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# State of Colorado



Bill Owens  
Governor

Stacy L. Worthington  
Board Director

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September 5, 2002

The Honorable Bill Owens  
Governor of Colorado  
136 State Capitol Building  
Denver, Colorado 80203

RE: State Personnel Board  
FY 02 Annual Report of Cases Under the State Employee Protection (Whistleblower) Act

Dear Sir:

Pursuant to Section 24-50.5-107, C.R.S., I have enclosed the State Employee Protection Act Annual Report of the State Personnel Board for Fiscal Year 2002 (July 1, 2001, through June 30, 2002). If you would like additional information about any of the matters contained in this report, please feel free to call me directly at 303-894-2144.

Very truly yours,

Stacy L. Worthington  
Director

# STATE OF COLORADO

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## STATE PERSONNEL BOARD

The Chancery Building  
1120 Lincoln Street, Suite 1420  
Denver, Colorado 80203  
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Bill Owens  
Governor

### **State Employee Protection Act Annual Report of State Personnel Board July 1, 2001, through June 30, 2002**

Report to the Governor  
pursuant to section 24-50.5-107, C.R.S.

### **NOTICE OF VIOLATION OF THE STATE EMPLOYEE PROTECTION (WHISTLEBLOWER) ACT:**

Michael Rura v. Department of Higher Education, State Board of Agriculture, Colorado State University, State Personnel Board case number 2001G117.

On April 14, 2002, the Administrative Law Judge issued an Initial Decision in this appeal, which was filed on June 29, 2001. The Administrative Law Judge found that Respondent violated the State Employee Protection (Whistleblower) Act; that Respondent's actions were arbitrary, capricious, and contrary to rule or law; and that Complainant is entitled to an award of attorney fees and costs. The Administrative Law Judge ordered that Complainant be reinstated to a comparable position under a different supervisor; back pay with interest with no offset for the Workers Compensation settlement; reinstatement of all paid leave used from December 15, 2000 through his separation; and attorney fees and costs. The November 2000 grievance decision is rescinded and shall be removed from Complainant's personnel file. The amended Good 1999 performance evaluation is to be placed in Complainant's personnel file; the January 2000 Corrective Actions are rescinded and to be removed from Complainant's personnel file.

Respondent appealed, the parties filed briefs, and the Board considered the matter at its August 20, 2002 meeting. The Board affirmed the Initial Decision and ordered the relief described above. The Board remanded the matter to the Administrative Law Judge to determine the amount of the attorney fees and costs to be paid to Complainant.

**FY 00 Cases<sup>1</sup>**

<u>Case No.</u>	<u>Description</u>
2000G070	Kevin Harvey v. Department of Human Services

**Status**

- Complainant filed a petition for hearing on 1/10/00, claiming a violation of the State Employee Protection (Whistleblower) Act and alleging that the corrective action he received was retaliatory.
- The Preliminary Recommendation of the Administrative Law Judge recommended that a hearing be denied.
- The Board rejected the Preliminary Recommendation of the Administrative Law Judge and granted a hearing by order dated 11/21/00.
- The hearing on the matter was scheduled for 3/26, 3/27, 6/18 and 6/19/01.
- The matter was settled and dismissed by order of the Administrative Law Judge on 9/4/01. There was no finding regarding a violation of the Whistleblower Act.

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<sup>1</sup> This matter remained open at the end of FY 01 and reached resolution before the Board in FY 02.

## FY 01 Cases<sup>2</sup>

<u>Case No.</u>	<u>Description</u>	<u>Status</u>
2001B009	David Raymond Green v. Department of Corrections, Centennial Correctional Facility	<ul style="list-style-type: none"> <li>• In his notice of appeal of 7/10/00, Complainant alleged that he was terminated in retaliation for disclosing information, as well as for testifying in a legal proceeding, making a claim under the State Employee Protection (Whistleblower) Act.</li> <li>• After hearing, the Initial Decision of the Administrative Law Judge, dated 5/20/01, was adopted by the Board. It concluded that Respondent's action was arbitrary, capricious, or contrary to rule or law, and rescinded that action. Administrative Law Judge found that there was no violation of the Whistleblower Act.</li> <li>• This matter was settled and dismissed by order of the Administrative Law Judge on 2/11/02.</li> </ul>
2001B077	Michael McKim v. Department of Human Services, Colorado Mental Health Institute at Pueblo	<ul style="list-style-type: none"> <li>• Complainant's notice of appeal, dated 2/6/01, indicated that there was reasonable communication to his supervisor of a retaliation claim and reasonable communication to his appointing authority or member of legislature, pursuant to the requirements of the State Employee Protection (Whistleblower) Act.</li> <li>• On 4/30/01, Complainant clarified that he was not asserting a whistleblower claim.</li> <li>• After hearing, an Initial Decision of the Administrative Law Judge was issued on 11/13/01, affirming his termination.</li> </ul>
2001B113	Jeffrey Johnson v. Department of Human Services, Wheat Ridge Regional Center	<ul style="list-style-type: none"> <li>• On 5/7/01, Complainant and seven other employees filed a notice of appeal of their improper suspension and layoff, alleging a violation of the State Employee Protection (Whistleblower) Act.</li> <li>• On 6/11/01, Respondent agency filed a response to the whistleblower allegations.</li> <li>• On 6/14/01, the matter was referred to the Office of the Personnel Director for</li> </ul>

