

State of Colorado



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State Personnel Board
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AGENDA PUBLIC BOARD MEETING April 15, 2014

A public meeting of the State Personnel Board will be held on **Tuesday, April 15, 2014, at the Colorado State Personnel Board, 1525 Sherman Street, 1st Floor Conference Room 103, 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 April 10, 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 KATHY NESBITT, STATE PERSONNEL DIRECTOR (EXECUTIVE DIRECTOR, DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA])

REPORT OF THE DIVISION OF HUMAN RESOURCES [DHR], DPA

II. PENDING MATTERS

There are no pending matters before the Board this month.

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. Theresa Chavez v. Department of Education, Office of Professional Services and Education Licensure, State Personnel Board case number 2014G011.

Complainant, a certified Administrative Assistant III employed by DOE, filed a petition for hearing on August 14, 2013, arguing that she was denied relief in the final grievance decision and that decision was arbitrary and capricious because it was discriminatory based on age, disability, religion/creed and Whistleblower retaliation. As relief, Complainant requests that the memo be removed from her file and that her attorney's fees be paid.

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; rescission of the corrective action is moot; and Complainant has not stated a basis to support a Whistleblower claim. As relief Respondent requests that Complainant's petition for hearing be denied and dismissed.

On April 3, 2014, the Administrative Law Judge issued a preliminary recommendation that Complainant's petition for hearing be denied as to Complainant's August 6, 2013 grievance process, and remanded to the agency for resolution of the August 14, 2013 grievance.

B. Shantell Honest v. Department of Human Services, Division of Youth Corrections, Platte Valley Youth Service Center, State Personnel Board case number 2014G036.

Complainant, a probationary Correctional Youth Security Officer I employed by DHS Division of Youth Corrections, Platte Valley Youth Service Center, filed a petition for hearing on November 1, 2013, arguing that she was wrongfully terminated during the probationary period of her employment and that the termination decision was arbitrary and capricious because it was discriminatory based on gender, including sexual harassment; race/color; and pregnancy; and retaliatory for disclosures she made, in violation of the Whistleblower Act. As relief, Complainant requests a reversal of Respondent's dismissal, back pay/salary, return of retroactive working months toward certified classification, transfer to a different facility and/or a comparable position in the State Personnel system, and *ad quod damnum* the Administrative Law Judge deems necessary to make the Complainant whole.

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 has not demonstrated a valid dispute that merits a hearing; Complainant has not presented evidence that her termination violated the Whistleblower Act; Complainant has abandoned her claim of discrimination; and Complainant has not established a case for sexual harassment. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On April 2, 2014, the Administrative Law Judge issued a preliminary recommendation that Complainant's petition for hearing be denied.

C. William Harry Challans v. Department of Corrections, State Personnel Board case number 2014S009.

Complainant, an applicant for a Community Parole Officer position at DOC, filed a petition for hearing on November 18, 2013. Complainant asserts that Respondent denied his application based on age discrimination. As relief, Complainant requests that a hearing be granted.

Respondent argues that Complainant has failed to meet his burden of showing that grounds exist under Board Rule 8-46, 4 CCR 801, that merit a full hearing; Complainant was not discriminated against because of his age; and the decision not to select Complainant was for legitimate non-discriminatory reasons. Respondent requests that a hearing be denied.

On March 26, 2014, the Administrative Law Judge issued a preliminary recommendation that Complainant's petition for hearing be denied.

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

- A. Terrence M. Sullivan v. Department of Transportation, State Personnel Board case number 2014B003 (March 17, 2014).

Complainant worked for CDOT for 20 years before being administratively discharged on June 25, 2013. Complainant appealed the separation from service arguing that he was discriminated against on the basis of disability, in violation of Colorado Anti-Discrimination Act. He further contends that CDOT violated the Americans with Disabilities Act by failing to engage in the interactive process with him. The ALJ found that CDOT violated the ADA by failing to engage in the interactive process with Complainant, reversed Complainant's separation from service, and ordered CDOT to complete the interactive process with him and to pay him back pay. Complainant and Respondent have each filed a petition for reconsideration.

VI. REVIEW OF THE MINUTES FROM THE MARCH 18, 2014 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

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

- A. Mourad Ksouri v. Governor's Office of Information Technology, State Personnel Board case number 2013B076(C)(January 31, 2014; Amended February 26, 2014).

The Board voted to review the Amended Initial Decision of the ALJ at the Board's July 15, 2014 meeting. As part of such review, the parties are asked to brief the issue of whether the ALJ's Conclusion of Law No. 5 should be upheld. Specifically, given the finding that Respondent's disciplinary termination of Complainant was deemed arbitrary and capricious and not within the range of reasonable alternatives, the parties are asked to brief whether the appointing authority should determine the lesser discipline ordered by the ALJ or whether such discipline should be delegated by the appointing authority to a neutral party.

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

- Attorney advice regarding considerations in developing motions

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

May 20, 2014	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
June 17, 2014	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
July 15, 2014	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
August 19, 2014	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
September 16, 2014	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
October 21, 2014	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
November 18, 2014	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
December 16, 2014	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203