

State of Colorado



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AGENDA PUBLIC BOARD MEETING November 19, 2013

A public meeting of the State Personnel Board will be held on **Tuesday, November 19, 2013, at the Colorado State Personnel Board, 1525 Sherman Street, 3rd Floor Conference Room, Denver, CO 80203.** The public meeting will commence at 9:00 a.m. **There was no State Personnel Board Meeting conducted on October 15, 2013, due to lack of a quorum.**

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 14, 2013

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

II. PENDING MATTERS (from October 15, 2013)

A. Brett L. Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2011G028.

- Request and response to request to remove decisions from website

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. Patricia Aragon v. Department of Revenue, Title and Registrations Section, State Personnel Board case number 2013G084.

Complainant, a certified General Professional V employed by the Department of Revenue, filed a petition for hearing on April 25, 2013, arguing that the final grievance decision concerning a corrective action was due to retaliation for her disclosures, in violation of the Whistleblower Act. As relief, Complainant requests that the corrective action be removed from her file, that the performance evaluation be changed to more accurately reflect her performance of her duties, and that she be awarded her attorney fees.

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. Respondent argues that Complainant's Whistleblower Act complaint is untimely, and that the lack of any argument supporting such a claim should lead to a finding that this claim has been abandoned. Respondent also argues that Complainant's allegations of a violation of the Workplace Violence and Disruptive Behavior Policy and Procedure exceed the limitations on the Board's jurisdiction under C.R.S. § 24-50-123(3). Respondent requests that the petition for hearing be denied and the matter dismissed.

On November 4, 2013, the Administrative Law Judge issued a preliminary recommendation that the petition for hearing be denied and referred to the Personnel Director for further action as appropriate.

B. Mark E. Southerland v. Department of Human Services, Division of Youth Corrections, Spring Creek Youth Services Center, State Personnel Board case number 2014S003.

Complainant, a certified Correctional Youth Security Officer I employed by the Department of Human Services, Division of Youth Corrections, Spring Creek Youth Services Center, filed a petition for a Director's review on July 2, 2013, arguing that he was denied relief in the selection decision and that decision not to select him for the position of CYSO II was arbitrary and capricious because it was discriminatory based on gender and bias. As relief, Complainant requests what is due/fair and owed to him: (a) Total of \$54,700 dollars, (b) 20% pay raise, and (c) 5 years of state time to be added to his current state time.

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 was not discriminated against because of his race/color, gender or bias; and the decision to select another applicant was for legitimate non-discriminatory reasons. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On November 6, 2013, the Administrative Law Judge issued a preliminary recommendation that the petition for hearing be denied and referred to the Personnel Director for further action as appropriate.

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

A. Mark Mitchell v. University of Colorado Boulder, Department of Intercollegiate Athletics, Athletic Game Management and Facility Operations, State Personnel Board case number 2013B116 (September 9, 2013).

Complainant appealed his termination of employment. He was Custodian III at CU athletic facilities, but yelled at and verbally abused his staff at work and at home, and demanded rides home and on errands by subordinates every day. He also used employees for personal benefit during work time. Complainant asserted lack of progressive discipline and no warning on performance evaluations. The ALJ upheld the termination upheld due to seriousness of actions and abuse of position.

B. Joanne Brown v. Department of Human Services, Colorado Mental Health Institute of Pueblo, State Personnel Board case number 2012B128 (September 12, 2013).

Complainant worked at CMHIP as a Psychiatric Admissions staffer on graveyard shift. She became disabled and was no longer able to perform physical take-downs or CPR or train for these duties. She requested an accommodation by removing those duties from her position; her request was denied and she was administratively separated after exhaustion of leave. She alleged disability discrimination. The ALJ held that

performance of those duties was an essential function of her position because of the serious consequences that could result if the need for a take-down during her isolated shift occurred.

C. Renee Ryan v. Department of Human Services, Colorado Mental Health Institute at Fort Logan, State Personnel Board case number 2013G025 (September 12, 2013).