<sup>2</sup> These matters remained open at the end of FY 01, reached resolution before the Board in FY 02 or remain open.

		<p>investigation.</p> <ul style="list-style-type: none"> <li>• After the case was set for hearing, Complainant moved to withdraw his appeal, and a dismissal order was issued by the Administrative Law Judge on 9/19/01. There was no finding regarding the Whistleblower Act.</li> </ul>
2001B114	<p>Jesse Medina v. Department of Corrections, Fremont Correctional Facility</p>	<ul style="list-style-type: none"> <li>• Complainant filed a notice of appeal on 5/4/01, alleging retaliation for disclosure of mismanagement of agency, a violation of the State Employee Protection (Whistleblower) Act.</li> <li>• On 5/17/01, Complainant was ordered to file a written whistleblower complaint no later than 5/29/01.</li> <li>• Complainant did not respond to the order, and the whistleblower complaint was dismissed.</li> <li>• This matter was being investigated by the Colorado Civil Rights Division, but the Division closed the matter after settlement of the case.</li> </ul>
2001G003	<p>H. James Dulan v. Department of Higher Education, Colorado Student Loan Program</p>	<ul style="list-style-type: none"> <li>• Complainant's petition for hearing of 7/11/00 alleged that agency action was taken against him in retaliation for information he provided to senior management, in violation of the State Employee Protection (Whistleblower) Act.</li> <li>• On 5/30/01, the Administrative Law Judge filed a notice of intent to dismiss the petition, absent any action on the part of the parties in several months.</li> <li>• After a Dismissal Order was issued on 6/21/01, Complainant filed a Petition for Reconsideration.</li> <li>• The Order Denying the Petition for Reconsideration was issued on 7/2/01. There were no findings regarding the Whistleblower Act.</li> </ul>
2001G059	<p>Ronald C. Calhoun v. Department of Transportation</p>	<ul style="list-style-type: none"> <li>• On 12/7/00, Complainant filed a notice of appeal, claiming he was terminated for divulging information regarding upper level managers who were smoking in the workplace, a violation of the State Employee Protection (Whistleblower)</li> </ul>



		<ul style="list-style-type: none"> <li>Act.</li> <li>His whistleblower complaint alleged abuse of authority and reasonable communication to a supervisor of his retaliation claim.</li> <li>Complainant's whistleblower complaint was dismissed on 4/4/01 because he did not contest an agency motion to dismiss.</li> <li>The matter was dismissed by order of the Administrative Law Judge on 8/8/01.</li> </ul>
2001G081	Michael Taylor v. Department of Personnel, GSS, Division of Central Services	<ul style="list-style-type: none"> <li>Complainant filed a petition for hearing on 3/12/01 in which he claimed retaliation for disclosure of abuse of authority, mismanagement of agency, and the reporting of his supervisor for having outstanding debts to the state, a violation of the State Employee Protection Act.</li> <li>Separate documentation supporting Complainant's allegation of retaliation as a result of exercising rights under the Whistleblower Act was filed 4/6/01.</li> <li>On 5/17/01, the matter was referred to the Office of the Personnel Director for investigation.</li> <li>A Preliminary Recommendation granting a hearing was adopted by the Board.</li> <li>The Initial Decision of the Administrative Law Judge was issued on 3/4/02 and was affirmed in part and reversed in part by the Board on 7/16/02. The Administrative Law Judge did not find a violation of the Whistleblower Act.</li> </ul>
2001G018 2002B020 2002G021	John P. DeLeo v. Department of Revenue, Motor Vehicle Business Group, Driver Services	<ul style="list-style-type: none"> <li>Complainant filed two petitions for hearing, and an appeal of his disciplinary termination, alleging retaliation for disclosures under the State Employee Protection Act of abuse of authority, mismanagement of agency, and safety violations to the risk management office.</li> <li>The matters were investigated by the Office of the Personnel Director.</li> <li>The consolidated cases were set for hearing in July 2002. The case was settled and dismissed by the parties. There was no finding regarding the Whistleblower Act.</li> </ul>

