

State of Colorado



John W. Hickenlooper
Governor

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Board Director

State Personnel Board
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AGENDA PUBLIC BOARD MEETING August 18, 2015

A public meeting of the State Personnel Board will be held on **Tuesday, August 18, 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 August 14, 2015.

CALL TO ORDER

- Attendance.
- Disclosure of any potential conflicts of interest with regard to present Board business and notice of recusal, if applicable.

ELECTION OF BOARD OFFICERS

- I. REPORT OF DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA] AND REPORT OF THE DIVISION OF HUMAN RESOURCES [DHR].**
- II. REVIEW OF PENDING MATTERS AT THE COURT OF APPEALS AND BOARD OPTIONS**
- 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. Scott Reneau v Department of Corrections, LaVista Correctional Facility, State Personnel Board case number 2014G099.

Complainant, a certified employee, filed an initial petition for hearing on May 15, 2014, alleging that he was removed from his position after filing gender discrimination complaints with the State Personnel Board (Board) and the Colorado Civil Rights Division (CCRD). Complainant claims retaliation for pursuing these discrimination complaints, as well as retaliation as a whistleblower under the State Employee Protection Act, § 24-50.5-101, C.R.S. (Whistleblower Act). As relief, Complainant requests reinstatement to his prior position, and restoration of his office and days off with holidays. He also requests that Respondent cease all gender-based discrimination and seeks a formal written apology, as well as punishment of management staff involved, "the maximum relief under current law," and \$300,000 "per charge filed under the CCRD investigation."

Respondent argues that, due to business needs, Complainant was transferred to another position with identical skill levels and responsibilities, and that his pay, benefits, tenure, status, work shift and scheduled days off were not affected. Further, Complainant has failed to establish that he is entitled to the protections of the Whistleblower Act or that Respondent has violated this Act. Respondent argues that, because Complainant has failed to establish grounds that merit a hearing under State Personnel Board Rule 8-41, his petition for hearing and request for relief should be denied.

On August 4, 2015 the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be granted.

B. Chad Bauer v Community Colleges of Colorado, Pikes Peak Community College, State Personnel Board case number 2015G096.

Complainant, a Sergeant in Pikes Peak Community College's ("PPCC") Department of Public Safety ("Police Department"), filed a petition for a hearing on April 10, 2015, alleging that PPCC's Human Resources ("HR") Director Carlton Brooks ("HR Director Brooks" or "Mr. Brooks") is not following Department of Personnel and Administration ("DPA") rules. Complainant contends that Mr. Brooks allowed Complainant to re-file a grievance he originally filed in March 2014, which concerned what Complainant considered an ill-conceived policy of allowing employees being investigated by Internal Affairs to lodge complaints that are not subject to any statute of limitations against their supervisors. Complainant also alleges that when he did re-file his grievance on February 27, 2015, HR handled it as a Step Two grievance and should have handled it as a Step One grievance because he raised additional issues not raised in his March 2014 grievance. Finally, Complaint alleges that a subordinate officer's conduct that Complainant viewed as a violation of PPCC's workplace violence policy only resulted in an undocumented verbal warning despite the fact that the policy is a zero tolerance policy. As relief, Complainant requests that all parties involved receive appropriate discipline according to their actions and involvement, up to and including termination.

Respondent argues that Complainant has failed to establish grounds that merit a hearing in this case under C.R.S. § 24-50-123(3) or Board Rule 8-45(G). Complainant was concerned that a subordinate officer was able to file a complaint against him and another Sergeant while that officer was under an Internal Affairs investigation. Complainant also sought clarification concerning the difference between complaints and grievances as well as the step process when filing a grievance. Respondent alleges that all of Complainant's concerns have been appropriately addressed. As relief, Respondent requests that the petition for hearing be denied and that Complainant's appeal be dismissed.

On July 28, 2015 the Administrative Law Judge issued a preliminary recommendation that the petition for hearing be denied.

C. Cletus Thiessen v Department of Transportation, State Personnel Board case number 2015G082.

Complainant, who was a Transit Grant Coordinator in the Colorado Department of Transportation (“CDOT”), filed a petition for a hearing on March 6, 2015, arguing that Respondent terminated his employment during his probationary period due to his disclosure to his supervisor and others within Respondent’s Division of Transit and Rail (“DTR”) of significant problems with DTR’s administration of grants, including, but not limited to, failure to pay public and private agencies receiving grants through CDOT DTR to provide transit services; loss of grant awards; statutory violations for services provided without contracts; and misallocation of grant funds. Complainant alleges that his termination violated The State Employee Protection Act, § 24-50.5-101, *et seq.*, C.R.S. (“Whistleblower Act” or “Act”), which provides that “no appointing authority or supervisor shall initiate or administer any disciplinary action against an employee on account of the employee’s disclosure of information.” § 24-50.5-103(1), C.R.S.

