

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
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AMENDED AGENDA PUBLIC BOARD MEETING April 16, 2013

A public meeting of the State Personnel Board will be held on Tuesday, April 16, 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 April 12, 2013.

I. REPORT OF KATHY NESBITT, STATE PERSONNEL DIRECTOR (EXECUTIVE DIRECTOR, DEPARTMENT OF PERSONNEL AND ADMINISTRATION [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. Floyette Peaker v. Department of Human Services, Colorado State Veterans Nursing Home at Fitzsimons, State Personnel Board case number 2013G036.

Complainant, a probationary Certified Nursing Assistant employed by the Department of Human Services, Colorado State Veterans Nursing Home at Fitzsimons, filed a petition for hearing on October 26, 2012, arguing that she was terminated during her probationary period and that the termination decision was arbitrary and capricious because it was made in retaliation for her disclosures, in violation of the Whistleblower Act. As relief, Complainant requests to be reinstated at a different facility in the Aurora/Denver area; to be compensated for the hardship and violations that she has had to endure, which caused her and her family to suffer; and to be given a letter of apology.

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; the Board does not have statutory authority to grant a hearing in this matter

regarding Complainant's Whistleblower allegations; Complainant has failed to demonstrate any "disclosure of information" as defined by § 24-50.5-102(2); Complainant's alleged "disclosure of information" as defined by § 24-50.5-102(2) is not a matter of public concern because it is a personal dispute with a supervisor; Complainant has failed to demonstrate any "disciplinary action" as defined by § 24-50.5-102(1), or that any disclosure of information was a substantial and motivating factor of a disciplinary action; Complainant has failed to demonstrate a good faith effort to provide to her supervisor or appointing authority the information to be disclosed prior to the time of its disclosure; and an employee who fails to perform satisfactorily during her probationary employment does not have a right to a hearing. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On March 18, 2013, the Administrative Law Judge issued a preliminary recommendation that Complainant's petition for hearing be denied.

B. Maurice G. Carter v. Department of Transportation, State Personnel Board case number 2013G037.

Complainant, a certified Transportation Maintenance II employed by the Department of Transportation, filed a petition for hearing on October 29, 2012, arguing that he was denied relief in a decision to return him to a hostile work environment and that decision was arbitrary and capricious because it was discriminatory based on organizational membership, political affiliation, race/color, religion/creed, and sexual orientation, as well as retaliatory for disclosures he had made, in violation of the Whistleblower Act. As relief, Complainant requests that he be placed back into the headquarters Bituminous Central Lab without losing any base pay; that he be given his annual and sick time back which he lost since September 2012; and that he be awarded his attorney fees incurred with his attorney.

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; this Board's review is limited; Complainant has failed to demonstrate that any valid legal issues exist that merit a hearing and has failed to provide any evidentiary support for his whistleblower complaint; Complainant has failed to establish a *prima facie* case of discrimination; and Complainant has not demonstrated that he would be able to present a *prima facie* case of hostile work environment in a hearing. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On April 2, 2013, the Administrative Law Judge issued a preliminary recommendation that Complainant's petition for hearing be denied.

C. Rita Rittenmeyer v. Department of Transportation, State Personnel Board case number 2013G041.

Complainant, a probationary Office Manager I employed by the Department of Transportation, filed a petition for hearing on November 13, 2012, arguing that she was improperly terminated during the probationary period and the termination was arbitrary and capricious because she was terminated for reporting hostile working conditions to Human Resources, in violation of the Whistleblower Act. As relief, Complainant is requesting back pay, reversal of the personnel action taken against her, expungement of her record, attorney fees (if an attorney is retained), reinstatement to the position of OM I for a state agency at the compensation level of \$3965.00 per month in the areas of Canon City, Pueblo or Colorado Springs. Complainant also asserts that she was a trial service, not a probationary employee.

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 was a probationary employee; Complainant's termination was for unsatisfactory performance; and Respondent did not violate the Whistleblower Act on the basis that Complainant does not articulate a disclosure covered under the Whistleblower Act and the alleged disclosures were not a motivating or substantial factor in the decision to correct Complainant's performance. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On March 28, 2013, the Administrative Law Judge issued a preliminary recommendation that Complainant's petition for hearing be denied.

D. Michael Zordani v. Department of Corrections, Denver Complex, State Personnel Board case number 2013G055.

Complainant, a certified Correctional Officer I employed by the Department of Corrections, filed a petition for hearing on January 17, 2013, arguing that he was denied relief in the final grievance decision and that decision was arbitrary and capricious because it violated agency or Board grievance procedures. As relief, Complainant requests that this performance documentation form 1450 – 02A, that was presented to him on November 7, 2012, be removed/purged from his file immediately, without prejudice; that the file will not be used nor will it be referred to in any future disciplinary issues that may arise; and that it will not be used in Complainant's position evaluations, or hinder in any possible way promotional or job opportunities that Complainant may seek with DOC or any outside agency.

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 nor has he provided allegations that merit a full hearing. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On April 2, 2013, 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. Richard L. Homann v. Department of Public Safety, Division of Fire Safety and Control, State Personnel Board case number 2013B004 (March 21, 2013), Order Granting Complainant's Motion for Summary Judgment.

After review of the parties' Motions for Summary Judgment, the Administrative Law Judge entered the following orders:

- HB 1283 affected a transfer of Complainant and his position from CSU to DPS; the legislative intent was to effectuate this transfer in an efficient manner;
- The State Personnel Systems Act provisions governing transfers and bringing state employees into the personnel system apply to the movement of Complainant's position within the state system;
- As an involuntary transfer appointee, Complainant was not required to apply for his position at DPS or to serve a period of probation or trial service; because Complainant did not refuse the Wildland Fire Section Chief position, it is his position by operation of law;
- Complainant is entitled to service credit for his fifteen years in the Fire Supervisor position at CSU and his service is deemed to have been continuous;

- Complainant is now a certified employee in the state personnel system by operation of HB 1283 and the State Personnel Systems Act;
- Respondent's termination of Complainant's employment exactly one second after he transferred into the agency violated C.R.S. § 24-33.5-1201(4)(b)(I) and (II);
- Complainant shall be reinstated to his Wildland Fire Section Chief position retroactive to July 1, 2012 and is entitled to back pay and benefits to that date.

VI. REVIEW OF THE MINUTES FROM THE FEBRUARY 19 AND MARCH 19, 2013 PUBLIC MEETINGS OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS MARCH 19, 2013 PUBLIC MEETING:

- A. James Beard v. Community Colleges of Colorado, Front Range Community College, State Personnel Board case number 2013B043.

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

- B. John Carrigan v. Department of Corrections, State Personnel Board case number 2013G049.

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

- C. Mark Walton v. Department of Labor and Employment, Unemployment Insurance, State Personnel Board case number 2013S019.

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

- Case Status Report
- 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

X. PROPOSED LEGISLATION AND/OR RULEMAKING

XI. EXECUTIVE SESSION

- A. Executive Session Minutes of February 19, 2013
- B. Attorney advice concerning legal implications of records requests to Board

- C. Attorney advice concerning a party's communication with Board counsel or Board staff regarding matters pending before the Board

XII. BOARD DELIBERATION

- A. Board deliberation and decision, if any, regarding XI. B.
- B. Board deliberation and decision, if any, regarding XI. C.

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

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