

# State of Colorado



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State Personnel Board  
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## AGENDA PUBLIC BOARD MEETING August 19, 2014

A public meeting of the State Personnel Board will be held on **Tuesday, August 19, 2014, at the Colorado State Personnel Board, 1525 Sherman Street, 4<sup>th</sup> 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 August 14, 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 DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA] AND REPORT OF THE DIVISION OF HUMAN RESOURCES [DHR]

### II. PENDING MATTERS – CASES ON REMAND FROM THE COURT OF APPEALS

- Arthur Robinson v. University of Colorado Denver, Information Technology Services, State Personnel Board case number 2012B131, Court of Appeals Number 2013CA1147, Order Reversed and Case Remanded with Directions, May 22, 2014; Mandate Issued July 25, 2014.

### III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD

- 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.

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

- A. Randy Kennedy v. Department of Public Safety, State Personnel Board case number 2013G096.

Complainant, a certified General Professional employed by the Department of Public Safety, and formerly a GP VI assigned to the Division of Emergency Management with the Department of Local Affairs, filed his first petition for hearing on June 7, 2013, challenging Respondent's decisions to reassign Complainant's duties and supervisory responsibilities in or around February 2013, and to reassign Complainant from the Office of Budget and Finance within the Division of Homeland Security and Emergency Management to the Office of Preparedness, strip him of his title as Manager of Office of Budget and Finance, strip him of his oversight of financial responsibilities, and cut off his access to all financial systems, including the Colorado Financial Reporting System, in or around May 2013. Complainant contends that these reassignments were a direct result of his protected disclosures of State mismanagement of federal contracts and federal funds and State violation of federal rules and regulations, in violation of the State Employee Protection (Whistleblower) Act. As relief, Complainant seeks a full evidentiary hearing on his whistleblower claims; his job back in Finance; that he be allowed to attend all leadership meetings except personnel meetings; that all negative records since January 1, 2012, removed from his personnel file; and that he be granted his attorney fees and costs.

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; the Board's jurisdiction to review the appointing authority's grievance decision is limited; and Complainant cannot meet his burden of demonstrating that the alleged disclosures were a motivating or substantial factor in the decision to reassign him. As relief, Respondent requests that the Board deny and dismiss Complainant's petition for hearing.

On August 6, 2014, the ALJ issued a Preliminary Recommendation that the petition for hearing be granted.

- B. Pauline Steckel v. Department of Human Services, Division of Regional Center Operations, Wheat Ridge Regional Center, State Personnel Board case number 2014079.

Complainant, a probationary Health Care Technician I employed by the Department of Human Services, Division of Regional Center Operations, Wheat Ridge Regional Center, filed a petition for hearing on March 14, 2014, arguing that she was wrongfully terminated during the probationary period and that the termination was arbitrary and capricious due to discrimination based on her Philippine/Asian national origin and the fact that she was the only involved in the incidents who was terminated. As relief, Complainant requests reinstatement, back pay, and removal from Complainant's record of adverse notations affecting licensure.

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 did not timely allege discrimination; and Complainant has not stated a *prima facie* case of discrimination. As relief, Respondent requests that the petition for hearing be denied and dismissed.

On July 30, 2014, the ALJ issued a Preliminary Recommendation that the petition for hearing be denied.

- C. Kristi L. Gray v. Department of Transportation, State Personnel Board case number 2014G087.

Complainant, a probationary Auditor III employed by the Department of Transportation, filed a petition for hearing on April 24, 2014, arguing that she was wrongfully terminated in her probationary period due to retaliation and discrimination based on age, gender, and race. As relief, Complainant is requesting reinstatement, back pay, benefits and expense reimbursement.

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 should deny Complainant's request for a hearing because she has failed to state a *prima facie* case of gender, race or age discrimination and because, in each instance, her claims lack the specific elements required by relevant case law; the Board should deny Complainant's request for a hearing on her retaliation claim because her information sheet provides no specific factual basis from which the Board may conclude that a causal connection exist between her termination and engagement in a protected activity; and the Board should deny Complainant's request for a hearing on the theory that her termination constituted unlawful discrimination because the circumstances described give no rise to an inference of unlawful discrimination. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On August 6, 2014, the ALJ issued a Preliminary Recommendation that the petition for hearing be granted on the Whistleblower claim.

- D. Kate E. Kelly v. Department of Transportation, State Personnel Board case number 2014G089.

Complainant, a certified member of Unit 6 ROW Survey Unit, employed by the Department of Transportation (DOT), filed a petition for hearing on April 28, 2014, arguing that she was denied relief in the final grievance decision and that decision was arbitrary and capricious because it violated her state or federal constitutional rights. As relief, Complainant requests a solution that is both fair and desirable with options presented to her about being moved out of the unit with the understanding that she is a single parent and cannot do rotating schedules, nights or weekends, due to child care issues.

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; this Board's review is limited; Complainant's claim regarding violation of federal or state constitutional rights was not discussed in her information sheet; and Complainant's list of facts allegedly showing workplace harassment and workplace violence are insufficient to prove a hostile work environment. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On July 30, 2014, the ALJ issued a Preliminary Recommendation that the petition for hearing be denied.

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

- A. Anne Sheridan v. Department of Corrections, Division of Adult Parole, Community Corrections & Youthful Offender System, State Personnel Board case number 2014B033 (July 7, 2014).

The Initial Decision of the Administrative Law Judge upheld Respondent's termination of Complainant's employment with DOC due to failing to meet minimum performance requirements. Complainant timely appealed her termination claiming it was arbitrary and capricious, but the state proved by a preponderance of the evidence that Complainant

was not meeting minimum job requirements, and had not been during her 14 year career with DOC.

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

**VII. ACKNOWLEDGMENTS**

**DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JULY 15, 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 adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge.

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

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
- Mandate, Appeal Dismissed with Prejudice, Misgana Tesfaye v. Department of Revenue, State Personnel Board case number 2013G026, Court of Appeal Case No 2014CA164
- Annual Whistleblower Report for FY13-14

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 Arthur Robinson v. University of Colorado Denver, Information Technology Services, State Personnel Board case number 2012B131, Court of Appeals Number 2013CA1147, Order Reversed and Case Remanded with Directions, May 22, 2014.

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

<b>*July 15, 2014</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 4<sup>th</sup> Floor Courtroom 6 Denver, CO 80203</b>
<b>*August 19, 2014</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 4<sup>th</sup> Floor Courtroom 6 Denver, CO 80203</b>
<b>*September 16, 2014</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 4<sup>th</sup> Floor Courtroom 6 Denver, CO 80203</b>
<b>October 21, 2014</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>November 18, 2014</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>
<b>December 16, 2014</b>	<b>Colorado State Personnel Board 1525 Sherman Street, 1<sup>st</sup> Floor Conference Room 103 Denver, CO 80203</b>

\*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.