Complainant, a probationary Nurse I with the Colorado Mental Health Institute at Fort Logan (Ft. Logan), appealed the termination of her employment on the grounds that the decision violated the State Employee Protection Act (Whistleblower Act). Complainant specifically alleged that she was retaliated against for refusing to provide emergency medications under circumstances that did not meet her nursing judgment, for critiquing the treatment team's treatment protocols as insufficiently grounded in recovery model treatment principles, and for complaining that the facility did not provide adequate treatment plans for patients or provide adequate skill training for patients. After hearing, the ALJ found that Complainant had met her burden of proving by a preponderance of the evidence that certain of her statements which questioned the quality of the psychiatric treatment services provided by Ft. Logan were disclosures of information entitled to protection under the Whistleblower Act, and that these disclosures were a substantial or motivating factor in the decision to terminate Complainant's employment. The ALJ also found that Respondent then met its burden to prove by a preponderance of the evidence that Complainant would have been terminated even without the protected disclosures. The ALJ found that Complainant's actions in failing to administer emergency or involuntary medications was not a protected disclosure subject to protection and that such actions were contrary to the applicable standards which governed the administration of medications. These actions alone would warrant the termination of a probationary nurse. The ALJ also found that Complainant's other actions in not working well as a member of a treatment team, complaining about the treatment provided by her team during an internal interview, and leaving the impression with various staff members that she had no intention of taking their perspectives into account in the manner in which she presented her arguments, were all factors which supported termination of her employment. As a result, The ALJ found that there had been no violation of the Whistleblower Act and the termination of Complainant's employment was affirmed.

VI. REVIEW OF THE MINUTES FROM THE SEPTEMBER 17, 2013 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS SEPTEMBER 17, 2013 PUBLIC MEETING:

A. Petition for Declaratory Order of "Pro Se" Sgt. Sheldon Reneau, Sgt. Mary Martinez, C/O Kristina Grubb, C/O Mary Moore, and Sgt. Brian Thomas, State Personnel Board case number 2014D001.

The Board voted to deny the Petition for Declaratory Order on the grounds of lack of jurisdiction.

B. Karen McGrane v. Department of Human Services, Colorado State Veterans' Nursing Home at Fitzsimons, State Personnel Board case number 2013G076.

The Board voted to adopt and grant the petition for hearing on the issue of Whistleblower Act violation.

C. Kimberly Hardesty v. Department of Human Services, Division of Youth Corrections, Zebulon Pike Youth Services Center, State Personnel Board case number 2013G080.

The Board voted to adopt and grant the petition for hearing on Complainant's claims of Colorado Anti-Discrimination (CADA) retaliation and State Employee Protection Act (Whistleblower Act) violation.

DECISION OF THE STATE PERSONNEL BOARD MADE AS A RESULT OF A LACK OF QUORUM ON OCTOBER 15, 2013:

D, Tina Romero v. Department of Revenue, State Personnel Board case number 2013G098.

The Board issued a Notice of Lack of Quorum in this case, pursuant to § 24-4-105(14)(b)(II), C.R.S., denying Complainant's petition for hearing, making the Preliminary Recommendation of the Administrative Law Judge a final agency order, and referring the matter to the State Personnel Director for further action, as appropriate.

VIII. REPORT OF THE DIVISION OF HUMAN RESOURCES, DPA

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts
- Mandate: Order Affirmed, Larry Brown v. Colorado State University, Housing & Dining Services, State Personnel Board case number 2012G061, Court of Appeals Number 2012CA1366

B. OTHER BOARD BUSINESS

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

X. PROPOSED LEGISLATION AND/OR RULEMAKING

XI. EXECUTIVE SESSION

A. Executive Session Minutes of September 17, 2013

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

December 17, 2013	Colorado State Personnel Board 1525 Sherman Street, 3rd Floor Denver, CO 80203
January 21, 2014	Colorado State Personnel Board 1525 Sherman Street, 3rd Floor Denver, CO 80203
February 18, 2014	Colorado State Personnel Board 1525 Sherman Street, 3rd Floor Denver, CO 80203
March 18, 2014	Colorado State Personnel Board 1525 Sherman Street, 3rd Floor Denver, CO 80203
April 15, 2014	Colorado State Personnel Board 1525 Sherman Street, 3rd Floor Denver, CO 80203
May 20, 2014	Colorado State Personnel Board 1525 Sherman Street, 3rd Floor Denver, CO 80203
June 17, 2014	Colorado State Personnel Board 1525 Sherman Street, 3rd Floor Denver, CO 80203