STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. **2025B085**

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

SCOTT W. CLAUSSEN,
Complainant,

v.

DEPARTMENT OF TRANSPORTATION,
Respondent.

Senior Administrative Law Judge (ALJ) Susan J. Tyburski held the evidentiary hearing via Google Meet on September 24, 2025. The record was closed on September 24, 2025**.**

Throughout the hearing, Complainant appeared via Google Meet, representing himself. Respondent appeared through its attorney, Assistant Attorney General Kerry J. Ferrell, Esq. Respondent's advisory witness was Melanie Vigil, Respondent's Talent Acquisition and Compensation Program Director.

A list of exhibits admitted into evidence and a list of witnesses who testified at hearing are attached in an Appendix.

MATTER APPEALED

Complainant, a certified employee, appeals Respondent's reduction of Complainant's monthly salary. Complainant argues that Respondent's actions were arbitrary and capricious. Complainant seeks recovery of the amount of $889.08 taken out of his paycheck.[1]

Respondent argues that it overpaid Complainant because of a calculation error made by the Department of Personnel and Administration. Respondent argues that its actions were not arbitrary or capricious, and its reduction of Complainant's monthly salary to correct a calculation error should be affirmed**.**

For the reasons discussed below, Respondent's reduction of Complainant's monthly salary to correct a calculation error is **affirmed**.

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[1] Complainant also requested that a System Maintenance Study be conducted to determine whether the job class series of Transportation Maintenance and of Equipment Operators are properly classified and paid. As Respondent correctly argued, ordering such a study is beyond the Board's jurisdiction. This issue potentially falls within the jurisdiction of the State Personnel Director.

ISSUES TO BE DETERMINED

Was Respondent's reduction of Complainant's pay arbitrary or capricious? If so, what is the appropriate remedy?

FINDINGS OF FACT

1. Complainant has worked for the Colorado Department of Transportation (CDOT or Respondent) for over eight years.

2. Complainant is currently an Equipment Operator (EO) III.

3. Prior to becoming an EO III, Complainant worked as a Transportation Maintenance (TM) I.

4. The TM I and EO III positions are classified into separate job series.

5. On July 1, 2024, the State of Colorado implemented a Step Pay Program that was negotiated with COWINS. Base salaries of employees covered by the Step Pay Program were determined by calculating each employee's Time In Job Series (TIS).

6. The Step Pay Program was implemented by the Colorado Department of Personnel and Administration (DPA).

7. Complainant is a certified employee covered by the Step Pay Program.

8. Prior to implementation of the Step Pay Program, on May 17, 2024, Complainant emailed a query to the DPA's Step Pay Implementation Team about the proper calculation of his TIS and resulting step pay raise.

9. On May 20, 2024, DPA's Step Pay Implementation Team sent Complainant an email that did not specifically respond to Complainant's query and directed Complainant to an online "step pay estimator." Complainant was advised that, if he still had questions, to "reach out" to his "HR and/or Payroll teams."

10. After receiving his first paycheck affected by the Step Pay Program, on August 2, 2024, Complainant sent the following email addressed to "DOT_Workforce_Staffing_CDOT":

> I have a question regarding my new base pay. I am a EOIII, My new base pay is the same now as a TMI with the same years of service. I spent 2 years to get all my qualifications to earn my EOIII status along with a 10% raise over the base rate of a TMI, with the step raises it removed the pay differential that I worked for and earned, I would like an answer why I lost my EOIII pay increase. I asked this question when the step raise calculator came out and did not get a

valid response other than to use the calculator. Please let me know who I need to contact to discuss this or please forward to appropriate individuals.

11. On August 5, 2024, Melanie Vigil, CDOT's Talent Acquisition and Compensation Program Director, responded to Complainant's queries via email:

> Thank you for getting in touch, and I understand your frustrations. The reason that a Transportation Maintenance (TM) employee with 5-7 years of experience in the class series is receiving the same salary as an Equipment Operator (EO) III is that the Department of Personnel & Administration (DPA) significantly increased the salaries in the TM I classification last year. The salary range for TM I is now very close to that of the EO III classification. This was not the case when you were promoted to the EO III classification. CDOT created this career path at the time to help TM I employees get promoted and advance their careers. At the time, no one could have predicted the Time in Class Series Step Pay Program.

12. After receiving this response from Ms. Vigil, Complainant assumed that his pay was properly calculated.

13. In May and June 2025, CDOT conducted an audit of the TIS calculations made pursuant to the Step Pay Program. CDOT's audit focused on employees with complex work histories, such as Complainant.

14. During its audit, CDOT learned that Complainant's TIS was incorrectly calculated by DPA when the Step Pay Program was implemented.

15. Ms. Vigil recalculated Complainant's TIS and determined that, since July 1, 2024, Complainant had been overpaid by $889.08. Ms. Vigil had her calculations verified by her Compensation Specialist and also by DPA.

