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# State of Colorado

Bill Ritter, Jr.  
Governor

Rich Djokic  
Board Chair

Kristin F. Rozansky  
Board Director



State Personnel Board  
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August 4, 2009

The Honorable Bill Ritter, Jr.  
Governor of the State of Colorado  
136 State Capitol Building  
Denver, Colorado 80203

**RE: State Personnel Board Annual Report of Cases Involving Claims Under the  
State Employee Protection (Whistleblower) Act, §24-50.5. 101, et seq., C.R.S.**

Dear Sir:

I have enclosed the State Employee Protection Act Annual Report of the Colorado State Personnel Board for Fiscal Year 2009 (July 1, 2008, through June 30, 2009), mandated by Colorado's Whistleblower Act, in particular § 24-50.5-107, C.R.S. If there are questions, or if you would like additional information regarding the Report, please feel free to contact me at (303) 866-5044.

Please note that the attached report contains information pertaining to actions taken during FY09 in any pending State Personnel Board actions in which there was a claim of a violation of the Whistleblower Act. In addition, this letter is also to inform you that the Board does not know if appointing authorities received a disciplinary action in cases where a violation of § 24-50.5-103, C.R.S., was found, as mandated by § 24-50.5-104(4), C.R.S.

Sincerely,

Kristin F. Rozansky

cc: State Personnel Board Members  
Rich Gonzales (2 copies)  
Trey Rogers  
Tom Montoya  
Amy Zimmer, 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, 2008, through June 30, 2009

## FY 04 Cases<sup>1</sup>

**Timothy Bennett v. Department of Corrections, Colorado Territorial Correctional Facility, 2003B150, 2004G052 [2003B0150(C)] – no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- At its October 17, 2006 meeting, the State Personnel Board (Board) remanded the matter to the Administrative Law Judge (ALJ) on two issues: the amount of attorney fees to be awarded to Complainant for litigating the abolishment of his position and the amount of the disciplinary reduction of his base pay.
- On December 20, 2006, the ALJ issued the following Order on Remand:
  - Respondent shall pay Complainant’s attorney fees and costs in the amount of \$38,335.36, with statutory interest to be assessed as of June 1, 2006, as incurred by that date;
  - Fees and costs incurred after June 1, 2006, shall be awarded statutory interest from the date of the ALJ’s decision;
  - The \$300 a month permanent pay reduction assessed against Complainant’s base salary is modified so that the equivalent of a \$571.43 per month (with the last month at \$571.42) reduction is taken from Complainant’s pay from September 1, 2003 through March 31, 2004;
  - Complainant is to be refunded any amount taken from his pay in excess of \$4,000;
  - Interest on the salary amount refunded to Complainant shall be payable at the statutory rate from the date of the Initial Decision, June 1, 2006;
  - Complainant’s base pay for period after the assessment of the \$4,000 reduction in pay shall be restored to the level it would have been if the pay reduction had lasted only seven months.
- Upon appeal of the ALJ’s Order on Remand to the Board, the Board then issued an order adopting the findings of fact, including the supplemental findings of fact; the conclusions of law, including the calculation of hours awardable to Complainant’s attorney, as amended on remand to 127 hours by the Board (and agreed to by the parties) and the assessment of a total of \$4,000.00, as a disciplinary pay reduction against Complainant’s base salary; and the ALJ’s order on remand, as modified.
- Complainant filed his Notice of Appeal at the Court of Appeals on June 14, 2007, raising as issues whether the warden had been properly delegated appointing authority, whether the abolition and bumping of Complainant’s position terminated the warden’s authority over him, and whether the penalty imposed on Complainant was proper.
- On August 28, 2008, the Court of Appeals issued its decision setting aside the Board’s order, vacating the disciplinary penalty and remanding the case to the Board for a determination of the reasonable living and travel expenses that Bennett incurred as a result of the improper abolition of his position and for the entry of an order requiring DOC to refund the \$4,000 disciplinary penalty to Bennett. The court also ordered that, on remand, the Board may determine whether Bennett is entitled to recover additional attorney fees, and if so, the amount of such fees.
- On June 16, 2009, the Board remanded the matter to the Administrative Law Judge for a determination of reasonable living and travel expenses that Complainant incurred as a result

<sup>1</sup> This matter remained open or reached resolution before the Board during FY 09; see previous reports.

of the abolition of his position; for a determination of whether he is entitled to additional attorney fees; and, if entitled to attorney fees, the amount of those attorney fees. The Board also ordered that the Department of Corrections is to refund to Complainant \$4,000, the amount of the disciplinary penalty.

