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State of Colorado



Bill Owens
Governor

Stacy L. Worthington
Board Director

DPA

Department of Personnel
& Administration

State Personnel Board
The Chancery
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September 9, 2003

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

RE: State Personnel Board
FY 03 Annual Report of Cases Under the State Employee Protection (Whistleblower) Act

Dear Sir:

Pursuant to § 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 2003 (July 1, 2002, through June 30, 2003). If you would like additional information about any of the matters contained in this report, please feel free to call me directly at 303-764-1474.

Very truly yours,

Stacy L. Worthington
Director

cc: State Personnel Board Members
Troy A. Eid
Jeffrey Schutt
Karen Hoff, Librarian (4 copies)

Annual Report of State Personnel Board to the Governor

**Pursuant to State Employee Protection Act, § 24-50-.5-107, C.R.S.
July 1, 2002, through June 30, 2003**

FY 01 Cases¹

Michael Rura v. Department of Higher Education, Colorado State University, 2001G117

(This violation of the Whistleblower Act was reported on the 2001-2002 Annual Report to the Governor.)

- On 4/14/02, the Administrative Law Judge issued an Initial Decision in this appeal, finding 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 reinstatement of Complainant 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 12/15/00 through his separation; attorney fees and costs; the rescission of the November 2000 grievance decision; the placing of the amended Good 1999 performance evaluation in Complainant's personnel file; and the rescission of the January 2000 Corrective Actions.
- As its 8/20/02 meeting, the Board affirmed the Initial Decision and remanded the matter to the Administrative Law Judge to determine the amount of the attorney fees and costs to be paid to Complainant.
- This case is currently before the Court of Appeals.

Michael Taylor v. Department of Personnel, Division of Central Services, 2001G081

- 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 (Whistleblower) Act.
- Separate documentation supporting Complainant's allegation of retaliation as a result of exercising rights under the Whistleblower Act was filed 4/6/01.
- On 5/17/01, the matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.
- A Preliminary Recommendation granting a hearing was adopted by the Board.
- After hearing, 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.

John P. DeLeo v. Department of Revenue, Motor Vehicle Business Group, 2001G018, 2002B020, 2002G021

- Complainant filed two petitions for hearing, and an appeal of his disciplinary termination, alleging retaliation for disclosures under the State Employee Protection (Whistleblower) Act of abuse of authority, mismanagement of agency, and safety violations to the risk management office.

¹ These matters remained open at the end of FY 02, reached resolution before the Board in FY 03, or remain open.

- The matters were investigated by the Office of the Personnel Director. The Director found no violation of the Whistleblower Act.
- The consolidated cases were set for hearing in July 2002, settled, and dismissed by the parties.

FY 02 Cases²

Lori J. Tucker v. Department of Public Health & Environment, 2002B001

- 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.
- On 9/6/01, the Administrative Law Judge granted Complainant's motion dismissing her claims of discrimination and/or retaliation.
- 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.
- The Initial Decision was appealed to the State Personnel Board, which affirmed the Initial Decision on 7/16/02.
- This case was affirmed by the Court of Appeals on 8/7/03.

Larry Lara v. Department of Corrections, Territorial Correctional Facility, 2002B054

- 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, and discrimination.
- In response to a request for additional information, Complainant requested that his whistleblower charges be deleted.
- Following an investigation by the Colorado Civil Rights Division and a no probable cause finding, this matter was set for hearing.
- A motion for summary judgment is pending.

Steven Kleimola v. Department of Corrections, Sterling Correctional Facility, 2002B098

- 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.
- On 6/10/02, the Office of the Personnel Director issued an investigative report that found no violation of the Whistleblower Act.
- A joint motion to dismiss was granted by order dated 9/30/02.

Celeste King v. Department of Higher Education, University of Colorado Health Sciences Center, 2002B112

- 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.
- The matter was referred to the Office of the Personnel Director for investigation on 5/1/02. The Director found no violation of the Whistleblower Act.
- Following a settlement of this matter, an unopposed motion to dismiss was granted by order dated 9/13/02.

