

# State of Colorado



**John W. Hickenlooper.**  
*Governor*

**Rich Djokic**  
*Board Chair*

**Dana Shea-Reid**  
*Board Director*

**State Personnel Board**  
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## Meeting Minutes March 19, 2013

The State Personnel Board met in public session on Tuesday, March 19, 2013, at the Colorado State Personnel Board, 633 17<sup>th</sup> Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604.

The meeting was called to order at 9:00 a.m. Board Members Garth Lucero, Anthony Marquez, and Teresa Salerno were present in person. Board Members Rich Djokic and Sally Yerger were absent.

Dana Shea-Reid, Board Director; Assistant Attorney General Catherine Shea, Board Counsel; and Jane Sprague, Legal Assistant, were present in person.

### **I. REPORT OF KATHY NESBITT, STATE PERSONNEL DIRECTOR (EXECUTIVE DIRECTOR, DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA])**

Markie Davis of the Division of Human Resource (DHR) Services, gave a report to the Board on behalf of Ms. Nesbitt and Deborah Layton-Root as follows:

- DPA is focusing on the rules and the development of Technical Guidance as a follow-up to the Joint Permanent Rulemaking of January 30, 2013. A second rulemaking is planned to address the remaining rules.
- The new Wellness Coordinator has begun work and Colorado WINS is finalizing its plan to implement the wellness program.
- DPA is updating its website and its content is to be transferred to the new website. The agency and its divisions will present a new look for the entire DPA website.
- Segal and Associates has conducted a benefits audit and a general claims audit for state benefits plans.
- Open Enrollment is scheduled for April 23-May 17, 2013, and is a passive enrollment, meaning that previous benefits choices will roll over from 2012, unless changed by the covered employee.
- Staffing at DHR under restructure has created some new positions, including a total rewards manager.
- The total compensation survey work will continue the first week of April with a meet-and-confer scheduled for that week.

## II. REQUESTS FOR RESIDENCY WAIVERS

Director Shea-Reid reported that the Board has received no requests for residency waivers this month.

## III. PENDING MATTERS

There were no Pending Matters before the Board this month.

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

There were no Initial Decisions or other Final Orders of the Administrative Law Judges on appeal to the Board this month.

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

- A. James Beard v. Community Colleges of Colorado, Front Range Community College, State Personnel Board case number 2013B043.

Mr. Lucero moved to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny Complainant's petition for hearing. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Ms. Salerno, and Mr. Marquez.

- B. John Carrigan v. Department of Corrections, State Personnel Board case number 2013G049.

Mr. Lucero moved to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny Complainant's petition for hearing. Mr. Marquez seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Ms. Salerno, and Mr. Marquez.

- C. Mark Walton v. Department of Labor and Employment, Unemployment Insurance, State Personnel Board case number 2013S019.

Ms. Salerno moved to adopt the Preliminary Recommendation of the Administrative Law Judge, to deny Complainant's petition for hearing and to refer the matter to the State Personnel Director for further action, as appropriate. Mr. Lucero seconded the motion. The motion passed on the

affirmative vote of the following Board members: Mr. Lucero, Ms. Salerno, and Mr. Marquez.

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

- A. Sarah Rounds v. Department of Human Services, Colorado State Veterans Home at Fitzsimons, State Personnel Board case number 2011G099 (February 21, 2013).

Director Shea-Reid reported that Complainant had filed a Designation of Record.

- B. Robert P. Blume v. Department of Public Safety, Division of Fire Prevention and Control, State Personnel Board case number 2013B006 (February 21, 2013).

Director Shea-Reid stated that there is no appeal in the above matter as of this date, although the time for a Notice of Appeal has not yet elapsed.

## **VII. REVIEW OF THE MINUTES FROM THE FEBRUARY 19, 2013 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

The Minutes from the February 19, 2013 meeting were tabled until the April meeting because there was not a quorum present at the March 19, 2013 meeting to approve the minutes.

