

State of Colorado



John W. Hickenlooper
Governor

Sally Yerger
Board Chair

Dana Shea-Reid
Board Director

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

AGENDA PUBLIC BOARD MEETING December 16, 2014

A public meeting of the State Personnel Board will be held on **Tuesday, December 16, 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 December 11, 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 AT THE COURT OF APPEALS

- A. Shantell Honest v. Department of Human Services, Division of Youth Corrections, Platte Valley Youth Service Center, State Personnel Board case number 2014G036, Court of Appeals Number 2014CA934.

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

- A. Anne Sheridan v. Department of Corrections, Division of Adult Parole, Community Corrections & Youthful Offender System, State Personnel Board case number 2014B033 (July 7, 2014).

The Initial Decision of the Administrative Law Judge upheld Respondent's termination of Complainant's employment with DOC due to failing to meet minimum performance requirements. Complainant timely appealed her termination claiming it was arbitrary and capricious, but the state proved by a preponderance of the evidence that Complainant was not meeting minimum job requirements, and had not been during her 14 year career with DOC.

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

- A. Julius Tomasi v. Department of Transportation, State Personnel Board case number 2014G082.

Complainant, a permanent part-time Transportation Maintenance I employed by the Department of Transportation, was issued a corrective action on January 23, 2014, due to a December 26, 2013 heated encounter with his supervisor. Complainant grieved this corrective action; after his grievance was denied, he filed a petition for hearing on April 4, 2014, arguing that the denial of his grievance was arbitrary and capricious because it was a violation of the Americans with Disabilities Act and the Colorado State Employee Protection (Whistleblower) Act. He also alleged that he was denied a transfer to a full time position because he raised safety concerns. As relief, Complainant requests that the corrective action be reversed and removed, and that Region I management cease and desist from harassment, intimidation, and threatening, bullying behavior.

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 cannot demonstrate a *prima facie* case of either discrimination or Whistleblower; and Complainant's insubordination to his supervisor was the basis of the corrective action taken against him, not his disclosure of safety concerns. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On November 26, 2014, the ALJ issued a Preliminary Recommendation that the petition for hearing 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 NOVEMBER 18, 2014 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS NOVEMBER 18, 2014 PUBLIC MEETING:

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

The Board voted to provide notice that it has declined to act upon or to address Respondent's Motion for Stay of Final Agency Order Pending Appeal as the Board no longer has jurisdiction over this matter.

- B. Richard Reinhardt v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2014G088.

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

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

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

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

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

- E. Adel W. Edward v. Department of Transportation, State Personnel Board case number 2014S020.

The Board voted to adopt Administrative Law Judge's Recommended Order re: Complainant's Motion for Reconsideration of State Personnel Board's October 22, 2014 Order, and to deny Complainant's Motion for Reconsideration to Add Complainant's National Origin, Race, Color and Ancestry to Claims of Discrimination Against CDOT.

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.

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