- On July 10 and July 17, 2009, Complainant filed status reports indicating that the issues of back pay with interest entitlement, reimbursement of costs and expenses for moving and travel relative to the abolition of Complainant's position, and attorney fees had been resolved by the parties.
- On July 29, 2009, Complainant filed a Notice of Resolution of Issues on Remand.

#### FY 06 Cases<sup>2</sup>

**Edward L. Donaldson v. Department of Public Safety, Colorado State Patrol, 2006B026, 2006B051 [2006B051(C)] – no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- On May 16, 2007, the ALJ issued an Initial Decision, concluding that Complainant committed some of the acts for which he was disciplined, including failing to give status checks during his first day on the dayshift; leaving his assigned work area for forty-one minutes to go to the State Personnel Board and changing out of his uniform shirt to complete the errand; refusing to answer and leaving his supervisor's office, which constituted insubordination; making allegations of discrimination in the form of a written report against a coworker, as directed by his supervisor; and failing to return the fitness-to-return to work in a timely manner. However, the ALJ also found that Respondent's actions were arbitrary, capricious, or contrary to rule or law. The ALJ held that issuing a corrective action to Complainant for the contents of his discrimination report when he had been ordered by his supervisor to prepare that report would have a chilling effect on future reports. The ALJ further found that the corrective action and two disciplinary actions were not within the range of reasonable alternatives, were imposed without consideration of mitigating circumstances, or were too severe. Although no attorney fees were awarded, the ALJ modified Respondent's actions to rescind the corrective action and the five-day suspension, imposing an alternate disciplinary action of a one-day suspension; to rescind the termination, imposing an alternate disciplinary action on Complainant of a thirty-day suspension; and to award Complainant back pay and benefits to the date of reinstatement.
- Respondent filed an appeal to the Board of the Initial Decision of the Administrative Law Judge. The matter was scheduled for Board review on October 16, 2007.
- By order dated October 27, 2007, the Board adopted the ALJ's Findings of Fact numbers 1 ("Complainant committed some of the acts for which he was disciplined") and 4 ("Attorney fees are not warranted"). The Board also modified or reversed Conclusions of Law numbers 2 ("Respondent's actions were arbitrary, capricious, or contrary to rule or law") and 3 ("The corrective action and two disciplinary actions imposed were not within the range of reasonable alternatives"), as follows. The Board found that Respondent's actions were arbitrary, capricious, or contrary to rule or law with respect to the September 2005 corrective action and the December 13, 2005 disciplinary action, as the discipline imposed by the appointing authority was not within the range of reasonable alternatives. The Board adopted the rescission of the September 2005 corrective action and the modification of the December 13, 2005 disciplinary action from five days to one day. In addition, the Board concluded that Respondent's actions were not arbitrary, capricious, or contrary to rule or law with respect to the February 15, 2006 disciplinary termination and the discipline imposed was within the

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<sup>2</sup> This matter remained open or reached resolution before the Board during FY 09; see previous reports.

range of reasonable alternatives. Thus, the Board affirmed the disciplinary termination and reversed the portion of the Initial Decision of the Administrative Law Judge, Conclusions of Law numbers 2 and 3, relating to the disciplinary termination.

- Complainant filed his Notice of Appeal at the Court of Appeals on December 5, 2007.
- On December 30, 2008, the Court of Appeals issued its Mandate, affirming the Board Order.

### **FY 07 Cases<sup>3</sup>**

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

**Annmarie Maynard v. Department of Healthcare Policy and Financing, 2007B073, 2007G050, 2008G043 [2007B073(C)] - *finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.***