² These matters remain open or reached resolution before the Board by the end of FY 03.

Daniel W. Manning v. Department of Higher Education, Auraria Higher Education Center, 2002B117

- 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, and discrimination.
- The matter was referred to the Office of the Personnel Director and to the Colorado Civil Rights Division for investigation.
- The Director found no violation of the Whistleblower Act.
- Following a no probable cause finding by the Colorado Civil Rights Division, the matter was set for Preliminary Review and is currently pending.

Lisa Baca v. Department of Corrections, 2002B110 & *2002B120

- 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.
- 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.
- 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.
- After the cases were set for hearing, Complainant filed a motion to withdraw.
- A dismissal order was issued on 8/1/03.

Richard J. Porter v. Department of Corrections, Limon Correctional Facility, 2002B139

- On May 20, 2002, the matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.
- The parties filed a joint motion to dismiss on 12/9/02, following settlement.
- 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 (Whistleblower) Act.

Bernetta Collins v. Department of Regulatory Agencies, *2002G053 & 2002G069

- 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 and discrimination.
- After the case was consolidated with a second case, the matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.
- The investigation by the Colorado Civil Rights Division resulted in a finding of no probable cause.
- An order of dismissal was issued on 1/17/03, following Complainant's withdrawal of her appeal.

Rose Martinez v. Department of Corrections, San Carlos Correctional Facility, 2002G063

- 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.
- 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.
- On 01/03/03, the Preliminary Recommendation of the Director was issued, recommending that a hearing be denied.
- By order dated 01/29/03, the State Personnel Board adopted the Preliminary Recommendation of the Director and denied the petition for hearing.

Carol Roberson v. Department of Higher Education, University of Colorado Health Sciences Center, 2002G064

- 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.
- 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.
- The investigation by the Colorado Civil Rights Division resulted in a finding of no probable cause.
- The matter is currently set for Preliminary Review.

William Burke v. Department of Military Affairs, 2002G088

- 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.
- 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.
- On 7/17/02, an order dismissing the matter was issued, following Complainant's request to withdraw his petition for hearing.

Beverley Dahan v. Department of Public Health & Environment, 2002G127

- 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.
- This matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.
- Following settlement, the matter was dismissed by order dated 12/13/02.

Kevin Harvey v. Department of Human Services, Mount View Youth Services Center, 2002G129

- 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.

- On 8/1/02, the matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.
- Following the issuance of a Dismissal Order on 2/14/03, the matter was set for hearing solely on Respondent's request for attorney fees.
- On 3/24/03, Complainant requested Board review of the Dismissal Order.
- On 4/2/03, a hearing was held on Respondent's request for attorney fees.
- On 5/21/03, the Administrative Law Judge issued her Initial Decision and Order Denying Respondent's Request for Attorney Fees.
- The appeal of the Dismissal Order is currently set for Board review on 10/21/03.

Suzanna Sosa v. Department of Corrections, 2002G096

- On 3/27/02, Complainant filed a petition for hearing following an adverse grievance decision.
- The petition charged that she was being discriminated and retaliated against for testifying against a warden, in violation of the State Employee Protection (Whistleblower) Act.
- On 5/22/02, the matter was referred to the Office of the Personnel Director and to the Colorado Civil Rights Division for investigation. The Director found no violation of the Whistleblower Act.
- On 7/17/03, the Colorado Civil Rights Division issued its no probable cause finding.
- Preliminary review is pending.

Michael Illo v. Department of Human Services, Wheat Ridge Regional Center, 2002G077, 2002G108, 2002G130, 2002G131, 2002G132, 2002G133, 2002G134, 2002G135, 2002G138, 2002G139, 2002G140, 2002G141, & 2003B049

- Complainant filed a total of 13 petitions for hearing, alleging unspecified violations of the State Employee Protection (Whistleblower) Act.
- 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.
- The Director found no violation of the Whistleblower Act.
- The parties settled this case in May 2003; the Administrative Law Judge dismissed consolidated Case No. 2003B049(C) by order dated 6/19/03.

