

State of Colorado



Jared Polis
Governor

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Board Director

State Personnel Board
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AGENDA PUBLIC BOARD MEETING July 16, 2019

A public meeting of the Colorado State Personnel Board will be held on Tuesday, July 16, 2019 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 July 11, 2019.

CALL TO ORDER

Welcome to new Board members Sarah Wager and Patricia Bangert.

- 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]

DPA Executive Director Kara Veitch will introduce herself and her senior management team to members of the Board.

II. 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 on appeal or other final orders of the ALJ's for review.

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

- A. John M. Artuso v. University of Colorado at Colorado Springs, Department of Parking and Transportation Services, State Personnel Board case number 2019G067.

Complainant appeals Respondent's denial of his grievance concerning Respondent's issuance of a corrective action. Complainant seeks rescission of the corrective action and removal from his personnel file.

Respondent argues that Complainant has failed to meet this burden of showing that grounds exists under 24-50-123(3), C.R.S., that merit a hearing. Respondent requests that Complainant's request for a hearing and all other relief be denied.

On June 25, 2019, the Senior ALJ issued a Preliminary Recommendation that the petition for hearing be denied and dismissed with prejudice.

- B. Antoinette Johns v. Department of Local Affairs, State Personnel Board case number 2019G044.

Complainant disputes Respondent's final grievance decision. Complainant asserts discrimination on the basis of disability, age and race/color. Complainant also asserts a violation of the grievance procedures, retaliation, and a hostile work environment. Complainant's "primary request" is to maintain her current position. Complainant also requests a reasonable accommodation for a disability and an environment free from harassment.

Respondent denies Complainant's allegations and request the Board deny the Complainant's petition for hearing.

On June 27, 2019, the ALJ issued a Preliminary Recommendation that Complainant's petition for hearing be denied.

- C. Seth Downs v. Department of Personnel & Administration, Office of State Controller, Central Collection Services, State Personnel Board case number 2018G056.

Complainant, an Accounting Technician III, and a certified State employee, seeks a review of a final grievance decision and alleges that his supervisor discriminated against him on the basis of disability, and retaliated against and harassed him for pursuing his grievance. As relief, Complainant requests a reassignment to a comparable position within the Department of Personnel & Administration (DPA) but outside the offending supervisor's department.

Respondent argues that Complainant has not established that an evidentiary hearing is warranted and that the Board should deny Complainant's request for a hearing and dismiss this matter.

On July 2, 2019, the ALJ issued a Preliminary Recommendation that Complainant's petition for hearing be denied.

- D. Tabari Totty v. Department of Human Services, Office of Children, Youth & Families, Division of Youth Services, State Personnel Board case number 2019S049.

Complainant applied unsuccessfully for the position of Youth Services Counselor II and petitions the Board for a hearing concerning his non-selection. Complainant asserts discrimination on the basis of race/color. As relief, Complainant requests to participate in the comparative analysis process, receive a panel interview, and obtain the position.

Respondent denies Complainant's allegations. Respondent requests that the Board deny Complainant's petition for hearing.

On July 2, 2019, the ALJ issued a Preliminary Recommendation that Complainant's petition for hearing be denied and referred to the Director for review.

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

In order to preserve the Board's ability to review an Initial Decision on its own motion within 30 days of issue, the Board voted on June 18, 2019 to defer to July 16, 2019 for its consideration of the Initial Decision for Copley v. Department of Corrections, issued by the Administrative Law Judge on June 10, 2019.

- A. Dean Copley v. Department of Corrections, Sterling Correctional Facility, State Personnel Board case number 2019B034.

Complainant appeals the termination of his employment by Respondent. Complainant alleges that he did not commit the acts for which was disciplined, the decision to terminate his employment was arbitrary, capricious or contrary to rule or law, and Respondent's disciplinary action was outside of the range of reasonable alternatives. Complainant seeks reinstatement to his position as a Correctional Officer II, as well as back pay and back benefits.