**FY 02 Cases**

<b><u>Case No.</u></b>	<b><u>Description</u></b>	<b><u>Status</u></b>
2002B001	Lori J. Tucker v. Department of Public Health & Environment	<ul style="list-style-type: none"><li>• On 6/29/01, Complainant filed a notice of appeal of her termination, claiming discrimination and/or retaliation under the State Employee Protection (Whistleblower) Act.</li><li>• On 9/6/01, the Administrative Law Judge granted Complainant's motion dismissing her claims of discrimination and/or retaliation.</li><li>• After hearing, the Initial Decision of the Administrative Law Judge was issued on 3/5/01, affirming her termination. The Administrative Law Judge did not find a violation of the Whistleblower Act.</li><li>• The Initial Decision was appealed to the State Personnel Board, which affirmed the Initial Decision on 7/16/02.</li></ul>
2002B011	Richard Martinez v. Department of Higher Education, State Board of Agriculture, Colorado State University	<ul style="list-style-type: none"><li>• On 8/20/01, Complainant filed a notice of appeal and checked "abuse of authority" under the State Employee Protection (Whistleblower) Act.</li><li>• Absent additional information, an order was issued on 10/17/01 dismissing the appeal of his disciplinary suspension.</li><li>• After appeal, an order vacating the dismissal was issued by the Director on 12/6/01, and the case was set for hearing.</li><li>• On 5/3/02, an order granting a motion to vacate was issued by the Administrative Law Judge, the parties having settled. There was no finding regarding the Whistleblower Act.</li></ul>
2002B054	Larry Lara v. Department of Corrections, Territorial Correctional Facility	<ul style="list-style-type: none"><li>• On 12/6/01, Complainant filed a notice of appeal of his termination, including retaliation for disclosures of abuse of authority and mismanagement of agency under the State Employee Protection (Whistleblower) Act.</li><li>• In response to a request for additional information, Complainant requested that his whistleblower charges be deleted.</li><li>• The matter is currently being investigated by the Colorado Civil Rights Division.</li></ul>

2002B065	Rebecca Romero v. Department of Human Services, Food Stamp Quality Assurance Division	<ul style="list-style-type: none"> <li>Complainant filed a notice of appeal of her termination on 12/28/01 in which she indicated retaliation in violation of the State Employee Protection (Whistleblower) Act.</li> <li>On 1/7/02, an Order of Dismissal was issued by the Director for failure to timely file an appeal.</li> </ul>
2002B070	Bonnie Wyatt v. Department of Law, Office of Attorney General, Criminal Justice Section	<ul style="list-style-type: none"> <li>On 1/2/02, Complainant filed a notice of appeal of her demotion, alleging harassment as prohibited by the State Employee Protection (Whistleblower) Act.</li> <li>On 3/18/02, the Director granted a motion to dismiss Complainant's appeal.</li> </ul>
2002B083	Amber Stogdell v. Department of Corrections, San Carlos Correctional Facility	<ul style="list-style-type: none"> <li>Complainant filed a notice of appeal on 1/29/02, charging retaliation for disclosure of abuse of authority and ignoring verbal complaints of a hostile work environment under the State Employee Protection (Whistleblower) Act.</li> <li>Having dismissed the whistleblower complaint for lack of information, the Director set the case for Preliminary Review of her probationary termination. That review is pending.</li> </ul>
2002B098	Steven Kleimola v. Department of Corrections, Sterling Correctional Facility	<ul style="list-style-type: none"> <li>On 3/5/02, Complainant filed a notice of appeal of his suspension, claiming retaliation for disclosure of information under the State Employee Protection (Whistleblower) Act.</li> <li>On 6/10/02, the Office of the Personnel Director issued an investigative report that found no violation of the Whistleblower Act.</li> <li>The parties have informed the Board that they have settled this case.</li> </ul>



