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Bill Ritter, Jr.

Governor

Rich Djokic

Board Chair

Kristin F. Rozansky

Board Director

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State Personnel Board

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August 5, 2010

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 2010 (July 1, 2009, through June 30, 2010), 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 FY10 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)
Craig Welling
Guy Mellor
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, 2009, through June 30, 2010

FY 04 Cases¹

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.

- After the case was consolidated with an earlier case, 2003B150, the matter was referred to the Office of the Personnel Director for investigation. The Director found no violation of the Whistleblower Act.
- 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.
- On October 26, 2009, the ALJ issued an Order re: Notice of Satisfaction of All Claims.

FY 09 Cases²

Cheryl Muhovich v. Regents of the University of Colorado, University of Colorado at Boulder, Facilities Management, 2009B060 – 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 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.
- On September 21, 2009, following settlement, the ALJ dismissed this matter.

Jerry W. Betts v. Trustees of the State Colleges in Colorado, Mesa State College, Financial and Administrative Services, 2009B077 – 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 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.
- On August 4, 2009, following settlement, the ALJ dismissed this matter.

John W. Titmus, Sr. v. Community Colleges of Colorado, Colorado Northwestern Community College, 2009B090 – 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 termination for workplace violence, alleging retaliation for his suggestion that police be contacted regarding fuel theft and manipulation of

¹ This matter remained open or reached resolution before the Board during FY 10; see previous reports.

² These matters remained open or reached resolution before the Board during FY 10; see previous reports.

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.

- On September 23, 2009, following settlement, the ALJ dismissed this matter.

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.

Brenda St. John v. Trustees of the State Colleges in Colorado, Mesa State College, Advising and Career Center, 2009G072, 2009G086, 2009B106 [2009B106(C)] – no finding 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.
- On September 28, 2009, following settlement, the ALJ dismissed this matter.

John Redding v. Department of Natural Resources, Division of Water Resources, 2009G069(C), 2010B015(C) [2010B015(C)] – 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 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.
- Following Complainant’s waiver of an investigation by CCRD, on August 5, 2010, Complainant filed another appeal due to his termination of employment.

- After hearing on February 23, 24, and 25 and March 2, 2010, the ALJ issued the Initial Decision of the ALJ on April 27, 2010, concluding that Complainant committed the acts upon which the termination was based; Respondent's termination decision was not arbitrary, capricious or contrary to rule or law; Respondent did not violate the Colorado State Employee Protection Act; Respondent's termination decision was within the range of reasonable alternatives; and Complainant is not entitled to an award of attorney fees and costs. The ALJ dismissed Complainant's appeal with prejudice.
- On May 27, 2010, Complainant filed an appeal of the Initial Decision of the ALJ.
- The appeal of the Initial Decision of the ALJ is scheduled to come before the Board on September 21, 2010.

Robert Montoya v. Department of Human Services, Colorado Mental Health Institute at Pueblo, 2009G107 – 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 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 July 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.
- Absent a response to the deferral to the agency or any communication from either party, the ALJ issued a dismissal order on February 1, 2010.

FY 10 Cases

Kirk Katzenmeyer v. Department of Corrections, Buena Vista Correctional Facility, 2010B012 – no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.

- On July 20, 2009, Complainant filed an appeal of his disciplinary demotion, alleging retaliation for reporting misconduct toward an inmate, in violation of the Whistleblower Act.
- The matter was set for hearing on December 1, 2009.
- The hearing was vacated upon the parties' reaching a settlement; the ALJ granted the stipulation and motion to dismiss on December 28, 2009.

Owen Gondwe v. Department of Human Services, Wheat Ridge Regional Center, 2010B020 – no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.

- On August 14, 2009, Complainant filed an appeal of his resignation, alleging that it was coerced, discriminatory based on race, and imposed in retaliation for unspecified disclosures, in violation of the Whistleblower Act.
- The ALJ issued two separate show cause orders to Complainant.
- On September 30, 2009, the ALJ dismissed this case, ruling that once Complainant has resigned his position, the Board is not a proper venue for Complainant to assert his claims of discrimination and whistleblower retaliation.

John Vidor v. Department of Corrections, Division of Adult Parole, Community Corrections and YOS, 2010B027 – no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.

- On August 31, 2009, Complainant filed an appeal of his termination of employment, alleging discrimination based on age and national origin/ancestry and retaliation for informing his supervisor that his actions were illegal, in violation of the Whistleblower Act.
- After hearing on April 27, 29, 29, and May 4, 2010, the ALJ issued the Initial Decision of the ALJ on June 21, 2010, concluding that Complainant committed the acts for which he was disciplined; Respondent's action was arbitrary, capricious or contrary to rule or law; the discipline imposed was within the range of reasonable alternatives; Respondent did not discriminate against Complainant or violate the Colorado State Employee Protection Act; Respondent's delegation of appointing authority was appropriate. Affirming Respondent, the ALJ ruled that Complainant is not entitled to reinstatement, but is entitled to full back pay and benefits from the date of his termination until the last day of his evidentiary hearing, as well as an award of attorney fees and costs.
- On July 21, 2010, Respondent filed its Notice of Appeal of the Initial Decision, and Complainant filed his Notice of Cross Appeal of the Initial Decision.
- The appeal of the Initial Decision of the ALJ is scheduled to come before the Board on November 16, 2010.