Nancy Bravo v. Department of Human Services, Colorado Mental Health Institute at Pueblo, 2002S001

- On 8/6/01, Complainant filed a petition for hearing, alleging retaliation for a violation of the State Employee Protection (Whistleblower) Act and discrimination.
- The case was not referred to the Office of the Personnel Director because no whistleblower complaint was filed.
- The investigation by the Colorado Civil Rights Division resulted in a no probable cause finding.
- The matter was dismissed by order dated 1/31/03.

FY 03 Cases

LaVonne Taylor v. Department of Education, Colorado School for the Deaf and Blind, 2003G008, 2003G095, 2003G098, & 2003G137

- Complainant filed four petitions for hearing, alleging retaliation for disclosure of unsafe conditions and practices in the Student Health Center at the school in violation of the State Employee Protection (Whistleblower) Act.
- In 2003G008, the matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.
- By orders dated 6/17/03 and 7/28/03, the Administrative Law Judge ordered that the remaining cases be consolidated and sent to the agency for a response to the whistleblower allegations.

Fred Neal v. Department of Transportation, 2003B015

- On 8/8/02, Complainant filed a notice of appeal of his termination, alleging discrimination and retaliation for disclosure of objectionable material in his office, a violation of the State Employee Protection (Whistleblower) Act.
- On 8/13/02, the matter was referred to the Colorado Civil Rights Division for investigation.
- On 12/11/02, the matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.
- The case is currently under investigation by the Colorado Civil Rights Division.
- The case is currently under investigation by the Colorado Civil Rights Division.

Alvin Sais v. Department of Corrections, San Carlos Correctional Facility, 2003G023

- On 8/19/02, Complainant filed a petition for hearing, alleging discrimination and retaliation for disclosure of an unspecified violation of the State Employee Protection (Whistleblower) Act.
- After receiving additional information, the Administrative Law Judge dismissed the whistleblower claim on 11/4/02.
- Complainant waived investigation by the Colorado Civil Rights Division and the matter was set for Preliminary Review.
- On 1/14/03, the Administrative Law Judge dismissed the case for failure to respond to a motion to dismiss or to file an information sheet.

Julie Powell v. Trustees of the State Colleges in Colorado, Mesa State College, 2003G040

- On 9/16/02, Complainant filed a petition for hearing, alleging retaliation for disclosure of abuse and waste of state funds, a violation of the State Employee Protection (Whistleblower) Act.
- On 10/21/02, the matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.
- On 1/17/03, the Administrative Law Judge granted Complainant's request to withdraw her petition for hearing.

Kenneth W. Duncan v. Department of Corrections, Canon Minimum Centers, 2003B038

- On 10/22/02, Complainant filed a notice of appeal of his termination, alleging retaliation for a violation of the State Employee Protection (Whistleblower) Act. However, he failed to subsequently file a whistleblower complaint or a copy of the written notice he was appealing.
- On 12/10/02, the Administrative Law Judge dismissed his appeal.

Howard Lee Prince v. Department of Corrections, Division of Community Corrections and Adult Parole, 2003B044

- On 10/30/02, Complainant filed a notice of appeal of his termination, alleging discrimination and retaliation for disclosure of profanity and hostility in the workplace, a violation of the State Employee Protection (Whistleblower) Act.
- On 12/10/02, the matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.
- Having been referred to the Colorado Civil Rights Division, the matter is currently under investigation.

Larry C. Stuart v. Department of Corrections, Division of Adult Parole and Community Corrections, 2003G071

- On 12/2/02, Complainant filed a notice of appeal, alleging ongoing discrimination and retaliation relative to selection for positions, in violation of the State Employee Protection (Whistleblower) Act.
- On 12/31/02, the matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.
- Having been referred to the Colorado Civil Rights Division, the matter is currently under investigation.

