

State of Colorado



John W. Hickenlooper
Governor

Rich Djokic
Board Chair

Dana Shea-Reid
Board Director

State Personnel Board
633 17th Street, Suite 1320
Denver, Colorado 80202-3604
Phone (303) 866-3300
Fax (303) 866-5038

AGENDA PUBLIC BOARD MEETING January 15, 2013

A public meeting of the State Personnel Board will be held on **Tuesday, January 15, 2013, at the Colorado State Personnel Board, 633 17th Street, Suite 1400, Courtroom 1, Denver, CO 80202-3604.** The public meeting will commence at **9:00 a.m.**

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-866-3300 by January 10, 2013.

I. REPORT OF KATHY NESBITT, STATE PERSONNEL DIRECTOR (EXECUTIVE DIRECTOR, DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA])

II. REQUESTS FOR RESIDENCY WAIVERS

- January 1, 2013 Residency Waiver Report

III. PENDING MATTERS

There are no Pending Matters before the Board this month.

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

- A. Alvin Sais v. Department of Corrections, State Personnel Board case number 2013S002.

Complainant, an applicant for a Correctional Officer position and former employee of DOC, was denied reinstatement based on his oral assessment. Upon review, the ALJ found that in executing a Release and Settlement Agreement in 2005, Complainant waived all rights to reinstatement and employment with DOC. Therefore, the ALJ granted Respondent's Motion to Dismiss and referred the matter to the State Personnel Director.

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

- A. Patrick Roybal v. Trustees of the State Colleges in Colorado, Adams State University, State Personnel Board case number 2013G027.

Complainant, a certified Information Technology Professional II employed by Adams State University, filed a petition for hearing on October 1, 2012, arguing that he was denied relief in the final grievance decision and that the decision was arbitrary and

capricious because he was denied standing to challenge the exemption of positions from the classified system. As relief, Complainant requests that his petition for hearing be set for evidentiary hearing.

Respondent argues that Complainant failed to meet his burden of showing that grounds exist under § 24-50-123(3), C.R.S. and/or Board Rule 8-46, 4 CCR 801, that merit a full hearing; the Board's review of Respondent's final grievance decision is limited; Complainant lacks standing to grieve the exemption of positions from the classified system; Complainant cannot establish standing based on a generalized injury in fact; and the positions were properly exempted from the classified system pursuant to § 24-50-135, C.R.S. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On January 2, 2013, the Administrative Law Judge issued a preliminary recommendation that a hearing be granted.

B. Ray Miller v. Colorado School of Mines, State Personnel Board case number 2013G028.

Complainant, a certified Information Technology Professional II at the Colorado School of Mines, filed a petition for hearing on October 10, 2012, arguing that the final grievance decision regarding the exemption of a position from the state personnel system was in violation of § 24-50-135(1)(a) and (3), C.R.S., and the Colorado Civil Service Amendment. Complainant requests that the position be brought into the state personnel system.

Respondent argues that Complainant lacks standing to challenge the exemption decision, that his grievance was untimely filed, that the exemption decision comported with the law, and that Complainant has failed to meet his burden of showing that grounds exist under § 24-50-123(3), C.R.S. and Board Rule 8-46, 4 CCR 801, that merit a full hearing.

On December 26, 2012, the Administrative Law Judge issued a preliminary recommendation that a hearing be granted.

C. Tom Orell v. Colorado Mesa University, State Personnel Board case number 2013G034.

Complainant, a certified Information Technology Professional - Tech II employed by Colorado Mesa University, Financial & Administrative Services, filed a petition for hearing on October 19, 2012, arguing that the final grievance decision upholding the exemption of seven positions from the state personnel system is a violation of the Civil Service Amendment and state law implementing that Amendment.

Respondent argues that Complainant lacks standing to assert the claim, that the exemptions are proper under the law, and that Complainant has failed to meet his burden of showing that grounds exist under § 24-50-123(3), C.R.S. and/or Board Rule 8-46, 4 CCR 801 that merit a full hearing.

