

State of Colorado



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State Personnel Board
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AGENDA PUBLIC BOARD MEETING November 18, 2014

A public meeting of the State Personnel Board will be held on **Tuesday, November 18, 2014, at the Colorado State Personnel Board, 1525 Sherman Street, 1st Floor Conference Room 104, Denver, Colorado 80203.** 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 November 13, 2014.

CALL TO ORDER

- Attendance.
- Disclosure of any potential conflicts of interest with regard to present Board business and notice of recusal, if applicable.

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

II. PENDING MATTERS

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

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

There are 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.

Complainant, a certified Registered Nurse (RN) I employed by the Department of Human Services (DHS), Colorado Mental Health Institute at Pueblo (CMHIP), filed a petition for hearing on April 25, 2014, arguing that a corrective action issued on April 11, 2014, was arbitrary and capricious, and retaliation for protected disclosures he made under the State Employee Protection Act (Whistleblower Act), C.R.S. § 24-50-5-101 *et seq.* As relief, Complainant requests removal of adverse actions from his record, reimbursement of lost wages, attorney fees, correction of his April 17, 2014 Performance Management and Pay (PMAP) evaluation, and reinstatement of days off.

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; Complainant has not demonstrated a valid dispute that merits a hearing; Complainant fails to establish a *prima facie* claim under the Whistleblower Act; Complainant's disclosures do not fall within the protection of the Whistleblower Act; Complainant cannot meet his burden of demonstrating that the alleged disclosure was a motivating or substantial factor in the decision to reassign him; and Complainant's Performance Management and Pay (PMAP) rating was based on his interaction with his peers, not because of his disclosure of patient abuse. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On October 24, 2014, the ALJ issued a Preliminary Recommendation that the petition for hearing be granted.

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

Complainant, a certified Accounting Technician III employed by the Department of Corrections (DOC), filed a petition for hearing on September 23, 2013, arguing that the imposition of a correction action was a violation of an earlier settlement agreement and that the corrective action was arbitrary, capricious, retaliatory, and discriminatory based on race/color and age. As relief, Complainant requests removal of the corrective action; an end to the discrimination and the hostile work environment to which she has been subject, including efforts to remove her from her position and DOC employment; the creation of "a fair playing field so she can obtain evaluations at the 3 level"; and an award of attorney's fees and costs.

Respondent argues that Complainant failed to meet her 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; Complainant's Information Sheet is untimely; her petition for hearing should be deemed abandoned because her Information Sheet contains unsupported statements of alleged facts absent any legal argument to which Respondent can adequately respond in violation of Board Rules and the Notice of Preliminary Review; and she cannot establish her claims of discrimination or harassment/hostile work environment. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On October 30, 2014, the ALJ issued a Preliminary Recommendation that the petition for hearing be granted.

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

Complainant, a certified Information Technology (IT) Professional IV employed by Front Range Community College (FRCC), filed a petition for hearing on June 30, 2014, arguing that he was denied relief in his request for reasonable accommodation and that decision was arbitrary and capricious because it discriminated against him based on disability. As relief, he requests all relief to make him whole, including but not limited to an order granting his requested reasonable accommodation and attorney fees and costs.

Respondent argues that to set this matter for hearing will place the Board in the role of the "super personnel department"; based on the state of the current record, the Board will have insufficient information to make such a determination without ordering the parties to engage in the interactive process. As relief, FRCC requests that the Board send this matter back to the parties with instruction to engage in the interactive and grievance processes.

On November 5, 2014, the ALJ issued a Preliminary Recommendation that the petition for hearing be granted.

- D. Adel W. Edward v. Department of Transportation, State Personnel Board case number 2014S069.

At its October 21, 2014 meeting, the Board voted to adopt the Preliminary Recommendation of the ALJ and grant Complainant's petition for hearing on the issue of age discrimination. Complainant filed a petition for reconsideration requesting that issues of discrimination based on national origin/race/color be considered at the evidentiary hearing scheduled for January 21, 2015. Respondent filed a response to Complainant's motion opposing Complainant's petition for reconsideration. On November 5, 2014, the ALJ issued Recommended Order re: Complainant's Motion for Reconsideration of State Personnel Board's October 22, 2014 Order, recommending that the motion be denied.

V. 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 before the Board this month.

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

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 Reinstate 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 2014S069.

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

B. OTHER BOARD BUSINESS

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

IX. PROPOSED LEGISLATION AND/OR RULEMAKING

X. EXECUTIVE SESSION

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

November 18, 2014	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
December 16, 2014	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
January 20, 2015	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
February 17, 2015	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
March 17, 2015	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
April 21, 2015	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
May 19, 2015	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
June 16, 2015	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203