

State of Colorado



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State Personnel Board
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AGENDA PUBLIC BOARD MEETING July 15, 2014

A public meeting of the State Personnel Board will be held on **Tuesday, July 15, 2014, at the Colorado State Personnel Board, 1525 Sherman Street, 4th Floor Courtroom 6, 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 July 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.

ANNUAL ELECTION OF BOARD CHAIR AND VICE-CHAIR FOR FISCAL YEAR 2014 – 2015

I. REPORT OF DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA] AND REPORT OF THE DIVISION OF HUMAN RESOURCES [DHR]

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

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

Complainant appealed a corrective action, a disciplinary pay reduction, and his termination of employment. The ALJ found that Complainant did not commit most of the acts upon which the disciplinary pay reduction was based; the January 2013 disciplinary action was arbitrary, capricious and violated Board Rule 6-10; Respondent's September 2012 corrective action and the January 2013 disciplinary and corrective actions were retaliatory in violation of the Colorado Anti-Discrimination Act; Respondent lacked just cause for the April 2013 disciplinary termination because Complainant did not commit some of the acts upon which it was based; the April 2013 termination was arbitrary, capricious and not within the range of reasonable alternatives; Respondent did not create a hostile work environment nor did it discriminate against Complainant. The ALJ rescinded the September 2012 and January 2013 corrective and disciplinary actions; modified the April 2013 termination to a lesser discipline; reinstated Complainant to his IT

Pro III position with back and benefits; and ordered Respondent to pay Complainant's attorney fees and costs in bringing his appeal to the Board.

On March 18, 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.

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

A. Randy Smith v. Department of Corrections, State Personnel Board case number 2014S010.

Complainant, a certified Clinical Services Medical Case Manager employed by the Department of Corrections, filed a petition for hearing on December 6, 2013, arguing that he was denied relief in the selection process and the selection decision was arbitrary and capricious because it discriminated against him on the basis of gender, veteran's status, and "refuse opportunity to promote within and only 2 men occupy 12 positions." As relief, Complainant requests: (1) To be offered the HSA position at CMC and promoted with a comparable pay raise or to be offered an HSA position within the Canon City area as there is now an opening at CSP/CCF {two HSA options}. This is especially true due to the recent notification that HSA shuffling is forthcoming April 1st. No retaliation or extreme job demands that would constitute a failure of duty and predictable release (firing) from Clinical Services; (2) in the alternative to keep his current position/pay as Medical Case Manager and be relocated to an office in one of the Fremont County facilities – preferable CTCF. He wants a fresh start and alleviation of paranoia of retaliation from the HQ management staff. It is also currently an unnecessary 90-mile commute as he can work anywhere there is a computer with access to DOC's Intranet. He will assist in locating an office if management declares there is nothing available. Again, he wants no retaliation due to his submission of this complaint; (3) Interim HSAs are no longer considered for permanent HSA positions; (4) As a last resort, Complainant would agree to leave DOC with at least one year of his current salary in order to begin a new career outside the confines of misappropriated behavior from upper management. It would seem that there is not a promotional opportunity and management contends through their continuous non-selection that he does not have the qualifications or experience to hold a position, though he did hold the DWCF HSA position June 2005 - January 2008; (5) No matter what the decision, he formerly requests no retaliation or excessive demands to invoke work/duty failure as a subversive punishment. He does not wish to be demoted for airing this grievance or moved to another Department for the simple solution of removing someone who is standing up for something he believes is injustice. It is noted that the HSA position is a challenging one, but one job that can be accomplished with proper communication and guidance.

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 did not establish a *prima facie* case for a valid discrimination claim and therefore, a hearing must be denied; Complainant cannot satisfy a *prima facie* case based on his claim: Gender (Male) (Reverse Discrimination Claim); Complainant cannot satisfy a *prima facie* case discrimination claim; DOC complied with the Personnel Board Rules and Director's Administrative Procedures; and Complainant provided false or misleading information on his information sheet.

On July 3, 2014, the Administrative Law Judge issued a preliminary recommendation that Complainant's petition for hearing be denied and referred to the Director of Personnel for further action, as appropriate.

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 this month.

VI. REVIEW OF THE MINUTES FROM THE JUNE 17, 2014 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JUNE 17, 2014 PUBLIC MEETING:

- A. Doug Wanker v. Department of Transportation, State Personnel Board case number 2013B092 (December 27, 2013).

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge.

- B. Stephanie Sisneros v. Department of Corrections, Clinical Services, State Personnel Board case number 2014G055.

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

- C. Nancy Fey v. Department of Human Services, Colorado State Veteran's Nursing Home at Fitzsimons, State Personnel Board case number 2014G067.

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

- D. Joshua Powell v. Colorado School of Mines, Facilities Management, State Personnel Board case number 2014G075.

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

- E. Richard Medina v. Office of Information Technology, State Personnel Board case number 2014G044.

The Board voted to grant 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

- Brett L. Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2011G028, Court of Appeals No.2014CA390.

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

IX. PROPOSED LEGISLATION AND/OR RULEMAKING

- Modification for existing Board Rules to make minor corrections and to update rules to correspond with changes in statutes

X. EXECUTIVE SESSION

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

*July 15, 2014	Colorado State Personnel Board 1525 Sherman Street, 4th Floor Courtroom 6 Denver, CO 80203
*August 19, 2014	Colorado State Personnel Board 1525 Sherman Street, 4th Floor Courtroom 6 Denver, CO 80203
*September 16, 2014	Colorado State Personnel Board 1525 Sherman Street, 4th Floor Courtroom 6 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

*As part of the implementation of CORE (Colorado Operations Resource Engine) the first floor conference rooms at 1525 Sherman will be converted to a CORE call center for a period of time. This will require the State Personnel Board to relocate its monthly meetings for July, August and September. These meetings will be held in the State Personnel Board courtroom #6 on the 4th floor of 1525 Sherman. We are sorry for any inconvenience this may cause.