

State of Colorado



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State Personnel Board
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AGENDA PUBLIC BOARD MEETING May 20, 2014

A public meeting of the State Personnel Board will be held on **Tuesday, May 20, 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 May 15, 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. Harvest Thomas III v. Department of Human Services, Office of Operations and Financial Services, State Personnel Board case number 2013G085.

Complainant, a probationary Accounting Technician III employed by the Department of Human Services, Office of Administrative Solutions, filed a petition for hearing on May 3, 2013, arguing that he was denied relief in the termination decision and that decision was arbitrary and capricious because it was discriminatory based on race/color and his supervisor encouraged him to apply for other positions. As relief, Complainant requests that his termination status to be changed and his state personnel file to reflect that he is eligible for rehire in any State of Colorado Department; that his termination status be

changed to voluntary resignation; and that he be given his loss of wages.

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 provided false or misleading information on his information sheet; Complainant did not establish a *prima facie* case for a valid discrimination claim; therefore, a hearing must be denied; Complainant cannot satisfy a *prima facie* case based on his claim: Race (African American); Complainant cannot satisfy a *prima facie* case based on his claim: Gender; Complainant's reliance on a single stray comment is insufficient to grant a hearing; and Complainant cannot satisfy a *prima facie* case based on his claim: Retaliation. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On May 6, 2014, the Administrative Law Judge issued a preliminary recommendation that Complainant's petition for hearing be denied.

B. Kathy Starling v. Department of Revenue, Tax Audit and Compliance, State Personnel Board case number 2014G013.

Complainant, a certified Tax Examiner I employed by the Department of Revenue, Tax Audit and Compliance, filed a petition for hearing on August 30, 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 and gender, including sexual harassment. As relief, Complainant requests that her petition for hearing be granted.

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 and Complainant has failed to present sufficient information that she has been treated less favorably than others not in the protected class under circumstances that give rise to an inference of unlawful discrimination. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On May 6, 2014, the Administrative Law Judge issued a preliminary recommendation that Complainant's petition for hearing be granted.

C. Phillip K. Rietz v. Colorado School of Mines, Facilities Management, State Personnel Board case number 2014G028.

Complainant, a probationary Custodian I employed by the Colorado School of Mines, Facilities Management, filed a petition for hearing on October 1, 2013, arguing that he was denied relief in the decision to terminate his employment during the probationary period and that decision was arbitrary and capricious because it was discriminatory based on disability. As relief, Complainant requests reinstatement of employment either with CSM or another suitable facility; removal of all inaccurate items from all of his personnel records; and pay or compensation for lost time on the job/work/losses incurred due to the discrimination that he suffered through the lack of interest in the violations that occurred by CSM Management and Supervisors.

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; and Complainant has not demonstrated that he would be able to present a *prima facie* case of disability discrimination under the Colorado Anti-Discrimination Act in a hearing. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On May 6, 2014, the Administrative Law Judge issued a preliminary recommendation that Complainant's petition for hearing be denied.

- D. Caitlin R. Monahan v. University of Colorado Denver, School of Dental Medicine, State Personnel Board case number 2014G044.

Complainant, a probationary Administrative Assistant II employed by the University of Colorado Denver, School of Dental Medicine, filed a petition for hearing on November 14, 2013, arguing that she was wrongfully terminated and that Respondent's decision to terminate her was arbitrary and capricious because it was discriminatory based on her disability. As relief, she requests reinstatement, full back pay and benefits to the date of termination, and reasonable attorney 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; the Board is limited to considering Complainant's claims of retaliation; Complainant was terminated for an ongoing pattern of unsatisfactory performance and failure to improve, not because of disability discrimination; and Complainant was not terminated in retaliation for any alleged protected activity. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On May 7, 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. Stephen D. Harrison v. Department of Human Services, Division of Facilities Management, State Personnel Board case number 2013S031 (April 25, 2014).

Complainant appealed Respondent's decision that he should not be interviewed in the third and final round of the selection process for the position of Equipment Operator III. Complainant argued that Respondent's decision constituted unlawful age discrimination, and asked for an order that he should be employed in the position and provided other relief as determined by the ALJ. After hearing, the ALJ determined that Respondent's decision to reject Complainant's application for the EO III position was not a violation of the Colorado Anti-Discrimination Act. The ALJ affirmed Respondent's decision to reject Complainant's application as part of the EO III selection process and dismissed the appeal with prejudice.

VI. REVIEW OF THE MINUTES FROM THE APRIL 15, 2014 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS APRIL 15, 2014 PUBLIC MEETING:

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

The Board voted to deny Complainant's petition for hearing as to Complainant's August 6, 2013 grievance process, and to remand the August 14, 2013 grievance to the agency for resolution.

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

The Board voted to deny Complainant's petition for hearing.

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

The Board voted to deny Complainant's 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.

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