

State of Colorado



Jared Polis
Governor

Nora Kelly
Board Chair

Rick Dindinger
Board Director

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

AGENDA PUBLIC BOARD MEETING September 15, 2020

A public meeting of the Colorado State Personnel Board will be held via webinar on Tuesday, September 15, 2020 at 8:00 a.m. The State Personnel Board will provide a Zoom link to allow the public access to the meeting.

If you wish to attend the meeting via webinar, please notify the Board by September 10, 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. Gary D. Pacheco v. Department of Corrections, Denver Complex, SPB 2020B057.

Respondent administratively discharged Complainant from his employment after he exhausted his available leave and was unable to return to work without restrictions. Complainant filed an appeal of his administrative discharge on December 14, 2019. Complainant alleges that his administrative discharge was improper and discriminatory on the basis of disability. Respondent denies that it discriminated against Complainant and asserts that the administrative discharge complied with all applicable rules.

On May 4, 2020, the ALJ issued an Order Granting Respondent's Motion for Summary Judgment and dismissed Complainant's appeal from the Board with prejudice.

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

- A. Sean Patrick v. Department of Corrections, Corrections Training Academy, SPB 2020G082.

Complainant petitions for a hearing to review Respondent's termination of Complainant's probationary employment due to his inability to provide a urine sample for mandatory drug testing. Complainant argues that he did not refuse a drug test, and that he had a medical reason for his inability to provide an adequate sample. As relief, Complainant seeks reinstatement.

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 requests that the Board deny Complainant's petition for hearing and dismiss Complainant's appeal with prejudice.

On August 14, 2020, the ALJ issued a Preliminary Recommendation to grant Complainant's petition for hearing because Complainant demonstrated the existence of valid issues that merit a hearing.

- B. Hauoli Ulrich v. Department of Human Services, Office of Behavioral Health, Colorado Mental Health Institute at Pueblo, SPB 2020G071.

Complainant petitions for a discretionary hearing to review Respondent's termination of Complainant's probationary employment. In her petition for review, Complainant alleges that Respondent denied requested accommodations, and that she was discriminated against based on age and disability. However, Complainant did not include any information concerning alleged age discrimination in her information sheet or in her reply; therefore, her claim of age discrimination has been abandoned. As relief, Complainant seeks damages, including back pay and front pay in lieu of reinstatement, and reimbursement of attorney fees and costs.

Respondent argues that Complainant 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 September 1, 2020, the ALJ issued a Preliminary Recommendation to grant a hearing on the Complainant's claim of disability discrimination.

- C. Michael Dublinski v. University of Colorado Boulder, Parking Services, SPB 2020G083.

Complainant disputes Respondent's final grievance decision concerning a Corrective Action and argues that the Corrective Action violates his federal and state constitutional rights to freedom of speech. As relief, Complainant requests removal of the Corrective Acton and training for management.

Respondent argues that Complainant failed to demonstrate a violation of his federal and state constitutional rights or establish any other reason that merits a hearing. Respondent requests that the Board deny Complainant's petition for hearing and dismiss the matter with prejudice.

On September 1, 2020, the ALJ issued a Preliminary Recommendation to deny Complainant's petition for hearing.

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

- A. Christian J. Barahona v. Department of Human Services, Office of Children, Youth & Families, Division of Youth Services, Marvin W. Foote Youth Services Center, SPB 2020B052.

Complainant appeals the termination of his employment. Respondent terminated Complainant's employment after concluding that Complainant had used an unauthorized and injurious physical restraint technique on a youth and was untruthful about the incident. Complainant alleges that he did not commit the act for which he was disciplined; the decision to terminate his employment was arbitrary, capricious, or contrary to rule or law; and the disciplinary action was outside the range of reasonable alternatives. Complainant seeks reinstatement and back pay.

On **August 12, 2020**, the Administrative Law Judge issued an Initial Decision affirming Respondent's decision to terminate Complainant's employment and dismissed Complainant's appeal with prejudice. *In order to preserve the Board's ability to review an Initial Decision on its own motion within 30 days, pursuant to C.R.S. § 24-4-105(14)(a)(II), the Board voted on August 18, 2020 to defer to September 15, 2020 its consideration of the Initial Decision.*

- B. Kurt Liljekvist v. University of Colorado Colorado Springs, Department of Public Safety, SPB 2019B094.

Complainant appeals the termination of his employment, arguing the termination was arbitrary and capricious. Complainant seeks all damages to make him whole, including but not limited to rescission and removal of the disciplinary action, reinstatement to his position of Police Officer effective the date of his termination, an award of back pay and benefits, and an award of attorney fees and costs.

On **August 21, 2020**, the Administrative Law Judge issued an Initial Decision affirming Respondent's decision to terminate Complainant's employment. Attorney fees and costs were not awarded and Complainant's appeal was dismissed with prejudice.

V. REVIEW OF THE MINUTES FROM THE AUGUST 18, 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 Muller v. Department of Corrections, State Personnel Board No. 2018B012; Court of Appeals No. 19CA1045

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 the purpose of receiving legal advice and legal training pursuant to C.R.S. Sec. 24-6-402(3), specifically as to Board Member Ethics, Board Member Conflicts of Interest, and the matters set forth in C.R.S. Sec. 24-3.7-102.
- For the purpose of receiving legal advice pursuant to C.R.S. Sec. 24-6-402(3) regarding a pending court action, specifically McCauley v. Department of Revenue, SPB No. 2014B061; Court of Appeals No. 20CA1244.

ADJOURN

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

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

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

July 20, 2021

August 17, 2021

September 21, 2021