Betty Satak v. Department of Corrections, 2003G087, 2003B175

- On 3/5/03, Complainant filed a petition for hearing, alleging retaliation for disclosures regarding her agency's reorganization in violation of the State Employee Protection (Whistleblower) Act. This matter was referred to the agency for a response on 8/5/03.
- On 5/21/03, Complainant filed a notice of appeal of her layoff, alleging discrimination and retaliation for unspecified disclosures, a violation of the State Employee Protection (Whistleblower) Act.
- The whistleblower claim in the second case was dismissed by the Administrative Law Judge by order dated 7/2/03.
- Having been referred to the Colorado Civil Rights Division, the matter is currently under investigation.

John T. Grose v. Community Colleges of Colorado, Arapahoe Community College, 2003G093

- On 2/10/03, Complainant filed a petition for hearing, alleging discrimination and retaliation for contact with the media regarding the discontinuation of a school publication, in violation of the State Employee Protection (Whistleblower) Act.
- After the matter was referred to the agency for a response, Complainant waived investigation by the Colorado Civil Rights Division and Respondent filed its motion to dismiss.

- By order dated 3/31/03, the Administrative Law Judge dismissed the case.

Tina Sterling v. Regents of the University of Colorado, University of Colorado at Denver, 2003B085

- On 2/24/03, Complainant filed a notice of appeal of her layoff, alleging retaliation for disclosing financial improprieties and workplace violence, a violation of the State Employee Protection (Whistleblower) Act.
- On 3/31/03, the matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.
- A motion to dismiss is currently pending before the Board.

Michael Yanker v. Regents of the University of Colorado, University of Colorado at Boulder, 2003G101

- On 3/4/03, Complainant filed a petition for hearing, alleging retaliation for a disclosure of violations of health and safety regulations, in violation of the State Employee Protection (Whistleblower) Act.
- On 5/2/03, the matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.
- A settlement is currently pending.

Brad Rockwell v. Department of Corrections, 2003B097

- On 3/14/03, Complainant filed a notice of appeal of his termination, alleging discrimination and retaliation for disclosure of the need for a competitive hiring process for a position in his agency, a violation of the State Employee Protection (Whistleblower) Act.
- On 4/21/03, the matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.
- After Complainant waived investigation by the Colorado Civil Rights Division, the matter was set for hearing.

Kevin Harvey v. Department of Human Services, Mount View Youth Services Center, 2003G111

- On 3/4/03, Complainant filed a petition for hearing, alleging retaliation for previous whistleblowing activities, a violation of the State Employee Protection (Whistleblower) Act.
- On 5/9/03, the matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.
- The matter is currently set for Preliminary Review.

Corey Barkwill v. State of Colorado Auditor's Office, 2003G119

- On 4/2/03, Complainant filed a petition for hearing, alleging retaliation for disclosure through the grievance process of policy violations by his agency, a violation of the State Employee Protection (Whistleblower) Act.
- On 5/15/03, the matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.
- The matter is currently set for Preliminary Review.

Barbara Mickens v. Department of Corrections, Limon Correctional Facility, 2003G121

- On 4/9 and 4/11/03, Complainant filed two petitions for hearing, alleging retaliation through a corrective action, a violation of the State Employee Protection (Whistleblower) Act.
- On 6/9/03, the matter was referred to the Office of the Personnel Director for investigation. On 6/24/03, the case was consolidated with 2003G076, which contained an allegation of discrimination.
- The Director found no violation of the Whistleblower Act.
- Having been referred to the Colorado Civil Rights Division, the matter is currently under investigation.

Frank Drumm, Jr. v. Department of Natural Resources, Colorado State Parks, 2003G123

- On 4/21/03, Complainant filed a petition for hearing, alleging retaliation for disclosure of unsafe conditions in a park, a violation of the State Employee Protection (Whistleblower) Act.
- After Complainant failed to respond to an order to show cause, the matter was dismissed by the Administrative Law Judge by order dated 5/21/03.

