

State of Colorado



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State Personnel Board
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AGENDA PUBLIC BOARD MEETING December 18, 2018

A public meeting of the Colorado State Personnel Board will be held on Tuesday, December 18, 2018 at 1525 Sherman Street, 1st Floor Conference Room 104, Denver, Colorado 80203. The public meeting will commence at 9:00 a.m.

Reasonable accommodation 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 December 13, 2018.

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]

Agenda item pending until further notice.

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

- A. Diane Ricci v. Department of Military & Veterans Affairs, Division of Veterans Affairs, State Personnel Board case number 2019B019.

Complainant, a certified employee, filed an appeal with the State Personnel Board (Board) on October 26, 2017. Complainant seeks review of a Performance Discussion and Documentation form and Corrective Action / Performance Improvement Plan she received on October 20, 2017, removing her supervisory responsibilities and reassigning her to a new work location with different duties. Complainant argues that these actions constitute a disciplinary demotion that was arbitrary, capricious and contrary to rule or law. Complainant further argues that Respondent's action was motivated by discrimination on the

basis of gender and military status,¹ as well as retaliation directed against her as a whistleblower in violation of the State Employee Protection Act, § 24-50.5-101, *et seq.*, C.R.S. (Whistleblower Act). Complainant seeks reassignment to her former position.

Respondent argues that its October 20, 2017 actions do not constitute discipline. If these action are determined to be disciplinary, Respondent argues that they were justified by Complainant's performance problems. Respondent denies that it discriminated or retaliated against Complainant. Respondent seeks denial and dismissal of Complainant's appeal, discrimination claims and whistleblower complaint.

On July 13, 2018, the Administrative Law Judge issued an Initial Decision affirming Respondents actions as they do not meet the Board's definition of discipline, and were not motivated by discrimination or retaliation.

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

A. Bridget O'Dell v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2019G014.

Complainant, a Program Assistant II and a certified state employee, filed a petition for a hearing after she received a final grievance decision denying her request for relief from a corrective action that she believes to be unwarranted. As relief, Complainant requests that the corrective action and the final grievance decision be rescinded and removed from her personnel file.

Respondent argues that this matter should not be set for hearing due to Complainant's failure to establish jurisdiction and failure to state grounds that merit a hearing.

On November 20, 2018, the ALJ issued a Preliminary Recommendation that Complainant's petition for hearing be denied and that the petition be dismissed.

B. Fayokemi Omolara Akinbode v. Department of Corrections, Corrections Training Academy, State Personnel Board case number 2019G006.

Respondent terminated Complainant's probationary employment for "unsatisfactory performance." Complainant denies many of the factual allegations underlying the termination and asserts discrimination on the basis of gender, national origin, and race. She also claims defamation. As relief, Complainant seeks reinstatement to the position, an award of back pay and benefits, and compensation for emotional distress.

Respondent denies Complainant's allegations. Respondent requests the Board to reject Complainant's petition for hearing and dismiss the matter.

On November 28, 2018, the ALJ issued a Preliminary Recommendation that Complainant's petition for hearing be granted on her claim that the termination was arbitrary, capricious, or contrary to rule or law and on her discrimination

claims. The ALJ recommends that the Board deny a hearing on Complainant's claims of retaliation and defamation.

- C. Michael Wayne Morrison v. Department of Human Services, Office of Behavioral Health, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2019S012.

Complainant unsuccessfully applied, twice, for a position as a Psychologist I, Forensic Evaluator with the Colorado Mental Health Institute at Pueblo (CMHIP). He filed a petition for hearing, arguing that he was not selected for the position because of personal bias and retaliation. As relief Complainant requests that Respondent offer him the next available position as Psychologist I, Forensic Evaluator based in Pueblo, Colorado, at a salary commensurate with his compensation history or, alternatively, Complainant would consider contract, temporary, or per diem work as a forensic evaluator as needed to cover position vacancies or extended absences by permanent employees.

Respondent argues that Board lacks jurisdiction to review this appeal and it should be dismissed from the Board and referred to the State Personnel Director for a Director's review.

On November 29, 2018, the ALJ issued a Preliminary Recommendation to deny Complainant's petition for hearing and refer appeal to the State Personnel Director of further review.

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

- A. Cleveland v. Department of Revenue State Personnel Board case number 2018B079.

The Initial Decision was issued by the ALJ on November 13, 2018 affirming Respondent's disciplinary demotion of the Complainant. The State Personnel Board met on November 20, 2018 and the matter was not within the timelines to include on the November 20 Board agenda. The matter was not presented to the Board on November 20th in order for the Board, on its own motion, to defer its review until the December 18, 2018 Board meeting. The 30-day review period expired on December 14, and the Board has lost jurisdiction to review the ID. The Complainant, however, has already contacted Board staff regarding a possible appeal of the discipline, and the Board will have the opportunity to review the ID and the appeal of the ID.

V. REVIEW OF THE MINUTES FROM THE NOVEMBER 20, 2018 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VI. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS NOVEMBER 20, 2018 PUBLIC MEETING:

- A. Cassandra Clemons v. Department of Revenue, Tax Audit & Compliance Division, State Personnel Board case number 2018S065(C).

The Board voted to adopt the Preliminary Recommendation of the ALJ and deny

the petition for hearing and referred the matter to the State Personnel Director for a Director's review.

- B. Ben Cappa v. Department of Public Health & Environment, Air Pollution Control Division, State Personnel Board case number 2018G088.

The Board voted to adopt the Preliminary Recommendation of the ALJ and grant the petition for hearing.

- C. Andrea Bonino v. Department of Human Services, Office of Behavioral Health, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2019G015.

The Board voted to adopt the Preliminary Recommendation of the ALJ and deny the petition for hearing and referred the matter to the State Personnel Director for a Director's review.

VII. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Status of Cases on Appeal to the Board and Appellate Courts
- Mandate in McNew v. Department of Public Safety, State Personnel Board Case No. 2018G037, Court of Appeals No. 2018CA1262
- Order Affirmed in Stiles v. Department of Corrections, State Personnel Board Case No. 2016B034, Court of Appeals No. 2017CA1992.

B. OTHER BOARD BUSINESS

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

VIII. PROPOSED LEGISLATION AND/OR RULEMAKING

IX. EXECUTIVE SESSION

Board Counsel recommendation to the Board regarding Court of Appeals decision on Stiles v. Department of Corrections

ADJOURN:

2019 REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.

January 15, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
February 19, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
March 19, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
April 16, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
May 21, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
June 18, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
July 16, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
August 20, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
September 17, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
October 15, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
November 19, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
December 17, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203