On December 26, 2012, the Administrative Law Judge issued a preliminary recommendation that a hearing be granted.

D. Alfritch D. Anderson v. Colorado Community College System, State Personnel Board case number 2013S010.

Complainant, a certified Security Officer I employed by the Colorado Community College System, filed a petition for hearing on September 6, 2012, arguing that he was denied a promotion in a selection process based upon race and organizational membership

discrimination. As relief, Complainant requests that the Board investigate this matter and sanction the people involved; that he receive a \$50,000.00 monetary settlement; that the people involved in this incident be fired or demoted; and that he be made whole by placing him in a position with the state that is comparable to the position he was denied.

Respondent argues that Complainant failed to meet his burden of showing that grounds exist under § 24-50-123(3), C.R.S. and/or Board Rule 8-46, 4 CCR 801 that merit a full hearing and Complainant has not established an inference of race discrimination and, thus, cannot establish a *prima facie* case warranting a hearing. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On December 26, 2012, the Administrative Law Judge issued a preliminary recommendation that a hearing be granted.

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

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

VII. REVIEW OF THE MINUTES FROM THE DECEMBER 18, 2012 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VIII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS DECEMBER 18, 2012 PUBLIC MEETING:

- A. Richard Riley v. Department of Corrections, State Personnel Board case number 2011B100 (July 12, 2012).

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

- B. Brett Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2011G028 (July 16, 2012).

The Board voted to deny Respondent's Motion for Oral Argument, to grant the Motion to Submit Errata to Replace Page One of Respondent's Opening Brief on Appeal to State Personnel Board, and to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision of the ALJ, with the exception of the following modifications to the ALJ's Order:

1. The Board rejects the ALJ's conclusion that there is an anti-gay culture in the Colorado State Patrol and finds that this conclusion is not supported by substantial evidence in the record. The conclusion that there is an anti-gay culture in the Patrol is not necessary to support the ALJ's conclusion of law that Respondent discriminated against Complainant on the basis of sexual orientation, which the Board adopts.
2. The last two sentences of the Order, "The Patrol will immediately incorporate sexual orientation into all existing diversity training programs. The Patrol will immediately designate a command-level point-of-contact for gay Patrol members" are stricken, because these remedies are not within the scope of the Board's authority under Board Rule 9-6.

- C. Calvin Jones v. Department of Labor and Employment, Workforce Development Programs, State Personnel Board case number 2012G069.

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

- D. Lea Mason v. Department of Transportation, Audit Division, State Personnel Board case number 2013G012.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge, to deny the petition for hearing, and to remand the grievance of the corrective action to Respondent for completion of the grievance process.

- E. Theresa K. Bradbury v. Department of Law, State Personnel Board case number. 2013G023.

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

IX. REPORT OF THE DIVISION OF HUMAN RESOURCES, DPA

X. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Case Status Report
- Cases on Appeal to the Board and to Appellate Courts
- Mandate: Appeal Dismissed, Deborah Krieger v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2012G039, Court of Appeals Number 2012CA690
- Mandate: Order Affirmed, Richard P. Mignogna v. Department of Regulatory Agencies, Public Utilities Commission, State Personnel Board case number 2011G040, Court of Appeals Number 2011CA2117

B. OTHER BOARD BUSINESS

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

XI. PROPOSED LEGISLATION AND/OR RULEMAKING

- Temporary/Emergency Rulemaking Repeal of Board Rule 2-13
- Discussion of Chapter 7 changes to Board Rules.

XII. EXECUTIVE SESSION

A. Executive Session Minutes of December 18, 2012

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REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.

February 19, 2013	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
March 19, 2013	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
April 16, 2013	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
May 21, 2013	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
June 18, 2013	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
July 16, 2013	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
August 20, 2013	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
September 17, 2013	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
October 15, 2013	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
November 19, 2013	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
December 17, 2013	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604