John Conte v. Department of Natural Resources, Division of Water Resources, 2010B028, 2010G012 [2010B028(C)] - no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.

- On August 6, 2009, Complainant filed a petition for hearing, alleging discrimination based on race and religion and retaliation for his disclosures to management of product and contract improprieties, in violation of the Whistleblower Act.
- On September 9, 2009, Complainant filed an appeal of his disciplinary termination, again alleging discrimination based on race and religion and retaliation for his disclosures to management of product and contract improprieties, in violation of the Whistleblower Act.
- On April 19, 2010, CCRD issued a no probable cause opinion after Complainant filed a charge of discrimination.
- The matter was set for hearing on August 3, 2010; however, the ALJ issued a stay of the proceedings on June 11, 2010, due to pending settlement.

Charles Cobb v. Department of Public Health and Environment, Laboratory Services, 2010B042 - no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.

- On October 26, 2009, Complainant filed an appeal of his disciplinary termination, alleging discrimination based on disability and retaliation for his disclosures to management about necessary software modifications to the Denver Police Department's alcohol breath testing program and Complainant's objections to the agency's procedures and processes, in violation of the Whistleblower Act.
- The case was set for hearing on March 11, 2010.
- The ALJ issued a dismissal order on July 13, 2010, having been informed that the matter settled.

Rebecca Baca v. Department of Human Services, Bruce McCandless State Veterans Home at Florence, 2010B044 - no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.

- On October 28, 2009, Complainant filed an appeal of her forced resignation, alleging discrimination based on retaliation for unspecified disclosures, in violation of the Whistleblower Act.
- The ALJ dismissed the matter on December 7, 2009, for lack of jurisdiction due to the untimely filing of Complainant's appeal.

Jeffrey Roberts v. Department of Human Services, Disability Determination Services, 2010B058, 2010G028 [2010B058(C)] - no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.

- On October 26, 2009, Complainant filed a Whistleblower Complaint, alleging retaliation for disclosures regarding the sending of pornographic materials over email, in violation of the Whistleblower Act.
- On November 20, 2009, Complainant filed an appeal of his termination, alleging discrimination based on political affiliation, national origin, and organization membership, as well as disclosures regarding the sending of pornographic materials over email, in violation of the Whistleblower Act.
- The matter was set for hearing on April 12, 2010, but the ALJ dismissed the matter on April 13, 2010, for Complainant's failure to appear at hearing.

Curtis Lee Medina v. Department of Human Services, Division of Youth Corrections, Platte Valley Youth Service Center, 2010B059 – 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.

- On November 23, 2009, Complainant filed an appeal of his disciplinary termination for violation of sexual harassment, work place violence, employee civil rights and code of conduct. He alleged retaliation for his disclosures to management about misuse of the time clock, in violation of the Whistleblower Act.
- The case is set for hearing on July 27 and 28, and August 10, 2010.

Danny Guerrero v. Department of Human Services, Colorado Mental Health Institute at Pueblo, 2010B103 – no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.

- On February 9, 2010, Complainant filed an appeal of his disciplinary termination, alleging discrimination based on gender and retaliation for disclosures regarding misappropriation and misuse of state funds for the implementation of a computer tomography scanner, in violation of the Whistleblower Act.
- The matter was set for hearing on June 28, 2010.
- The hearing was vacated upon the parties' reaching a settlement; the ALJ granted the motion to dismiss on June 9, 2010.

Bryan S. Walker v. Regents of the University of Colorado at Boulder, University Memorial Center, 2010B105 – no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.

- On February 9, 2010, Complainant filed an appeal of his disciplinary termination, alleging discrimination based on national origin/ancestry and race/color, as well as retaliation for disclosures regarding the theft of computers from the University of Colorado, in violation of the Whistleblower Act.
- Complainant withdrew his appeal on June 21, 2010.

- The ALJ dismissed the matter on June 22, 2010.

Marc Ziolkowski v. Department of Public Safety, Colorado State Patrol, 2010B111 – *no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.*

- On February 23, 2010, Complainant filed an appeal of his disciplinary termination, alleging retaliation for disclosures regarding his supervisor’s misconduct of falsifying time sheets and engaging in secondary employment while on state duty, in violation of the Whistleblower Act.
- The matter was set for hearing on June 30, 2010.
- The hearing was vacated upon the parties’ reaching a settlement; the ALJ granted the motion to dismiss on July 8, 2010.

Dean Van Zandt v. Department of Human Services, Colorado Mental Health Institute at Pueblo, 2010G003 – *no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.*

- On July 7, 2009, Complainant filed a petition for hearing, alleging retaliation for disclosures regarding time clock fraud on the part of another employee, in violation of the Whistleblower Act.
- The case was dismissed on October 15, 2009, upon Complainant’s failure to timely file an information sheet.

