikes Peak Community College, State Personnel Board case number 2019G007.

Mr. Peck continued deliberation on Peterson, specifically as to whether the Board could, on its own motion, award attorney fees for persistent conduct on the part of Complainant's attorneys that he described as "contemptuous". After consultation with Counsel, the Board agreed that the matter should be remanded to the Administrative Law Judge in order for the ALJ to make a determination whether the Board or the ALJ has the authority to award attorney fees sua sponte.

Mr. Knaizer moved to adopt the Preliminary Recommendation of the ALJ and deny the petition for hearing and to remand the matter to the ALJ to determine whether the State Personnel Board or the Administrative Law Judge has the legal authority to impose attorney fees without a request from one of the parties, and if so, whether fees should be imposed in this matter. Ms. Palmquist seconded the motion. The motion carried on the affirmative vote of the following Board members: Ms. Hall, Mr. Knaizer, Ms. Palmquist and Mr. Peck.

The meeting adjourned by consensus at 9:40 a.m.

DATED THIS 16th DAY OF APRIL, 2019.

SIGNATURES

Neil Peck, Chair

Michelle Palmquist, Vice Chair

Vonda Hall, Member

Maurie Knaizer, Member