- Complainant's consolidated appeal included a challenge to a corrective action, a demotion, a termination, and the agency's failure to correct harassment against her, alleging discrimination based on race/color/creed and sex and violations of the Whistleblower Act, consisting of retaliation for her reports of fiscal irregularities, including the fact that the state owed the federal government \$3,500,000 due to accounting errors and the state overcharged the federal government \$8 million.
- Following a No Probable Cause determination by CCRD, Complainant appealed that determination to the Board on April 30, 2008.
- A second No Probable Cause opinion was issued by CCRD on July 9, 2008.
- The case was set for four days of hearing in September 2008.
- On December 8, 2008, the ALJ issued her Initial Decision. The ALJ determined that Complainant did not commit the acts upon which discipline was based, including creating a hostile work environment or violating the terms of her corrective action. The ALJ did conclude that Respondent's actions were arbitrary and capricious and violated Board Rules regarding performance management and predisciplinary meetings; and, while Respondent did not engage in race discrimination, Respondent's demotion of Complainant constituted gender discrimination. Additionally, the ALJ found that Respondent's November 2007 corrective action, 2008 evaluation and termination of Complainant were retaliatory in violation of the Colorado Anti-Discrimination Act and constituted retaliation against Complainant for filing charges of discrimination; Respondent's termination of Complainant violated the Colorado State Employee Protection (Whistleblower) Act; Complainant was entitled to an award of attorney fees and costs; and Complainant was entitled to back pay and benefits, and front pay. The ALJ ordered Respondent to rescind the demotion and termination of Complainant, provide her back pay and benefits to the date of demotion, provide front pay in an amount to be determined at hearing, and pay attorney fees and costs incurred in bringing this action.
- On May 1, 2009, having concluded settlement negotiations, the parties filed Stipulations as to Satisfaction of Obligations & Withdrawal of Appeal of the Initial Decision by Respondent.
- On May 4, 2009, the ALJ granted the stipulations and dismissed the case.

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<sup>3</sup> The matter remained open or reached resolution before the Board during FY 09; see previous reports.



## FY 08 Cases<sup>4</sup>

### **Raymond Cordova v. Department of Education, Colorado School for the Deaf and Blind, 2008B031 – no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant appealed his disciplinary termination, alleging retaliation for disclosures about computers being disposed of by putting them in a dumpster; software being installed without licensing; a co-worker browsing porn sites, game sites, proxy servers and infecting his machine; and developing health issues from employment conditions, in violation of the Whistleblower Act.
- Complainant alleged discrimination based on race/color/creed, religion and "persecution by way of making working conditions unbearable, non support of IT department."
- On November 20, 2007, Complainant filed a Verification of Filing a Charge at the Colorado Civil Rights Division (CCRD).
- On July 11, 2008, CCRD issued its no probable cause opinion, and on July 22, 2008, the Board transmitted this finding to Complainant.
- On December 5, 2008, the ALJ dismissed this matter, for Complainant's failure to respond to a motion to dismiss.

### **Howard J. Boff v. Department of Transportation, 2008B049 – no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed a petition for hearing, alleging retaliation for a disclosure of acts of malfeasance and possible corruption by a co-worker. Complainant stated that allegations have been made against him of misconduct and harassment and he has been threatened with violence and possible termination, in violation of the Whistleblower Act.
- On May 28, 2008, following Complainant's failure to file an information sheet, the ALJ dismissed this matter.
- Complainant appealed the dismissal and the Board adopted the ALJ's Dismissal Order.

### **Laura Toth v. Department of Agriculture, 2008B056 – no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed an appeal of her disciplinary pay reduction, alleging retaliation because she disclosed an accounting error to her direct supervisor and reported to the general manager of the State Fair a double booking of revenue made by an employee, in violation of the Whistleblower Act.
- The matter was set for hearing on May 8, 2008.
- On July 9, 2008, following settlement, the ALJ dismissed this matter.

### **Anita Khan v. Department of Transportation, Office of Financial Management and Budget, 2008B094 – no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed an appeal of her termination, alleging retaliation for filing a grievance, regarding the disproportionate and exorbitant pay increase of 44% provided to a short term employee, due to favoritism, in violation of the Whistleblower Act.
- The matter was set for hearing on September 10, 2008.

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<sup>4</sup> These matters remained open or reached resolution before the Board during FY 09; see previous reports.

- On August 28, 2008, following settlement, the ALJ dismissed this matter.