Ronda Katzenmeyer v. Department of Corrections, Clinical Services, 2010G005 – *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.*

- On July 20, 2009, Complainant filed a Whistleblower Complaint regarding disclosures of abusive treatment of an inmate, in violation of the Whistleblower Act.
- On November 3, 2009, the ALJ issued the Preliminary Recommendation of the Administrative Law Judge, recommending that a hearing be granted.
- On November 23, 2009, the Board issued its order granting the petition for hearing.
- The case is set for hearing on September 15 and 16, 2010.

Sandra Iverson v. Department of Regulatory Agencies, 2010G011 – *no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.*

- On August 6, 2009, Complainant filed a petition for hearing challenging a final grievance decision. She alleged discrimination based on age and disability, and retaliation for filing previous grievances where she reported discrimination and retaliation, in violation of the Whistleblower Act.
- On December 2, 2009, the ALJ issued the Preliminary Recommendation of the Administrative Law Judge, recommending that a hearing be denied.
- On December 16, 2009, the Board issued its order denying the petition for hearing.

David Powell v. Department of Human Services, Colorado Works Division, 2010G015 – *no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.*

- On August 6, 2009, Complainant filed a Whistleblower Complaint, alleging retaliation for filing a previous case at the Board, in violation of the Whistleblower Act.

- On August 19, 2009, the ALJ issued a Notice of Deferral Pending Agency Response to the Whistleblower Complaint.
- On February 17, 2010, the ALJ dismissed the case, having received no communication from Respondent or Complainant for six months.

Robert B. Clarke v. Department of Human Services, 2010G035 – no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.

- On November 17, 2009, Complainant filed a petition for hearing alleging retaliation for questioning his appointing authority about filling a position by the open competitive process versus by hiring an internal candidate, in violation of the Whistleblower Act.
- On January 4, 2010, the ALJ issued the Notice of Preliminary Review.
- On February 17, 2010, the ALJ issued a Dismissal Order because Complainant failed to file an information sheet.

Havilah Lilly v. Board of Trustees for Metropolitan State College of Denver, Cashier’s Office, 2010G047 - no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.

- On December 20, 2009, Complainant filed a petition for hearing alleging retaliation for disclosures regarding her work in the cashier’s office and the disregard of college policies, in violation of the Whistleblower Act.
- On January 11, 2010, Complainant requested that her petition for hearing be withdrawn.
- On January 12, 2010, the ALJ granted Complainant’s request to withdraw her petition and dismissed her case.

Marion Hase-McLellan v. Department of Transportation, Information Technology Office, 2010G053 - no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.

- On January 28, 2010, Complainant filed a petition for hearing alleging retaliation for disclosures regarding her reassignment of duties related to infrastructure and operations, in violation of the Whistleblower Act.
- On April 19, 2010, Complainant requested that her petition for hearing be withdrawn.
- On April 19, 2010, the ALJ granted Complainant’s request to withdraw her petition and dismissed her case.

Kathy DePew v. Department of Agriculture, 2010G054 - no finding of a violation of Colorado’s whistleblower statute, § 24-50.5-101, et seq., C.R.S.

- On January 29, 2010, Complainant filed a petition for hearing alleging retaliation for disclosures regarding her duties as Director of Human Resources and hostility in the workplace, in violation of the Whistleblower Act.
- On April 20, 2010, following a settlement, the ALJ dismissed Complainant’s petition.

Bryan L. Friberg, Sr. v. Regents of the University of Colorado at Boulder, 2010G065 - 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.

- On March 19, 2010, Complainant filed a petition for hearing alleging discrimination based on veteran's status and retaliation for disclosures regarding waste and abuse of public funds and abuse of authority, in violation of the Whistleblower Act.
- On May 11, 2010, the ALJ issued a procedural order regarding the handling of Complainant's grievance, given that he has been activated to military duty for deployment.

Erin Toll v. Department of Regulatory Agencies, Division of Real Estate, 2010G066 - no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.

- On March 25, 2010, Complainant filed a petition for hearing alleging retaliation for disclosures to the legislature regarding appraisal management companies that directly affect mortgage companies, in violation of the Whistleblower Act.
- On April 29, 2010, Complainant filed a second petition for hearing appealing a final grievance decision.
- On June 18, 2010, following a settlement, the ALJ dismissed Complainant's petition.

Frederick R. Bohlmann v. Department of Natural Resources, Colorado State Parks, 2010G067 -no finding of a violation of Colorado's whistleblower statute, § 24-50.5-101, et seq., C.R.S.

- On March 29, 2010, Complainant filed a petition for hearing alleging retaliation for disclosures regarding a supervisee involved in forced entry, theft, falsification of records and deception, in violation of the Whistleblower Act.
- On April 19, 2010, following an order to show cause, the ALJ dismissed the petition for hearing for lack of jurisdiction due to the untimely filing of Complainant's petition for hearing.

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