Eileen O'Reilly v. Regents of the University of Colorado, University of Colorado at Colorado Springs, 2003G125

- On 4/21/03, Complainant filed a petition for hearing, alleging retaliation for disclosure of the misuse of gift account monies, a violation of the State Employee Protection (Whistleblower) Act.
- On 6/12/03, the matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.
- The matter is currently set for Preliminary Review.

Frank Carlton v. Department of Corrections, Arrowhead Correctional Facility, 2003B156

- On 5/19/03, Complainant filed a notice of appeal of his layoff, alleging discrimination and retaliation for disclosing abusive leave practices, a violation of the State Employee Protection (Whistleblower) Act.
- On 7/7/03, the matter was referred to the Office of the Personnel Director for investigation.
- Having been referred to the Colorado Civil Rights Division, the matter is currently under investigation.

A.L. Weber v. Department of Corrections, 2003B157 & 2003B208

- On 5/19/03, Complainant filed a notice of appeal of his layoff, alleging discrimination and retaliation for disclosures regarding assignments and qualifications for positions, a violation of the State Employee Protection (Whistleblower) Act.
- On 5/28/03, Complainant filed a second notice of appeal of his suspension with pay, again alleging discrimination and retaliation for disclosure
- On 7/29/03, the first case was referred to the Office of the Personnel Director for investigation. On 7/31/03, the second case was referred to the Office of the Personnel Director for investigation.
- Having been referred to the Colorado Civil Rights Division, both matters are currently under investigation.

Patricia Jones v. Department of Corrections, 2003B165

- On 5/20/03, Complainant filed a notice of appeal of her layoff, alleging discrimination and retaliation for disclosures relating to expenditures for office furniture, a violation of the State Employee Protection (Whistleblower) Act.
- On 7/7/03, the matter was referred to the Office of the Personnel Director and to the Colorado Civil Rights Division for investigation. Both investigations are currently pending.

Ricardo A. Jaramillo v. Community Colleges in Colorado, Community College of Aurora, 2003B178

- On 5/21/03, Complainant filed a notice of appeal of his layoff, alleging discrimination and retaliation for unspecified disclosures, a violation of the State Employee Protection (Whistleblower) Act.
- On 7/3/03, his whistleblower claim was dismissed by the Administrative Law Judge because he failed to file a whistleblower complaint.
- Having been referred to the Colorado Civil Rights Division, the matter is currently under investigation.

Gene E. Muller v. Department of Corrections, Youthful Offender System, 2003B186

- On 5/23/03, Complainant filed a notice of appeal of his layoff, alleging discrimination and retaliation for disclosing use of offensive language, a violation of the State Employee Protection (Whistleblower) Act.
- On 6/9/03, the matter was referred to the Colorado Civil Rights Division for investigation.
- On 7/15/03, the matter was referred to the Office of the Personnel Director for investigation.
- Both investigations are currently pending.

William Gomez v. Department of Corrections, Arkansas Valley Correctional Facility, 2003B207

- On 5/23/03, Complainant filed a notice of appeal of his layoff, alleging discrimination and retaliation for disclosing unsafe working conditions, a violation of the State Employee Protection (Whistleblower) Act.
- On 6/27/03, the matter was referred to the Colorado Civil Rights Division for investigation.
- On 7/2/03, the matter was referred to the Office of the Personnel Director for investigation.

Verna Williams v. Department of Corrections, 2003B229

- On 6/18/03, Complainant filed a notice of appeal of her layoff, alleging discrimination and retaliation for unspecified disclosures about abuse of authority, a violation of the State Employee Protection (Whistleblower) Act.
- On 6/29/03, the matter was referred to the Colorado Civil Rights Division for investigation.
- Although the Administrative Law Judge requested additional information on the whistleblower claim, a separate whistleblower complaint has not yet been filed.