On June 10, 2019, the ALJ issued an Initial Decision affirming Respondent's disciplinary termination and dismissing Complainant's appeal with prejudice.

- B. Jacque Anderson v. Department of Human Services, State Veteran's Community Living Center at Fitzsimons, State Personnel Board case number 2018B056(c).

Complainant appeals the disciplinary action she received on March 6, 2018, imposing a ten percent reduction in her base salary for six months and Respondent's decision to terminate her employment as a certified Administrative Assistant II on September 7, 2018. Complainant contends that she did not commit the acts for which she was disciplined, that the decisions to discipline her were arbitrary and capricious or contrary to rule or law, and that the two disciplinary actions were outside the range of reasonable alternatives. She also alleges that she as the victim of race discrimination in violation of the Colorado Anti-Discrimination Act.

On July 1, 2019, the ALJ issued an Initial Decision to (1) rescind Respondent's March 6, 2018 disciplinary action. (2) Modifying Respondent's September 7, 2018 disciplinary dismissal to a 10% reduction in base salary for a three month period beginning September 7, 2018 which substitutes for the disciplinary dismissal. (3) Respondent shall reinstate Complainant to her former position as an Administrative Assistant II at the Colorado Veteran's Living Center at Fitzsimons, at the compensation level she would now hold, had Complainant's employment not been terminated and her monthly base salary had not been reduced by ten percent, from March 1, 2018 through September 7, 2018. (4) Respondent will compensate Complainant with her lost back pay and benefits, offset by the substitute earnings and unemployment compensation received by Complainant during this period of time, for a total of \$28,604.87 through June 30, 2019. This amount is subject to employer PERA contribution, as well as post-judgment statutory interest of 8% per annum to the date of reinstatement. (5)

Respondent shall credit Complainant with sick leave and vacation time for the period from September 7, 2018 to the date of reinstatement. (6) Complainant is awarded reasonable attorney's fees and costs attributable to the appeal of her disciplinary dismissal. Complainant shall file a Bill of Attorney's Fees and Costs no later than July 15, 2019. Respondent shall file a response to the Bill of Attorney's Fees and Costs within 10 day after receipt of the Bill of Attorney's Fees and Costs.

V. REVIEW OF THE MINUTES FROM THE JUNE 18, 2019 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VI. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JUNE 18, 2019 PUBLIC MEETING:

- A. Doris McCauley v. Department of Revenue, Division of Motor Vehicles, Driver's License Section, State Board of Parole, State Personnel Board case number 2014B061, Court of Appeals case number 2017CA921.

In compliance with the Court of Appeals order, the Board remanded this matter back to the ALJ to determine the amount of damages as a sum certain and to enter an award in that amount.

- B. Katie Lee v. Department of Human Services, Office of Behavioral Health, Colorado Mental Health Institute at Fort Logan, State Personnel Board case number 2019S046.

The Board voted to adopt the Preliminary Recommendation of the ALJ and deny the petition for hearing and to refer to the State Personnel Director of review.

- C. Brenda K. Cody v. Department of Revenue, Executive Director's Office, State Personnel Board case number 2019G057.

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

- D. Jonathan McDonald v. Department of Law, State Personnel Board case number 2018G046.

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

- E. Lorenzo Wright v. Department of Labor & Employment, Division of Unemployment Insurance, State Personnel Board case number 2019B038.

No formal action taken.

VII. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

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

- Mandate in Quintana v. Department of Revenue, State Personnel Board case number 2018G090, Court of Appeals No. 19CA368

B. OTHER BOARD BUSINESS

- On June 18, during executive session, the Board interviewed candidates for Board Director and determined the finalist. A job offer was subsequently extended by Board Chair Neil Peck to Rick Dindinger, who has accepted. Mr. Dindinger will start his job on August 5, 2019.
- Annual conflict of interest disclosure forms for Board members.
- August 20 Board meeting--Board members will select the next Board Chair and Vice Chair for FY2019-20.

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

VIII. PROPOSED LEGISLATION AND/OR RULEMAKING

IX. EXECUTIVE SESSION

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