

## SPB RULEMAKING (REDLINE)

**BOARD RULE 1-19.** ~~(AS ADOPTED ON JUNE 21, 2022)~~ An employee may voluntarily and knowingly waive, in writing, all rights under the state personnel system, except where prohibited by state or federal law. By law, the State Personnel Board has exclusive jurisdiction over claims regarding, but not limited to, the following matters: 1) Disciplinary Actions as defined by Board Rule 6-12; 2) Actions that adversely affect an employee's pay, status, or tenure as identified by C.R.S. § 24-50-125(5); and 3) Claims under the State Employee Protection Act (a/k/a Whistleblower Act) by a classified state employee. Employees who pursue these claims must do so before the State Personnel Board. In circumstances where an employee or an applicant may waive their rights under the state personnel system, the waiver must: 1) Be made in writing; 2) Be signed by the employee or applicant; 3) Indicate it is knowing and voluntary; 4) Advise employees and applicants of their rights under the Colorado Constitution at Article XII, Section 13 and under the State Personnel System Act, including rights to appeal to the Board; and 5) Notify an employee or applicant that they may obtain information regarding the State Personnel Board on the Board's website ([spb.colorado.gov](http://spb.colorado.gov)).

**BOARD RULE 1-71.** Harass or Harassment. In determining whether harassment violates the Colorado Anti-Discrimination Act, "Harass" or "Harassment" means to engage in, or the act of engaging in, any unwelcome physical or verbal conduct or any written, pictorial, or visual communication directed at an individual or group of individuals because of that individual's or group's membership in a protected class under the Colorado Anti-Discrimination Act, which conduct or communication is subjectively offensive to the individual alleging harassment and is objectively offensive to a reasonable individual who is a member of the same protected class.

~~Sexual Harassment. Quid pro quo sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct is used as the basis for an employment decision. Hostile work environment sexual harassment is any harassment or unequal treatment based on sex, even if not sexual in nature, which results in unreasonable interference with an individual's work performance or creates an intimidating, hostile, or offensive working environment.~~

**BOARD RULE 4-5.** All job postings shall notify applicants of their appeal rights. Such notice shall include the time frame to file an appeal, the email address and the street address for filing the appeal, and the availability of any template appeal form.

~~All applicants shall meet minimum and special qualifications for the vacancy in order to be included in the comparative analysis process, referred for an interview or appointed to a position. Any required job qualifications shall be consistent with those minimum~~

~~qualifications established by the State Personnel Director for classified positions within the state personnel system. (3/30/13)~~

**BOARD RULE 4-6.** Applicants directly affected by the selection and comparative analysis process may petition the Board for review when it appears that the decision of the appointing authority violates an employee's rights under the **Colorado Anti-Discrimination Act ("CADA")**, the **State Employee Protection Act** (commonly known as the **Whistleblower Act**), or as otherwise provided by law. Any petitions to the Board relating to selection decisions shall be filed in accordance with Chapter 8, Resolution of Appeals and Disputes. ~~federal or state constitution, part 4 of article 34 of title 24, or article 50.5 of title 24.~~  
(3/30/13)

**BOARD RULE 8-6(C)(5).** Upon its receipt of a filing via email, the Board will send the filing party an email stating "Received." **If disputed**, that email **may be used by a party as will be** the proof of filing. **The email will not be part of the record.**

**BOARD RULE 8-20(A)(5).** ~~Absent an extension of time~~, The Board will issue a Notice of Preliminary Review or hearing after **four two** hundred and **fifty seventy** (450 ~~270~~) days from the date the Board referred the matter to the CCRD even if the CCRD investigation is not completed.

**BOARD RULE 8-20(B)(6)(a)(i).** For the Board to adopt the CCRD's opinion, the CCRD's findings must demonstrate that Complainant is unable to establish a *prima facie* case of discrimination as set forth in *Bodaghi & State Personnel Board v. Department of Natural Resources*, 995 P.2d 288 (Colo. 2000).

**BOARD RULE 8-33(A)(1).** Complainant shall produce all documents and recordings in Complainant's possession that are relevant to the factual allegations or claims at issue in the appeal. **Complainant shall also produce any witnesses Complainant knows that may have information relevant to the factual allegations or claims, and a brief description of the information believed to be known by that witness.**

If the Complainant is appealing a termination, the Complainant shall also produce all: a. Documents relevant to calculation of lost pay and benefits including:

i. Income and benefits of subsequent employment, including the last three (3) months of pay stubs.

(a) Respondent shall not contact a prospective or current employer to discover information about Complainant without providing Complainant ten (10) days notice so Complainant has an opportunity to file a motion for protective order or a motion to quash. If Complainant files such a motion, Respondent shall not initiate contact until the motion is ruled upon.

ii. Unemployment benefit documents that are relevant to any calculation of damages.

~~b. Any witnesses that the Complainant knows that may have information relevant to the factual allegations or claims, and a brief description of the information believed to be known by that witness.~~

**BOARD RULE 8-37. Evidentiary Hearings.**

- A. Any stipulated exhibits and facts will be admitted into evidence.
- B. The party with the burden of proof proceeds first and may call witnesses and seek the admission of evidence. The opposing party proceeds second and may call witnesses and seek the admission of additional evidence. In cases with mixed burdens of proof, the Administrative Law Judge shall determine the order of presentation on a case-by-case basis. Regardless of who has the burden, witnesses may be called out of order at the discretion of the Administrative Law Judge.
- C. At the sole discretion of the Administrative Law Judge, a party may present rebuttal evidence.
- D. Each party is responsible for deciding the witnesses to call at the hearing. Testimony is given under oath or affirmation. Each party may cross-examine the other party's witnesses.
- E. Each party is responsible for deciding the exhibits to use and to offer for admission into evidence.
- F. The Administrative Law Judge may call a witness and may also examine any witness called by a party.
- G. The Administrative Law Judge will record the proceedings by an electronic recording device.
- H. The Administrative Law Judge may issue orders to promote expeditious and efficient hearings, including limiting the time each side has to present its evidence.

**BOARD RULE 8-51(E).** Any party seeking sanctions or attorney fees shall file and serve a motion within ten (10) days of:

1. The alleged failure to comply with the provisions in this Chapter 8, Resolution of Appeals and Disputes, Part A;
2. When the party knows or reasonably should have known of the alleged abuse giving rise to the request for fees;
3. A final order of an Administrative Law Judge, including an order of dismissal; ~~or~~
4. An Initial Decision; ~~or~~
5. A final order of the Board relating to action taken during a public Board Meeting.