**Paul Rodriguez v. Regents of the University of Colorado, University of Colorado at Denver, Information Technology Services, 2008B106 – no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed an appeal of his demotion, alleging unspecified whistleblower retaliation.
- The matter was set for hearing on November 25, 2009.
- In her Initial Decision of January 9, 2009, the ALJ determined that Respondent failed to prove that Complainant committed the acts for which he was disciplined, including intentionally misleading anyone in his requests for video footage which purported to show that a co-worker had assaulted Complainant, failing to follow the normal channels in obtaining the footage, using his position as an IT Pro IV for access to the footage. The ALJ also found that Respondent had failed to prove that Complainant had violated any of the University’s policies, including any policy controlling the dissemination of the video footage, the Use of Facilities policy, the Use of Technology Information policy, or the University’s Fiscal Code of Ethics. In addition, the ALJ found that Respondent’s conclusions that there were violations of the three policies cited as the basis for Complainant’s discipline, or there was willful misconduct in this case, were conclusions that reasonable persons would not reach given the facts of this case and the terms of the policies. Rescinding Respondent’s actions and reinstating Complainant to his former IT Pro IV position, the ALJ concluded that Respondent’s action was arbitrary, capricious, or contrary to rule or law and the discipline imposed was not within the range of reasonable alternatives.

**Judy Wilday-O’Neill v. Department of Human Services, Colorado State Veterans Home at Fitzsimons, 2008G065 - no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed a petition for hearing, challenging a final grievance decision which affirmed a corrective action and alleging retaliation for disclosures, in violation of the Whistleblower Act. Her disclosures reflected her concerns regarding serious patient care deficiencies and issues regarding violations of proper nursing practice which she discussed with the Human Resources Director over a period of weeks.
- The ALJ recommended to the Board that a hearing be denied, finding that Complainant has not made a *bona fide* protected disclosure because her only “disclosure” was a narration of an incident which led to her corrective action. Thus, Complainant’s allegations of Whistleblower Act violations are not sufficient to demonstrate that there is an evidentiary and legal basis that would support a finding that the action was arbitrary, capricious, or contrary to rule or law, and that the relief requested by Complainant is within the Board’s statutory authority.
- At its July 15, 2008 meeting, the Board adopted the Preliminary Recommendation of the Administrative Law Judge and denied the petition for hearing.

**Derek Wilson v. Regents of the University of Colorado, University of Colorado at Boulder, Center for Multicultural Affairs, 2008G075 - no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed a petition for hearing, challenging his evaluation and alleging retaliation for filing numerous complaints of harassment and discrimination with Human Resources, and then receiving a rating of incompetent, in violation of the Whistleblower Act.

- On June 27, 2008, the ALJ dismissed the whistleblower allegation, and the matter was set for preliminary review.
- On July 14, 2008, the ALJ granted Complainant's request for an extension of time to file a charge of discrimination with CCRD.
- Following a no probable cause finding by CCRD, Complainant withdrew his petition for hearing.

**Donald Staley v. Regents of the University of Colorado, Division of Facilities Management, 2008G078 - no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed a petition for hearing, alleging retaliation for his disclosures of mismanagement and waste of public funds, in violation of the Whistleblower Act.
- Complainant resigned prior to filing his petition for hearing. Therefore, the ALJ issued an order to show cause as to why this matter should not be dismissed for lack of jurisdiction.
- On July 14, 2008, the ALJ dismissed the matter.

**Judy Wilday-O'Neill v. Department of Human Services, Colorado State Veterans Home at Fitzsimons, 2008G079 – no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed a petition for hearing, challenging a charge against her of a HIPAA violation and again alleging retaliation for disclosures about her concerns regarding higher authorities' criminal activities, patient care and nursing practice deficiencies, assault and abuse, medication errors, infection control and other relating issues of deficiencies constituting risk and danger to the facility, patients and residents, in violation of the Whistleblower Act.
- Following Complainant's filing of a second petition for hearing, the ALJ consolidated the matters and referred the matter to the agency for a response to the whistleblower allegations on June 26, 2008.
- Following Complainant's termination, the cases were consolidated under 2009B016(C). See FY 09 Cases.

#### **FY 09 Cases**

**Howard J. Boff v. Department of Transportation, 2009B001 – no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed an appeal of his disciplinary demotion, alleging retaliation because he disclosed fraud and mismanagement by his supervisor, in violation of the Whistleblower Act.
- The matter was set for hearing on December 4, 2008.
- On February 3, 2009, following settlement, the ALJ dismissed this matter.

**Casey J. Conrad v. Department of Revenue, Motor Carrier Services Division, 2009B003 – no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed an appeal of his disciplinary demotion for violence in the workplace, alleging retaliation because he raised issues to his supervisors following a night of drinking with co-workers, in violation of the Whistleblower Act.
- The matter was set for hearing on November 10, 2008.
- On November 28, 2008, following settlement, the ALJ dismissed this matter.