Respondent contends that Complainant’s petition presents the question of whether the Board retains jurisdiction over Complainant’s claims and whether valid issues exist that merit a full evidentiary hearing. Respondent asserts that this matter should not be set for hearing because Complainant fails to establish grounds that merit a hearing and because the Board lacks jurisdiction due to Complainant’s failure to file his appeal within the ten-day time limit established by law. Respondent alleges that Complainant has not met his burden to establish that a violation of law occurred; Complainant did not provide an explanation of what disclosures he made and how his disclosures fall within the protections afforded by the Whistleblower Act, nor has he provided any evidence that his termination was “on account of” his alleged complaints about CDOT DTR’s grant program. Respondent asserts that, though it carries no burden, it has submitted facts, legal argument, and exhibits that justify Complainant’s termination and illustrate that Complainant’s termination was separate and apart from any alleged whistleblowing activity and was not issued “on account of” alleged disclosures. Respondent requests that Complainant’s request for a hearing be denied.

On August 6, 2015 the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be denied.

D. Jacqueline Jackson v. Department of Law, State Personnel Board case number 2015S028.

Complainant, a former state employee who applied for a position as a Program Assistant I in the Department of Law’s Consumer Protection Section’s Consumer Credit Unit, filed a petition for hearing on April 22, 2015, arguing that Respondent’s decision to eliminate Complainant from the selection process at an early stage and to not to hire Complainant for the Program Assistant I position was a result of employment discrimination based on race, as well as retaliation for Complainant’s complaints concerning workplace issues and perceived discrimination in the Department of Law in 2012. As relief, Complainant requests that she be hired into the Program Assistant I position for which she applied, or the equivalent thereof in the Department of Law, with back pay from the time the position was filled by the successful candidate. Complainant also requests financial compensation in the amount her former program assistant position would pay her, at today’s compensation rate, for the time period during which she had occupied that position in the past.

Respondent argues that Complainant has failed to establish grounds that merit a hearing. Complainant has not shown that she was subjected to illegal discrimination in the application process. The facts show that Complainant’s application was screened out

during a structured application review engaged as part of the comparative analysis process. 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 August 5, 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

Theresa N. Chavez v. Department of Education, Office of Professional Services & Educator Licensure, State Personnel Board case number 2015B011(c). (dated July 23, 2015)

Complainant, a certified employee, appeals the termination of her employment by Respondent on July 25, 2014, effective July 31, 2014. Complainant initially appealed a corrective action she received on March 14, 2014, alleging retaliation and violation of federal or state constitutional rights; this appeal was consolidated with the appeal of her July 31, 2014 termination. On January 15, 2015, Complainant withdrew her discrimination claims based on disability, religion/creed, hostile work environment and retaliation; at Complainant's request, these claims were dismissed by the ALJ on January 16, 2015. On February 9, 2015, the ALJ granted Respondent's motion to dismiss Complainant's appeal of the March 14, 2014 corrective action, due to Complainant's withdrawal of her discrimination and retaliation claims. This hearing proceeded on Complainant's appeal of Respondent's July 25, 2014 termination of her employment. Complainant argues that the Respondent has failed to show that Complainant committed any of the acts for which she was disciplined, as Complainant was performing her job competently and her actions on June 4, 2014 were not willful. Complainant further argues that Respondent's decision to terminate her employment was arbitrary and capricious, because Respondent neglected or refused to use reasonable diligence and care, and failed to honestly and candidly consider the evidence, in making this decision. Finally, Complainant argues that the termination of Complainant's employment was not within the range of reasonable alternatives. Complainant seeks reinstatement, back pay, the expungement of all related corrective and/or disciplinary actions, restoration of all benefits, including but not limited to PERA contributions, and an award of attorney fees and costs.

Respondent argues that its decision to terminate Complainant for incompetent performance of her job and disconnecting customers calling into Respondent's Customer Service Center on June 4, 2014 was made following a thorough investigation in accord with due process, and was not arbitrary, capricious or contrary to rule or law. Respondent further argues that Complainant refused to accept any responsibility for her disconnection of customers on June 4, 2014, and that her various excuses concerning her actions on June 4, 2014 lack credibility. Respondent requests that the Board affirm the actions of the appointing authority, dismiss Chavez's appeal with prejudice, and award Respondent its attorney fees and costs.

The ALJ affirmed Respondent's termination of Complainant's employment.

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

REVIEW OF THE MINUTES FROM THE JULY 21, 2015 PUBLIC MEETING OF THE STATE PERSONNEL BOARD.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JULY 21, 2015 PUBLIC MEETING:

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

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

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

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

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

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

VIII. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Status of Cases on Appeal to the Board and to Appellate Courts

B. OTHER BOARD BUSINESS

- Annual Whistleblower Report to the Governor
- Update on change request for FY 16-17 Budget regarding Legal Services and FTE increase
- New Board Counsel assigned

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

IX. PROPOSED LEGISLATION AND/OR RULEMAKING

X. EXECUTIVE SESSION

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
January 19, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203
February, 2016	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 103 Denver, CO 80203