16. On June 17, 2025, Ms. Vigil sent Complainant an email informing him that she needed to set up a time to talk with him. In this email, Ms. Vigil erroneously referred to Complainant as "Alek."

17. Ms. Vigil subsequently had a phone conversation with Complainant and informed him of the pay calculation error.

18. After Ms. Vigil talked with Complainant, CDOT's Division of Human Resources (HR Division) sent Complainant a Notice "of a payroll error that resulted from a miscalculation of your wages," causing "an overpayment of wages in the amount of $889.08 during the time period of 7/1/2024 through 6/30/2025." The Notice was dated June 23, 2025, and was signed by Ms. Vigil.

19. The Notice informed Complainant: "The State of Colorado is required by Fiscal Rule 9-5(3.1) to collect this overpayment."

20. Fiscal Rule 9-5(3.1) states: "If a State employee is paid more than the amount due, provisions shall be made for the repayment of the Overpayment."

21. Fiscal Rule 9-5(2.1) defines "Overpayment" as "any payment that results from overstating the rate of pay, overstating the hours worked, understating the employee deductions, or any other payments to which the employee is not entitled."

22. The Notice stated that Complainant could pay $889.08 via check to CDOT or could set up a series of payroll deductions. The Notice further stated that, if Complainant did not tell Ms. Vigil which one of these repayment options he preferred by June 27, 2025, CDOT would "deduct the overpayment through payroll deductions in the amount of $148.18 on your 7/31/25, 8/29/25, 9/30/25, 10/31/25, 11/28/25 and 12/31/25 paychecks."

23. On June 26, 2025, Complainant appealed the Notice and resulting reduction of Complainant's base pay.

24. Complainant did not notify Ms. Vigil which repayment option he preferred. CDOT deducted the entire overpayment amount of $889.08 from one of Complainant's paychecks.

ANALYSIS

In determining whether an agency's decision is arbitrary or capricious, the Board must determine whether the agency has: 1) neglected or refused "to use reasonable diligence and care to procure such evidence as it is by law authorized to consider in exercising the discretion vested in it," 2) failed "to give candid and honest consideration of the evidence before it on which it is authorized to act in exercising its discretion," or 3) exercised "its discretion in such manner that after a consideration of the evidence before it as clearly to indicate that its action is based on conclusions from the evidence such that reasonable persons fairly and honestly considering the evidence must reach contrary conclusions." *Lawley v. Dep't of Higher Educ.,* 36 P.3d 1239, 1252 (Colo. 2001).

The preponderance of the evidence establishes that CDOT's reduction of Complainant's monthly salary was necessary to correct an unintentional calculation error made by DPA. Ms. Vigil credibly testified that this error was discovered during an audit of CDOT's employees in 2025. Once this error was discovered, Ms. Vigil recalculated Complainant's TIS and determined that, since July 1, 2024, Complainant had been overpaid by $889.08. Ms. Vigil had her calculations verified by her Compensation Specialist and also by DPA. Ms. Vigil explored alternatives to collecting this overpayment; however, Fiscal Rule 9-5(3.1) required its recovery. The preponderance of the evidence establishes that Ms. Vigil used "reasonable diligence and care" and gave "candid and honest consideration" of all the factors necessary for this decision. *Lawley,* 36 P.3d at 1252.

Complainant argued that his May 17, 2024 query to DPA's Step Pay Implementation Team should have prompted DPA to recheck the calculation of his TIS and resulting pay. Complainant did not contact anyone at CDOT about his pay concerns until after he received his first paycheck following implementation of the Step Pay Program. His subsequent email on August 2, 2024 to "DOT_Workforce_Staffing_CDOT" did not raise any issues with the calculation of his TIS. Ms. Vigil responded to the specific issues raised by Complainant in his August 2nd email. The ALJ finds that there is nothing in Complainant's August 2nd email that should have prompted Ms. Vigil to doublecheck DPA's TIS calculations. There is no evidence in the record to indicate that Ms. Vigil was privy to Complainant's TIS query to DPA's Step Pay Implementation Team. Therefore, the fact that CDOT did not check DPA's TIS calculations until 2025 does not render its actions arbitrary and capricious.

Complainant also argued that Ms. Vigil's erroneous referral to him as "Alek" in her email constitutes additional evidence that CDOT's actions were arbitrary and capricious. While the ALJ understands Complainant's frustration with yet another mistake, this error does not render CDOT's actions arbitrary or capricious under the *Lawley* standards. The preponderance of the evidence establishes that Respondent's actions were not "based on conclusions from the evidence such that reasonable persons fairly and honestly considering the evidence must reach contrary conclusions." *Lawley,* 36 P.3d at 1252. Once CDOT discovered DPA's calculation error, Fiscal Rule 9-5 required CDOT to collect the resulting overpayment.

