

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
Fax (303) 866-5038

AMENDED AGENDA PUBLIC BOARD MEETING May 21, 2013

A public meeting of the State Personnel Board will be held on **Tuesday, May 21, 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 May 16, 2013.

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

II. PENDING MATTERS

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

At its December 18, 2012 meeting, the Board adopted the Initial Decision of the Administrative Law Judge (ALJ) in this matter, with the following exceptions:

1. The Board rejects the ALJ's conclusion that there is an anti-gay culture in the Colorado State Patrol and finds that this conclusion is not supported by substantial evidence in the record. The conclusion that there is an anti-gay culture in the Patrol is not necessary to support the AU's conclusion of law that Respondent discriminated against Complainant on the basis of sexual orientation, which the Board adopts.
2. The last two sentences of the Order, "The Patrol will immediately incorporate sexual orientation into all existing diversity training programs. The Patrol will immediately designate a command-level point-of-contact for gay Patrol members." are stricken, because these remedies are not within the scope of the Board's authority under Board Rule 9-6.

On January 28, 2013, the Board Director denied Respondent's Motion for Leave to File Out of Time, and Respondent's Motion for Board Reconsideration, Clarification, and Amendment of Order filed with the Board January 18, 2013, and ordered that the matter be remanded to the ALJ for a hearing to determine the appropriate amount of front pay to be awarded to Complainant.

On March 21, 2013, ALJ McClatchey denied Respondent's Motion for Stay Pending Appeal; Procedural Order. On April 22, 2013, Respondent filed its Motion for Personnel Board's Reconsideration of ALJ's Order Denying Respondent/Appellant's Motion for Stay Pending Appeal. On May 2, 2013, Complainant filed Complainant's Response to

Respondent's Motion for Personnel Board's Reconsideration of ALJ's Order Denying Respondent/Appellant's Motion for Stay Pending Appeal.

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

There are no Preliminary Recommendations of the Administrative Law Judges before the Board this month.

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

- A. Al Paiz v. Department of Human Services, Division of Youth Corrections, Lookout Mountain Youth Services Center, State Personnel Board case number 2013B068(C) (April 22, 2013).

Complainant appealed the three-month reduction in pay he received for being the Safety Security Officer I on duty in the Cedar Unit A pod when three of the youth detainees hid at the back of the upper level quiet living area and engaged in sexual conduct, and then two of the youths again engaged in sexual conduct on the lower level quiet living area. The ALJ found that one of the primary functions of an SSO I is to maintain a head count of the youths assigned to, or visiting, the pod. Additionally, an SSO I is expected to report and address any evidence that a security violation has occurred. The ALJ found that a preponderance of the evidence established that Complainant was the SSO I on duty when three youths went to a spot in the pod which was not in Complainant's line of sight, that Complainant saw the three youths come down from that position but failed to report or address anything, and that such actions by the youth were major security violations which should have been reported and addressed by Complainant. The preponderance of the evidence also established that Complainant was the SSO I on duty when two of the youths later engaged in sexual contact. Finally, the ALJ found that Complainant did not tell the truth about his actions during the Board Rule 6-10 process. The ALJ concluded that, given the fact that the primary function of the SSO I on the pod is to maintain visual lines of sight on the youth offenders so as to not allow them to engage in conduct violations, as well as to address any violations that are noted by staff, the performance deficits in this case were sufficiently serious to issue a disciplinary action without first issuing a corrective action for similar conduct. The disciplinary action was affirmed, and Complainant's request for an award of attorney fees and costs was denied.

VI. REVIEW OF THE MINUTES FROM THE FEBRUARY 19, MARCH 19, AND APRIL 16, 2013 PUBLIC MEETINGS OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS APRIL 16, 2013 PUBLIC MEETING:

- A. Floyette Peaker v. Department of Human Services, Colorado State Veterans Nursing Home at Fitzsimons, State Personnel Board case number 2013G036.

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

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

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

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

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

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

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

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
- New look for Website

B. OTHER BOARD BUSINESS

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

X. PROPOSED LEGISLATION AND/OR RULEMAKING CONTINUED FROM MAY 7, 2013

A. Deliberation and voting on proposed Board Rule 8-59

B. Reconsideration of proposed Board Rule 8-41(A)

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

D. Attorney advice on proposed Board Rule 8-41(A) and proposed Board Rule 8-59

XII. BOARD DELIBERATION

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

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

* * *

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

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