## **VIII. ACKNOWLEDGMENTS**

### **DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS FEBRUARY 19, 2013 PUBLIC MEETING:**

- A. Edward W. Gietl v. Department of Public Safety, State Personnel Board case number 2011B066.

The Board voted to adopt the findings of fact and conclusions of law in the Administrative Law Judge's May 9, 2012 Order Regarding Back Pay Award; and to vacate the Administrative Law Judge's September 19, 2012 Order Reaffirming May 9, 2012 Order Regarding Remedy. The Board found that the September 19, 2012 Order Reaffirming May 9, 2012 Order Regarding Remedy did not extend the time to appeal the May 9, 2012 Order Regarding Back Pay Award; any appeal of the May 9, 2012 Order was to be filed within 30 days of that Order; and the issues raised in Respondent's appeal were addressed in the May 9, 2012 Order and therefore were not timely appealed to the Board.

Pursuant to § 24-50-125.5, C.R.S., and Board Rule 8-38, the Board also voted to award Complainant his attorney fees incurred for proceedings before the Board after issuance of the September 19, 2012 Order, because: 1) Respondent's appeal was groundless, as it did not appeal the issues addressed by the ALJ in her September 19, 2012 Order but rather sought untimely to appeal the issues addressed in the May 9, 2012 Order; and 2) Respondent's filing of an untimely appeal was stubbornly litigious, as it justified failing to fully comply with the ALJ's May 9, 2012 Order Regarding Back Pay Award.

- B. Cory Cutting v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2013G015.

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

- C. Rene Ryan v. Department of Human Services, Colorado Mental Health Institute at Fort Logan, State Personnel Board case number 2013G025.

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

- D. Ray Miller v. Colorado School of Mines, State Personnel Board case number 2013G028.

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

- E. Tom Orell v. Colorado Mesa University, State Personnel Board case number 2013G034.

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

- F. Jacob Phillips v. Board of Directors for the Auraria Higher Education Center, State Personnel Board case number 2013G042.

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

- G. Jeromy Goodson v. University of Colorado Boulder, Police Department, State Personnel Board case number 2013S006.

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

- H. Alfritch D. Anderson v. Colorado Community College System, State Personnel Board case number 2013S010.

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

- I. Misgana Tesfaye v. Department of Revenue, Taxation Division, State Personnel Board case number 2013S018.

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

**IX. REPORT OF THE DIVISION OF HUMAN RESOURCES, DPA – See Section I.**

**X. ADMINISTRATIVE MATTERS & COMMENTS**

A. ADMINISTRATIVE MATTERS

- Case Status Report
- Cases on Appeal to the Board and to Appellate Courts

B. OTHER BOARD BUSINESS

Director Shea-Reid reported that Ms. Salerno's appointment to the Board was confirmed by the Senate on March 18, 2013. She also informed the Board members that Board Counsel Catherine Shea is leaving the Attorney General's Office to go to Attorney Regulation. Her last day as an attorney general is April 5, 2013; Eric Maxfield will serve as Board Counsel until a new appointment is made to that position. Board members and staff wished Ms. Shea well in her new position.

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

There were no comments.

**XI. PROPOSED LEGISLATION AND/OR RULEMAKING**

Director Shea-Reid stated there would be one more meeting regarding changes to Chapters 5 and 8. The filing of the Notice of Rulemaking is planned for March

28, 2013. The effective date of the adopted rules would be July 1, 2013. At this point in time, the rulemaking could involve the Director's rules only or be a joint rulemaking by the Board and DPA. She asked the Board members to review the proposed changes to the rules and determine if they want to make any further changes to the proposed language.

**XII. EXECUTIVE SESSION**

Because of a lack of a quorum, the Board declined to enter into Executive Session to approve the Executive Session Minutes from February. The Minutes from the February 19, 2013 Executive Session were therefore tabled until the April meeting.

The Board meeting ended by consensus.

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**DATED THIS 18th DAY OF JUNE, 2013.**

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Anthony Marquez, Acting Board Chair

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Garth Lucero, Member

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Teresa Salerno, Member