2002B112	Celeste King v. Department of Higher Education, University of Colorado Health Sciences Center, Parking and Transportation Services	<ul style="list-style-type: none"> <li>Complainant appealed her suspension on 3/21/02, alleging retaliation in violation of the State Employee Protection (Whistleblower) Act for disclosure of waste of public funds and mismanagement of agency.</li> <li>The matter was referred to the Office of the Personnel Director for investigation on 5/1/02.</li> <li>The parties have informed the Board that they have settled this case.</li> </ul>
2002B114	Lila Sue Baca v. Department of Human Services, Colorado Mental Health Institute at Pueblo	<ul style="list-style-type: none"> <li>On 3/28/02, Complainant filed her notice of appeal of her disciplinary reduction in pay, alleging retaliation for her disclosure of conversion of state assets for personal use, a violation of the State Employee Protection (Whistleblower) Act.</li> <li>The matter was referred to the Office of the Personnel Director for investigation.</li> </ul>
2002B117	Daniel W. Manning v. Department of Higher Education, Auraria Higher Education Center, Division of Facilities Management	<ul style="list-style-type: none"> <li>Complainant filed a notice of appeal of his termination on 4/3/02, alleging retaliation for his disclosure of unsafe conditions in the workplace, a violation of the State Employee Protection (Whistleblower) Act.</li> <li>The matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.</li> <li>The case is set for Preliminary Review by the Board.</li> </ul>

2002B110	Lisa Baca	
*2002B120	v. Department of Corrections	<ul style="list-style-type: none"> <li>• On 2/26/02, Complainant filed a notice of appeal of a corrective and disciplinary action, alleging retaliation for disclosure of harassment, in violation of the State Employee Protection (Whistleblower) Act.</li> <li>• On 4/1/02, Complainant filed a second notice of appeal of her termination, again alleging retaliation for disclosure of harassment in violations of the Act.</li> <li>• On 4/12/02, the cases were consolidated, and on 5/14/02, referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.</li> <li>• The matter is being held in abeyance pending completion of an investigation into Complainant's discrimination charges by the Colorado Civil Rights Division.</li> </ul>
2002B139	Richard J. Porter v. Department of Corrections, Limon Correctional Facility	<ul style="list-style-type: none"> <li>• Complainant filed a notice of appeal of his disciplinary termination on 5/20/02, alleging retaliation for his support of another employee by bonding him out of jail, a violation of the State Employee Protection Act.</li> <li>• On May 20, 2002, the matter was referred to the Office of the Personnel Director for investigation.</li> </ul>
2002G038	Sheila Pugh v. Department of State, Office of the Secretary of State	<ul style="list-style-type: none"> <li>• On 10/19/01, Complainant filed a petition for hearing after an adverse grievance decision, alleging retaliation for disclosure of information concerning violations of the workplace violence policy and for complaining that she has been denied training, a violation of the</li> <li>• State Employee Protection (Whistleblower) Act.</li> <li>• The matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.</li> <li>• A Preliminary Recommendation of the Administrative Law Judge denying a hearing was issued on 3/27/02.</li> <li>• On 4/22/02, the Board adopted the recommendation.</li> </ul>

2002G040	Teresa A. Livingston v. Department of Revenue, Taxpayer Service, Public Information and Education Section	<ul style="list-style-type: none"> <li>Complainant filed a notice of claim of retaliation for disclosure of age discrimination, a violation of the State Employee Protection (Whistleblower) Act on 10/26/01.</li> <li>On 4/8/02, the matter was dismissed by order of the Director, having received a withdrawal of the notice of claim from Complainant.</li> </ul>
*2002G053 2002G069	Bernetta Collins v. Department of Regulatory Agencies	<ul style="list-style-type: none"> <li>On 12/11/01, Complainant filed a petition for hearing, alleging retaliation for disclosures about violations of federal regulations in her agency under the State Employee Protection (Whistleblower) Act.</li> <li>The case was consolidated with a second case by order dated 3/18/02, and is currently under investigation by the Colorado Civil Rights Division.</li> </ul>
2002G057	Augustine Madrid v. Department of Corrections, Sterling Correction Center	<ul style="list-style-type: none"> <li>Complainant filed an unresolved grievance on 1/8/02, alleging unspecified retaliation in violation of the State Employee Protection (Whistleblower) Act.</li> <li>No appeal of a final grievance decision was filed.</li> </ul>
2002G063	Rose Martinez v. Department of Corrections, San Carlos Correctional Facility	<ul style="list-style-type: none"> <li>On 1/22/02, Complainant filed a petition for hearing after filing a grievance, alleging retaliation for disclosure of a hostile work environment, in violation of the State Employee Protection (Whistleblower) Act.</li> <li>On 5/22/02, the matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.</li> <li>The matter has been set for Preliminary Review.</li> </ul>