Finally, Complainant argues that CDOT's failure to spread the paycheck deductions in increments of $148.18 across six months, as stated in the Notice, and instead reducing Complainant's paycheck by the entire sum of $889.08, was arbitrary and capricious. When asked why this occurred, Ms. Vigil testified that she did not know. Ms. Vigil did not provide any reasons for this method of recovering the overpayment.

CDOT's abrupt deduction of the entire amount of $889.08 from Complainant's paycheck, in contradiction of the Notice and without an explanation, appears to be an arbitrary decision. However, Fiscal Rule 9-5 requires CDOT to collect the overpayment. Complainant did not testify that this lump sum deduction created any hardship and did not provide any legal authority prohibiting this collection method. While the lump sum deduction was yet another understandable source of frustration for Complainant, this collection method does not render CDOT's reduction of Complainant's monthly salary arbitrary or capricious under the *Lawley* standards.

CONCLUSIONS OF LAW

For the above reasons, Respondent's reduction of Complainant's monthly salary to correct a calculation error was not arbitrary or capricious.

ORDER

For the above reasons, Respondent's reduction of Complainant's monthly salary to correct a calculation error is **affirmed**.

Complainant's appeal is dismissed from the Board and referred to the State Personnel Director to review any issues within the Director's jurisdiction, including the complaints raised by Complainant concerning the Transportation Maintenance and Equipment Operator job class series.

Dated this 30th day
of September, 2025, at
Denver, Colorado.

/s/ [redacted]
Susan J. Tyburski
Senior Administrative Law Judge
State Personnel Board
1525 Sherman Street, 4th Floor
Denver, CO 80203

CERTIFICATE OF SERVICE

This is to certify that on the 30th day of September, 2025, I electronically served true copies of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** and the attached **NOTICE OF APPEAL RIGHTS** addressed as follows:

Scott W. Claussen
[redacted]

Kerry J. Ferrell, Esq.
Assistant Attorney General
Kerry.Ferrell@coag.gov

Andrea Woods

APPENDIX

EXHIBITS

COMPLAINANT'S EXHIBITS ADMITTED: The following exhibits were admitted into evidence without objection: Exhibit E. The following exhibits were admitted into evidence over objection: Exhibits A, B, C.

RESPONDENT'S EXHIBITS ADMITTED: The following exhibits were stipulated into evidence: Exhibits 1, 2, 3, 5, 6.

WITNESSES

The following is a list of witnesses in the order in which they testified during the evidentiary hearing:

Scott Claussen, Complainant
Melanie Vigil, Respondent's Talent Acquisition and Compensation Program Director

NOTICE OF APPEAL RIGHTS

EACH PARTY HAS THE FOLLOWING RIGHTS:

1. To abide by the decision of the Administrative Law Judge ("ALJ").

2. To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is served to the parties. § 24-4-105(15), C.R.S. and Board Rule 8-53(A)(2).

3. Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is served to the parties. §§ 24-4-105(14)(a)(II) and 24-50-125.4(4), C.R.S. The appeal must describe, in detail, the basis for the appeal, the specific findings of fact and/or conclusions of law that the party alleges to be improper and the remedy being sought. Both the designation of record and the notice of appeal must be received by the Board no later than the applicable twenty (20) or thirty (30) calendar day deadline referred to above. *Vendetti v. Univ. of S. Colo.*, 793 P.2d 657 (Colo. App. 1990) and § 24-4-105(14) and (15), C.R.S.

RECORD ON APPEAL

The cost to prepare the electronic record on appeal in this case is $5.00. This amount does not include the cost of a transcript, which must be paid by the party that files the appeal. Board Rule 8-53(C). That party may pay the preparation fee either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS. A party that is financially unable to pay the preparation fee may file a motion for waiver of the fee. That motion must include information showing that the party is indigent or explaining why the party is financially unable to pay the fee.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. To be certified as part of the record, an original transcript must be prepared by a neutral and certified court reporter and filed with the Board within 59 days of the date of the designation of record. See Board Rule 8-53(A)(5)-(7). For additional information contact the State Personnel Board office at (303) 866-3300 or email at: dpa_state.personnelboard@state.co.us.

BRIEFS ON APPEAL

When the Certificate of Record of Hearing Proceedings is served to the parties, signifying the Board's certification of the record, the parties will be notified of the briefing schedule and the due dates of the opening, answer and reply briefs and other details regarding the filing of the briefs, as set forth in Board Rule 8-54.

ORAL ARGUMENT ON APPEAL TO THE BOARD

In general, no oral argument is permitted. Board Rule 8-55(C).

MOTION FOR RECONSIDERATION

Motions for reconsideration are discouraged. *See* Board Rule 8-47(K).