**Barbara Bond v. Department of Human Services, Division of Youth Corrections, 2009B010 – no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed an appeal of her disciplinary demotion for workplace violence, alleging retaliation because she made a report during an investigation of the facility using records dating back to 1991, in violation of the Whistleblower Act.
- The matter was set for hearing on January 7, 2009.
- On December 30, 2008, following settlement, the ALJ dismissed this matter.

**Judy Wilday-O’Neill v. Department of Human Services, Colorado State Veterans Home at Fitzsimons, 2008G079, 2009B016 [2009B016(C)] – no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed an appeal of her disciplinary termination for violations of patient confidentiality and performance issues, alleging retaliation because she made disclosures regarding criminal activity, patient care and nursing practices, in violation of the Whistleblower Act.
- The matter was set for hearing on January 29, 30 and February 3, 2009.
- In her April 9, 2009 Initial Decision, After hearing, the ALJ determined that Complainant committed the acts for which she was disciplined, including repeated failure to assess, describe, measure and document a resident’s wounds, constituting a pattern of violating basic nursing standards of practice; failing to chart medication administration; and failing to arrange for the STAT blood draw during her shift on July 7, 2008. Affirming the disciplinary termination, the ALJ concluded that Respondent’s disciplinary action was not arbitrary, capricious, or contrary to rule or law; the evidence fails to establish that Complainant’s protected disclosures regarding patient care were a substantial or motivating factor in Respondent’s decision to terminate Complainant’s employment; and Complainant’s pattern of performance errors in June and July of 2008 was sufficiently serious that it was within the range of reasonable alternatives to terminate her employment.
- Complainant filed an appeal of the ALJ’s Initial Decision, but her appeal was dismissed for failure to file a Designation of Record.

**Louie Palomo v. Trustees of the State Colleges in Colorado, Auraria Higher Education Center, Facilities Management, 2009B023 – no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed an appeal of his disciplinary demotion, alleging retaliation for unspecified disclosures, in violation of the Whistleblower Act.
- On November 10, 2008, the ALJ dismissed this matter because Complainant failed to respond to a motion to dismiss.

**Terry Coleman v. Department of Labor and Employment, Workforce Development Programs, 2009B056 – no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed an appeal of her disciplinary termination for falsification of her educational background, alleging retaliation because, during a 2005 Federal Investigation of the Pueblo Work Link, she gave the United States Department of Labor information regarding her concerns of illegal acts committed by the persons being investigated, including verbal conversations and emails, in violation of the Whistleblower Act.



- The matter was set for hearing on May 4, 2009.
- On June 3, 2009, following settlement, the ALJ dismissed this matter.

**Cheryl Muhovich v. Regents of the University of Colorado, University of Colorado at Boulder, Facilities Management, 2009B060** – *this matter has not yet gone to hearing on the allegation of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.*

- Complainant filed an appeal of her administrative separation, alleging that UCB's refusal to provide accommodation (light-duty work) during injury leave was intended to force her out of position by exhausting her leave, in violation of the Whistleblower Act.
- The matter is currently pending settlement and dismissal.

**John Malloy v. Department of Human Services, Division of Youth Corrections, Platte Valley Youth Service Center, 2009B075** – *this matter has not yet gone to hearing on the allegation of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.*

- Complainant filed an appeal of his disciplinary termination for unsafe management of residents, alleging retaliation for giving information to news agencies that aired on Fox News and the Rocky Mountain New regarding physical abuse of residents, inappropriate sexual contact between staff during shifts and inappropriate testing procedures, in violation of the Whistleblower Act.
- On April 1, 2009, Complainant filed a charge of discrimination at CCRD based on race/color/creed. CCRD's investigation is ongoing.

**Jerry W. Betts v. Trustees of the State Colleges in Colorado, Mesa State College, Financial and Administrative Services, 2009B077** – *this matter has not yet gone to hearing on the allegation of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.*

- Complainant filed an appeal of his disciplinary termination for failing to perform competently, alleging retaliation for unspecified disclosures, in violation of the Whistleblower Act.
- On April 6, 2009, the ALJ dismissed the Whistleblower claim.
- The matter is set for hearing on August 4, 2009.

