

State of Colorado



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Governor

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Board Director

State Personnel Board
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Denver, Colorado 80203
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AGENDA PUBLIC BOARD MEETING JUNE 16, 2020

A public meeting of the Colorado State Personnel Board will be held via conference call on Tuesday, June 16, 2020 at 9:00 a.m. The State Personnel Board will provide a listen only conference ID to allow the public access to the meeting.

If you wish to attend the meeting via conference call, please notify the Board by June 11, 2020 at 303-866-3300 or via email at dpa_state.personnelboard@state.co.us.

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]

Report not scheduled at this time.

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

- A. Doris McCauley v. Department of Revenue, Division of Motor Vehicles, Driver's License Section, SPB 2014B061(c).

On November 22, 2016, the ALJ issued an Amended Initial Decision concluding that: (1) Respondent's refusal to accept Complainant's withdrawal of her resignation was contrary to rule or law, and (2) Complainant is entitled to an award of attorney fees and costs incurred in pursuing her appeal after March 2, 2016. The ALJ ordered Complainant's reinstatement with full back pay and statutory interest on that pay, minus any income Complainant earned from the date of the termination of her employment date to her reinstatement. The ALJ also ordered that Complainant should be made whole for all lost benefits, and reimbursed for attorney fees and costs incurred in pursuing her appeal after March 2, 2016.

On April 19, 2017, the Board adopted the ALJ's findings of fact and the ALJ's conclusion that Respondent's refusal to accept Complainant's withdrawal of her resignation was contrary to rule or law. The Board reversed the ALJ's conclusion concerning the award of attorney's fees.

Both parties appealed to the Colorado Court of Appeals. On March 28, 2019, the Colorado Court of Appeals issued an order vacating the Board's order and directing the Board "to return the matter to the ALJ to determine the amount of damages as a sum certain and enter an award in that amount."

On June 18, 2019, the Board remanded this case back to the ALJ "to determine the amount of damages as a sum certain and to enter an award in that amount."

On January 29, 2020, the Senior ALJ issued an Award of Damages awarding Complainant back pay and lost benefits through January 23, 2020 in the amount of \$78,014.52.

On March 2, 2020, Respondent filed a Notice of Appeal regarding the Award of Damages and filed its Opening Brief on May 11, 2020. Complainant's Response Brief was filed on May 25, 2020 and Respondent filed its Reply Brief on May 29, 2020.

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

A. Olga Ivanova v. Department of Public Health and Environment, Laboratory Services, SPB 2019G051(c).

Complainant petitions for a discretionary hearing to review Respondent's handling of a grievance that alleged discrimination in pay and other conditions of employment, as well as a performance evaluation that included some unsatisfactory ratings. Complainant alleges that Respondent discriminated against her on the bases of gender and national origin in violation of the Colorado Anti-Discrimination Act (CADA), § 24-34-401, *et seq.*, C.R.S. Complainant also alleges that Respondent retaliated against her for making disclosures concerning issues of public concern protected under the State Employee Protection Act (Whistleblower Act), § 24-50.5-101, *et seq.*, C.R.S. As relief, Complainant seeks an order from the Board finding discrimination, retaliation, and a whistleblower violation; a salary increase; removal of the negative job evaluation; payment of attorney fees and costs; and possible discipline to the supervisor(s) for the alleged whistleblower violation.

Respondent argues that Complainant failed to establish grounds that merit a hearing. Respondent denies that it discriminated or retaliated against Complainant, and requests that the Board deny Complainant's petition for a hearing and dismiss Complainant's petition with prejudice.

On June 1, 2020, the Senior ALJ issued a Preliminary Recommendation to deny and dismiss Complainant's petition for hearing.

B. Julien Mosely v. Department of Human Services, Office of Children, Youth & Families, Division of Youth Services, Mount View Youth Service Center, SPB 2020G049.

Complainant petitions for a discretionary hearing to review Respondent's termination of Complainant's probationary employment. Complainant alleges that he was discriminated against based on his race. As relief, Complainant seeks reinstatement, transfer to Gilliam Youth Services Center, and reimbursement of his attorneys' fees.

Respondent argues that Complainant has failed to establish grounds that merit a hearing. Respondent asserts that Complainant was terminated for unsatisfactory performance and that Complainant, as a probationary employee, is not entitled to a hearing to review that termination. Respondent denies that it discriminated against Complainant, and requests that the Board deny Complainant's petition for hearing and dismiss Complainant's petition with prejudice.

On June 1, 2020, the Senior ALJ issued a Preliminary Recommendation to deny and dismiss Complainant's petition for hearing.

C. Ryan Flores v. Department of Corrections, SPB 2019S040(c).

Complainant alleges that Respondent's failure to promote him to an Associate Warden position despite multiple applications and despite his many years of experience and outstanding performance evaluations constitutes discrimination on the basis of national origin/ancestry and a violation of the Whistleblower Act. As relief at the preliminary review stage, Complainant requests that the ALJ recommend that the Board grant a hearing on these issues and that the Board affirm such a recommendation. In his initial petition, Complainant requested back pay, an investigation into the selection process, an end to alleged nepotism in the comparative analysis process, equal consideration for ethnic and racial minorities, and an end to alleged retaliation against employees who participate in official investigations.

Respondent asserts that Complainant has failed to establish the existence of issues that merit an evidentiary hearing. As relief, Respondent requests that the Board deny Complainant's petition for a hearing and dismiss this matter with prejudice.

On June 3, 2020, the ALJ issued a Preliminary Recommendation to grant Complainant's petition for hearing for Complainant's national origin/ancestry discrimination claim in violation of the Colorado Anti-Discrimination Act.

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

There are no Initial Decisions or other Final Orders of the ALJ's for review.

V. REVIEW OF THE MINUTES FROM THE MAY 19, 2020 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VI. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

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

- Order Affirmed in Gieck v. Governor's Office of Information Technology, State Personnel Board case No. 2017G074, Court of Appeals No. 18CA1637.

B. OTHER BOARD BUSINESS

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

VII. PROPOSED LEGISLATION AND/OR RULEMAKING

None scheduled at this time.

VIII. EXECUTIVE SESSION

- For personnel matters required to be kept confidential regarding the Board Director's annual review pursuant to § 24-6-402(3), C.R.S.

ADJOURN

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

**Colorado State Personnel Board
1525 Sherman Street
1st Floor Conference Room 104
Denver, CO 80203**

July 21, 2020

August 18, 2020

September 15, 2020

October 20, 2020

November 17, 2020

December 15, 2020

January 19, 2021

February 16, 2021

March 16, 2021

April 20, 2021

May 18, 2021

June 15, 2021