State of Colorado

John W. Hickenlooper
Governor

Sally Yerger
Board Chair

Dana Shea-Reid
Board Director

State Personnel Board
1525 Sherman Street, 4th Floor
Denver, Colorado 80203
Phone (303) 866-3300
Fax (303) 866-5038

AMENDED AGENDA
PUBLIC BOARD MEETING
September 16, 2014

A public meeting of the State Personnel Board will be held on **Tuesday, September 16, 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 September 11, 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 AT THE COURT OF APPEALS AND ON REMAND

- Brett Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2011G028, Court of Appeals Number 2014CA390.

- 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.

  On September 9, 2014, Administrative Law Judge Denise DeForest issued Order Re: Certification of the Administrative Record. A new briefing schedule was also issued that same day.

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. Kristina M. Grubb v. Department of Corrections, La Vista Correctional Facility, State Personnel Board case number 2014B069.

Complainant, a certified Correctional Officer I employed by the Department of Corrections, La Vista Correctional Facility, filed a petition for hearing on February 24, 2014, arguing that she was denied relief in the final grievance decision and that decision was arbitrary and capricious because she alleges that she has lost her position number, days off, and holidays. She also alleges that she has been retaliated against due to disclosures she has made, in violation of the State Employee Protection (Whistleblower) Act.

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

On September 2, 2014, the ALJ issued a Preliminary Recommendation that the petition for hearing be granted.

B. Carl Jesse Elston v. Department of Natural Resources, Division of Water Resources, Office of State Engineer, State Personnel Board case number 2014G058.

Complainant, a probationary Records Technician I employed by the Department of Natural Resources, Division of Water Resources, Office of State Engineer, filed a petition for hearing on January 6, 2014, arguing that he was wrongfully terminated during the probationary period and that the decision to terminate him was arbitrary and capricious because his termination was due to bullying on the part of his supervisors and managers. As relief, he requests that the department be investigated about its management practice; assistance with his mortgage, van payments, bills and stress that DNR has caused him and his family; replacements for Scott Cuthbertson, Jessie Dunbar, Yolanda Johnson and Laura Nelson; and reinstatement to his job.

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's termination was for unsatisfactory performance; Complainant cannot establish his claim of hostile work environment/harassment; and Complainant has not made a *prima facie* case of discrimination. As relief, Respondent requests that Complainant's petition for hearing be denied and dismissed.

On September 4, 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. Jennifer Reno v. Department of Human Services, Division of Regional Center Operations, Pueblo Regional Center, State Personnel Board case number 2013B142(C) (August 28, 2014).

Complainant appealed Respondent's decision to discipline her for timekeeping irregularities and fraudulent timekeeping by removing her from the position of shopper, returning her to her previous position of Health Care Technician I, and imposing a 6% pay reduction for six months. Complainant also challenged the discipline and her most recent performance review as Whistleblower Act violations based upon her complaint that her co-worker had been reallocated to a higher classification and she had not. Complainant additionally appealed Respondent's decision to terminate her employment

for exhaustion of leave. After hearing, the ALJ found that Complainant's repeated practice of travelling to another Department of Human Services facility and clocking in or out at that facility, without her supervisor's request or knowledge, violated Complainant's performance standards. The ALJ determined that the evidence presented at hearing was insufficient to establish that there was timekeeping fraud in this case, however. The ALJ also found that the change in Complainant's position to return her to the HCT I position as reasonable under the circumstances, and that the imposition of a temporary pay reduction was also within the range of reasonable disciplinary alternatives. The ALJ concluded that Complainant had not established that her objection to her co-worker's reallocation was either a disclosure of information protected by the Whistleblower Act or had motivated any retaliatory conduct against Complainant. Finally, the ALJ reviewed the process used to terminate Complainant's employment for exhaustion of leave after Complainant did not report to work as a HCT I, and found that Complainant had not shown that the process was arbitrary, capricious or contrary to rule or law. The ALJ affirmed the discipline imposed and the decision to terminate Complainant's employment for exhaustion of leave.

VI. REVIEW OF THE MINUTES FROM THE AUGUST 19, 2014 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS AUGUST 19, 2014 PUBLIC MEETING:

A. 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.

The Board voted to remand the matter to the Administrative Law Judge for the limited purpose of determining the sufficiency of the record. The Administrative Law Judge may, in her discretion, permit a responsive brief by the Department on this limited issue before making a determination. The Administrative Law Judge will then submit her determination to the Board as to the sufficiency of the Administrative Record, and the Board will review and rule on such determination at its next regularly scheduled meeting. In addition, the briefing schedule previously established concerning the appeal to the Board is stayed pending the Board's review of the determination of the Administrative Law Judge on the sufficiency of the record.

B. Terrence M. Sullivan v. Department of Transportation, State Personnel Board case number 2014B003 (March 17, 2014).

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

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

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

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

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

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

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

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

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the 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

- Attorney advice regarding Brett Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2011G028, Court of Appeals Number 2014CA390.

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 Center** **Denver, CO 80203**
November 18, 2014	**Colorado State Personnel Board** **1525 Sherman Street, 1st Floor Conference Center** **Denver, CO 80203**
December 16, 2014	**Colorado State Personnel Board** **1525 Sherman Street, 1st Floor Conference Center** **Denver, CO 80203**