**John W. Titmus, Sr. v. Community Colleges of Colorado, Colorado Northwestern Community College, 2009B090** – *this matter has not yet gone to hearing on the allegation of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.*

- Complainant filed an appeal of his disciplinary termination for workplace violence, alleging retaliation for his suggestion that police be contacted regarding fuel theft and manipulation of the federal fuel system at Rangely Airport, creating an unsafe or dangerous work environment, failure to report an accident and DWI, and report of a runway not being closed, in violation of the Whistleblower Act.
- The matter is set for hearing on September 1, 2009.

**Michelle Rush v. Regents of the University of Colorado, University of Colorado at Boulder, 2009B102** – *no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.*

- Complainant filed an appeal of the abolishment of her position, alleging retaliation for her work as a reporter for Silver & Gold, because she wrote a story about an employee who

alleged a breach of confidential information in his email account and she printed an article against the university's wishes, in violation of the Whistleblower Act.

- On July 20, 2009, the ALJ issued an order granting Complainant's withdrawal of her appeal.

**Jefferson Dodge v. Regents of the University of Colorado, University of Colorado at Boulder, 2009B103 – no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed an appeal of the abolishment of his position, alleging retaliation for his work as an editor for Silver & Gold, because he published Ms. Rush's story about an employee who alleged a breach of confidential information in his email account and printed an article against the university's wishes, in violation of the Whistleblower Act.
- On June 29, 2009, the ALJ issued an order granting Complainant's withdrawal of his appeal.

**Brenda St. John v. Trustees of the State Colleges in Colorado, Mesa State College, Advising and Career Center, 2009G072, 2009G086, 2009B106 [2009B106(C)] – this matter has not yet gone to hearing on the allegation of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Following the filing of petitions for hearing regarding final grievance decisions, Complainant filed an appeal of her disciplinary termination for failing to perform competently, alleging retaliation for her disclosure of information regarding unprofessional behavior and civil rights discrimination against minority students, in violation of the Whistleblower Act.
- This consolidated matter is currently undergoing investigation by CCRD.

**Taissyia Oleynikova v. Department of Human Services, Office of Information Technology Services, 2009G005 – no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed a petition for hearing, challenging her low performance rating and alleging retaliation for disclosures, including verbally supporting her former supervisor in claiming deficient performance and poor attendance of a contractor and misuse of public funds, in violation of the Whistleblower Act.
- On December 4, 2008, the ALJ recommended that the petition for hearing be granted, finding: (1) The issues of mismanagement of the agency contractors, favoritism, and budget waste are all topics which can create a disclosure of information because such topics at least touch on a matter of public concern; (2) Complainant's low 2007 PMAP evaluation issued in April of 2008, the April 2008 addition of new duties to her PDQ without a new classification, and a July 2008 change of office space from a cubicle with a window to the less desirable location in the basement constitute disciplinary action under the Whistleblower Act; (3) Regarding the causal connection between disclosure and discipline, Complainant has alleged enough to find that she has met the third prong of the Whistleblower analysis; and (4) Complainant made a good faith effort to inform her supervisor or appointing authority of the information that she would eventually disclose to the Personnel Director and others with DPA.
- On December 18, 2008, the Board adopted the Preliminary Recommendation of the ALJ, granting the petition for hearing.
- The matter was set for hearing on March 12, 2009.
- On March 24, 2009, the parties entered into a Stipulated Motion to Dismiss, stating that Complainant was agreeing to withdraw her case before the Board.
- On March 25, 2009, the ALJ dismissed the matter with prejudice.

**Julie Rodriquez v. Department of Corrections, Centennial Correctional Facility, 2009G009 – no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed a petition for hearing, challenging her termination during the probationary period for poor performance and alleging retaliation for disclosures in incident reports regarding interactions among other correctional officers, in violation of the Whistleblower Act.
- On August 18, 2008, the ALJ dismissed the matter for Complainant’s failure to respond to an order to show cause.

**Steven L. Newman v. Department of Transportation, 2009G010 – no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed a petition for hearing, challenging his termination during the probationary period for poor performance and alleging retaliation for disclosing CDOT’s violation of Governor Executive Order D 028 07 Authorizing Partnership Agreements with state employees, in violation of the Whistleblower Act.
- On November 6, 2008, the ALJ recommended that the petition for hearing be denied, finding that Complainant’s whistleblower disclosures were false and that the disclosures were made after Complainant’s supervisor told him he was not a good fit for his position.
- On November 18, 2008, the Board adopted the Preliminary Recommendation of the ALJ, denying the petition for hearing.

