

State of Colorado



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State Personnel Board
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AGENDA PUBLIC BOARD MEETING July 21, 2015

A public meeting of the State Personnel Board will be held on **Tuesday, July 21, 2015, 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 accommodations 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 17, 2015.

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]

- Introduction of June Taylor, State Personnel Director, DPA

II. APPEALED CASES.

A. PENDING MATTERS AT THE COURT OF APPEALS

Rodney Smith v. Colorado State University, State Personnel Board case number 2014B019 COA 2014CA2350.

This case is now before the Court of Appeals. Appellant's Opening Brief was filed May 28, 2015 and again on June 15, 2015.

Joanne Brown v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2012B128 COA 2014CA2383.

This case is before the Court of Appeals. On June 2, 2015 and June 19, 2015 an Opening Brief was filed.

Brett L. Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2011G028 COA 2014CA0390.

This case is before the Court of Appeals. A Notice of Oral Argument has been issued and the Oral Argument has been scheduled for August 11, 2015.

B. CASES ON APPEAL TO THE BOARD AND TO APPELLATE COURTS

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. Rodney Carr v Department of Labor and Employment, Unemployment Insurance Program. State Personnel Board case number 2015G021.

Complainant, a certified employee, filed a petition for hearing on September 2, 2014, arguing that he was subject to a hostile work environment due to sexual harassment by a co-worker, Dawn Ali, as well as reverse gender discrimination and retaliation for raising sexual harassment and reverse gender discrimination complaints. As relief, Complainant requests that Dawn Ali, the alleged perpetrator, be immediately removed from his work unit, and that disciplinary action be taken against her for her sexual harassment of Complainant in 2007. Respondent should be ordered to comply with its zero tolerance policy for inappropriate workplace behavior.

Respondent argues that Complainant has failed to demonstrate a valid dispute that merits a hearing. Respondent argues that Complainant has failed to allege or establish a hostile work environment based on sexual harassment, and he cannot establish a *prima facie* case of reverse gender discrimination. Complainant's petition for a hearing should be denied and his claims dismissed with prejudice.

On July 10, 2015 the Administrative Law Judge issued a preliminary recommendation that the petition for hearing be granted.

B. Mary Ziegler v Department of Corrections, Corrections Training Academy. State Personnel Board case number 2015G088.

Complainant, a probationary employee, was hired as a Correctional Officer I with the DOC on January 30, 2015. On March 13, 2015, she was terminated for failing to pass the practical portion of the Pressure Point Control Tactics (PPCT) Exam, which was part of the Basic Training required by DOC. Complainant appealed the termination of her probationary employment to the Board on March 17, 2015, alleging discrimination on the basis of disability. Complainant argues that the takedown testing was not impartial, she was not given accommodation to practice and re-test, and the instructor discriminated against her. As relief, Complainant requests the opportunity to re-test under a fair and impartial certified PPCT instructor, after an opportunity to practice takedowns with a competent partner. Respondent argues Complainant fails to meet her burden to demonstrate that her termination from the Department of Corrections (DOC) was the result of disability discrimination or any other violation of state or federal law that would warrant a hearing. Respondent seeks denial and dismissal of Complainant's appeal.

On June 24, 2015 the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be denied.

C. Lynn A. Michel v. Department of Transportation, State Personnel Board case number 2015G091(c).

Complainant, an Administrative Assistant III in the Section 6, Craig Maintenance office, requests a full evidentiary hearing alleging that she was not selected for an Office Manager I position due to age discrimination in violation of the Colorado Anti-Discrimination Act ("CADA"). As relief, Complainant seeks all legal and equitable remedies available to her based on her claims, including but not limited to promotion, back pay, benefits, and attorney's fees.

Respondent argues that Complainant's petition is untimely and the Board lacks jurisdiction over the appeal; Complainant has presented only "a bare, unsupported statement of purported facts" which is insufficient to establish grounds that merit a hearing in this case; and 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. As relief, Respondent requests that the Board deny Complainant's petition for hearing, deny her requested relief and dismiss Complainant's appeal with prejudice.

On July 10, 2015, the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be granted.

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

Shawn Boston v. Department of Human Services, Division of Youth Corrections, Lookout Mountain Youth Service Center, State Personnel Board case number 2015B022. (dated June 26, 2015)

Complainant, a certified employee, appeals his disciplinary demotion on September 11, 2014 from a Correctional Youth Security Officer (CYSO) II to a CYSO I, resulting in a reduction in pay. Complainant argues that this demotion was not within the range of reasonable alternatives, as Respondent failed to adequately consider his lengthy record of exemplary service and the confusion about proper takedown techniques caused by recent training deficiencies. He seeks rescission of the disciplinary action, an action within the reasonable range of alternatives, reinstatement to the classification of CYSO II, reinstatement to his original rate of pay, and an award of attorney fees and costs. Respondent argues that its decision to disciplinarily demote Complainant was not arbitrary, capricious or contrary to rule or law; was within the range of reasonable alternatives, and should be affirmed. Respondent argues that all relief sought by Complainant should be denied.

Following the hearing, the Administrative Law Judge ("ALJ") concluded that: Complainant committed the acts for which he was disciplined; Respondent's action was not arbitrary, capricious, or contrary to rule or law; the discipline imposed was not within the range of reasonable alternatives and Complainant is not entitled to attorney fees. The ALJ affirmed Respondent's decision to discipline Complainant with modifications.

VI. REVIEW OF THE MINUTES FROM THE JUNE 16, 2015 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JUNE 16, 2015 PUBLIC MEETING:

- A. Rhonda Johnson v Department of Public Safety, State Personnel Board case number 2014G093.

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

- B. Micki Perez-Thompson v. Department of Transportation, State Personnel Board case number 2014G095(c).

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

- C. Kelley Kessler v. Department of Transportation State Personnel Board case number 2014G104

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing and refer to the Director of Personnel for further action if appropriate.

- D. Kathi Dean-Lee v. Department of Corrections, State Personnel Board case number 2015G031.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing and refer to the Director of Personnel for further action if appropriate.

- E. Bernard Whitney v. Department of Human Services, Division of Employment Affairs, Office of Administrative Solutions, State Personnel Board case number 2015G061.

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

- F. Susan Ure v. Department of Human Services, Colorado Mental Health Institute at Pueblo State Personnel Board case number 2015G080.

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

B. OTHER BOARD BUSINESS

- Board Election update
- Election of Board Chair and Vice Chair in August
- Transition of Board counsel

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

IX. PROPOSED LEGISLATION AND/OR RULEMAKING

X. EXECUTIVE SESSION

- **Board discussion COA oral argument – Williams.**

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

July 21, 2015	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
August 18, 2015	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
September 15, 2015	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
October 20, 2015	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
November 17, 2015	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
December 15, 2015	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203