2002G064	Carol Roberson v. Department of Higher Education, University of Colorado Health Sciences Center	<ul style="list-style-type: none"> <li>• After a final grievance decision, Complainant filed a petition for hearing on 1/23/02, alleging retaliation for complaints relating to discrimination, in violation of the State Employee Protection (Whistleblower) Act.</li> <li>• On 2/28/02, the Director issued an order dismissing Complainant's claim of whistleblower retaliation because no response to a request for additional information was filed by Complainant.</li> </ul>
2002G071	Clifford Sanders v. Colorado State Judicial Branch, Denver Adult Probation	<ul style="list-style-type: none"> <li>• On 2/1/02, Complainant filed a petition for hearing, alleging retaliation in violation of the State Employee Protection (Whistleblower) Act.</li> <li>• The case was dismissed on 3/6/02 by the Director because Complainant is not in the state personnel system.</li> </ul>
2002G080	Lonnice E. Fails v. Department of Corrections	<ul style="list-style-type: none"> <li>• After denial of his grievance, Complainant filed a petition for hearing on 3/1/02, alleging retaliation for unspecified disclosure of information in violation of the State Employee Protection (Whistleblower) Act.</li> <li>• On 5/31/02, the Director granted Respondent's motion to deem petition for hearing abandoned, dismissing the petition with prejudice.</li> </ul>
2002G088	William Burke v. Department of Military Affairs	<ul style="list-style-type: none"> <li>• On 3/8/02, Complainant, a terminated probationary employee, filed a petition for hearing alleging retaliation for disclosure of violence in the workplace, a violation of the State Employee Protection (Whistleblower) Act.</li> <li>• On 5/9/02, the matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.</li> <li>• The matter has been set for Preliminary Review.</li> </ul>



2002G096	Suzanna Sosa v. Department of Corrections	<ul style="list-style-type: none"> <li>• On 3/27/02, Complainant filed a petition for hearing following an adverse grievance decision.</li> <li>• The petition charged that she was being retaliated against for testifying against a warden, in violation of the State Employee Protection (Whistleblower) Act.</li> <li>• On 5/22/02, the matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.</li> <li>• The matter is being held in abeyance pending completion of an investigation into Complainant's discrimination charge by the Colorado Civil Rights Division.</li> </ul>
2002G127	Beverley Dahan v. Department of Public Health & Environment	<ul style="list-style-type: none"> <li>• After a denial of her grievance, Complainant filed a petition for hearing on 5/24/02, alleging retaliation for disclosure of information about the department's promotion of unsafe sexual practices, a violation of the State Employee Protection (Whistleblower) Act.</li> <li>• This matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.</li> <li>• This matter has been set for Preliminary Review.</li> </ul>
2002G129	Kevin Harvey v. Department of Human Services, Mount View Youth Services Center, Division of Youth Corrections	<ul style="list-style-type: none"> <li>• On 6/4/02, Complainant filed a petition for hearing, alleging retaliation for disclosure that the agency had not instituted legal training regarding medication administration, a violation of the State Employee Protection (Whistleblower) Act.</li> <li>• Additional information was requested by the Director on 6/5/02.</li> </ul>

2002G077	Michael Illo	<ul style="list-style-type: none"> <li>• Complainant filed a total of 13 petitions for hearing, alleging unspecified violations of the State Employee Protection (Whistleblower) Act.</li> <li>• After several procedural motions and orders, the 13 petitions were consolidated under case number 2002G077(C) for purposes of the Whistleblower investigation, and the matter was referred to the Office of the Personnel Director for investigation. That investigation is ongoing.</li> </ul>
2002G108	v.	
2002G130	Department of	
2002G131	Human Services,	
2002G132	Wheat Ridge	
2002G133	Regional Center	
2002G134		
2002G135		
2002G138		
2002G139		
2002G140		
2002G141		
2002S001	Nancy Bravo	<ul style="list-style-type: none"> <li>• On 8/6/01, Complainant filed a petition for hearing, alleging retaliation for a violation of the State Employee Protection (Whistleblower) Act.</li> <li>• The matter is currently being investigated by the Colorado Civil Rights Division.</li> </ul>
	v.	
	Department of	
	Human Services,	
	Colorado Mental	
	Health Institute at	
	Pueblo	