**Scott Horak v. Department of Natural Resources, 2009G013 – no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant, a former employee, filed a petition for hearing regarding a final grievance decision, requested a director’s review of an examination, and alleged retaliation for unspecified disclosures, in violation of the Whistleblower Act.
- On September 9, 2008, the ALJ dismissed the matter because Complainant failed to respond to a request for additional information.

**Victoria Johnson v. Department of Revenue, Colorado Lottery Division, 2009G014 – no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed a petition for hearing challenging her termination during the probationary period for unsatisfactory performance and alleging retaliation for failure to report a statement made about her supervisor, in violation of the Whistleblower Act.
- On December 4, 2008, the ALJ recommended that the petition for hearing be denied, finding that, rather than being terminated for disclosures, she was terminated for poor performance.
- On December 16, 2008, the Board adopted the Preliminary Recommendation of the ALJ, denying the petition for hearing.

**Patricia A. Lewthwaite v. Regents of the University of Colorado, University of Colorado at Denver and Health Science Center, Addiction Research and Treatment Services, 2009G019 – no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed a petition for hearing regarding an unresolved grievance pertaining to falsification of leave requests and approval forms, alleging retaliation for unspecified disclosures, in violation of the Whistleblower Act.

- On January 6, 2009, following settlement, the ALJ dismissed this matter.

**Tim Morrison v. Department of Health Care Policy and Financing, 2009G043 – no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed a petition for hearing regarding a corrective action which he alleged he received in retaliation for filing a charge of discrimination with EEOC and CCRD, in violation of the Whistleblower Act.
- On March 5, 2009, the ALJ recommended that the petition for hearing be denied, finding that the record before the Board does not establish a causal connection between Complainant’s filing of the discrimination charge and the imposition of the second corrective action.
- On March 17, 2009, the Board adopted the Preliminary Recommendation of the ALJ, denying the petition for hearing.

**John Redding v. Department of Natural Resources, Division of Water Resources, 2009G069 [2009G069(C)] - this matter has not yet gone to hearing on the allegation of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed a petition for hearing regarding a final grievance decision, alleging retaliation for disclosures pertaining to a supervisor’s receipt of gifts from consultants whose dam construction designs would get approved, conflicts of interest, safety of citizens who lived below the high hazard dams, and supervisor-imposed work conditions, in violation of the Whistleblower Act.
- On June 3, 2009, the ALJ issued the Preliminary Recommendation of the Administrative Law Judge recommending that the petition for hearing be granted, finding: (1) Complainant’s asserted retaliatory actions listed in his information sheet constitute an alleged pattern of reprimands, admonishments, withholding of work, the threat of a less than stellar work history, and an unsatisfactory performance evaluation without any prior notice or coaching; (2) the information in the record does establish at this preliminary stage that Complainant’s protected disclosures were substantial or motivating factor in the subsequent adverse actions taken against Complainant; and (3) Complainant’s information warrants a hearing on his Whistleblower allegations.
- On June 16, 2009, the Board adopted the Preliminary Recommendation of the ALJ, granting the petition for hearing.
- The matter was set for hearing on September 15, 2009.
- On July 17, 2009, the ALJ vacated the hearing setting due to consolidation with another case and referred the matter to CCRD based on Complainant’s charges of discrimination.

**Kimberly Frankmore v. Department of Corrections, Arkansas Valley Correctional Facility, 2009G075 - no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.**

- Complainant filed a petition for hearing following a final grievance decision and alleged retaliation for unspecified disclosures, in violation of the Whistleblower Act.
- On March 30, 2009, following Complainant’s response to an order to show cause, the ALJ dismissed the matter.

**Robert Montoya v. Department of Human Services, Colorado Mental Health Institute at Pueblo, 2009G107 – this matter has not yet gone to hearing on the allegation of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.**



- Complainant filed a petition for hearing, challenging receipt of a corrective action and alleging retaliation for disclosures, including a photograph and report of a captain sleeping while on duty; reports of numerous ethical, procedural and retaliatory issues within DOC; and workplace violence, in violation of the Whistleblower Act.
- On June 23, 2009, following Complainant's response to a request for additional information, the ALJ deferred the matter to the agency for the completion of the grievance process.

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