

ARIZONA STATE PERSONNEL BOARD
MEETING MINUTES
JUNE 20, 2017

The Arizona State Personnel Board meeting was called to order by Chair Mark Ziska at 11:09 a.m. The meeting was held at 1400 West Washington Street, Suite 280, Phoenix, Arizona. Board members in attendance were Joe Beers and Kevin Donnellan. Chad Kirkpatrick was present telephonically. Staff members present were Jeff Bernick as Counsel for the Board, Laurie Barcelona, Executive Director and Robin Van Staeyen, Administrative Assistant II.

The Board called for comments from the public. There being no public comments, Kevin Donnellan moved to adopt the minutes from the April 11, 2017 meeting. Joe Beers seconded the motion which carried unanimously.

Next, the Board considered the dismissal appeal of *Diana Toma vs. Department of Child Safety*.

Ms. Toma requested the Board consider reinstating her to her position at the department and continued by explaining that she had become ill in 2015 and was on medical leave, returned to work, but later discovered that the tumor had returned and again went back on medical leave. While she was recovering during the second medical leave absence, there was an issue with one of her cases, but she was unable to respond due to the fact she had none of the files she needed for reference, which ended with a contempt of court and led to her dismissal. Ms. Toma stated she had a high caseload and a good rapport with all the judges. Ms. Toma believed the judge in this matter was frustrated with the department and would not have intended for Ms. Toma to lose her job.

Kevin Donnellan asked about Ms. Toma's health. Ms. Toma stated that she was in good health.

Mark Ziska inquired about her statement regarding the inability to "respond" and whether that was about the contempt charge by the court. Ms. Toma stated in the affirmative.

Anna Dahlquist, Assistant Attorney General representing the Department of Child Safety, asked that the Board uphold the hearing officer's Findings of Fact and Conclusions of Law, sustain the dismissal, dismiss the appeal, but deny the recommendation that Ms. Toma be reinstated on a probationary basis. Ms. Dahlquist stated that per A.R.S. 41-783(c)1, if the department has not failed to meet its burden of proof, then the hearing officer and Board lack discretion to modify the discipline. The decision was not arbitrary or capricious, and the hearing officer found that Ms. Toma was in neglect of duty, violated the standards of conduct and a court order, and received media attention. Ms. Dahlquist stated there was a pattern of practice that was

demonstrated by a prior 40-hour suspension. In light of the vulnerable children that the department serves, the department cannot reinstate Ms. Toma.

Kevin Donnellan made a motion for the Board to go into executive session and Joe Beers seconded the motion. The Board went into executive session at 11:21 a.m. and resumed the open session at 11:29 a.m.

There being no further discussion, Kevin Donnellan proposed the following motion:

"I move we continue this matter for the next scheduled meeting. In the interim, the Board requests additional information from the hearing officer regarding the appellant's assertion that she was not given the opportunity to respond to the court, which led to the contempt of court charge."

Mark Ziska seconded the motion which carried unanimously.

Next, the Board considered the prohibited personnel practice complaint of **Simon Wade vs. Department of Public Safety, et al.**

John Fry, Assistant Attorney General representing the Department of Public Safety, stated Mr. Wade was not disciplined for bringing forth concerns of the department or his unit, but for making at least one dishonest accusation, as well as an allegation of criminal activity by a fellow officer without any basis for doing so. The hearing officer found that complainant's declaration that he had to lie to a Chandler police commander was not made as a good faith reasonable belief about an event that never took place and is outside the jurisdiction of the Board. Furthermore, the complainant's allegation of the squad supervisor's theft of funds was unreasonable and a baseless accusation and outside the jurisdiction of the Board. Mr. Wade acknowledged in a recorded interview that he lied and that his supervisor made him do it were not true and accurate statements. In a written statement, Mr. Wade admitted that he made an error in a claim that he lied when indeed he had not. Additionally, he also admitted that the conduct he described as theft by his squad supervisor was not in fact theft and was approved by the department. Mr. Fry explained that by statute dishonesty is grounds for dismissal of a law enforcement officer and asked the Board to uphold the hearing officer's recommendation.

Dale Norris, Attorney at Law representing Mr. Wade, stated that the complainant did not have a history of counseling prior to this matter and that none of the instances referred to were ever written in an evaluation or in his personnel file, but only became important after Mr. Wade filed his whistleblower complaint. Mr. Norris continued by stating that Mr. Wade made his disclosure after a great deal of thought and after bringing his concerns to his commander, but was told to drop it. Mr. Norris stated that Mr. Wade has repeatedly admitted to a poorly written statement, but believed the department did not like what Mr. Wade had to say. Mr. Norris continued by stating that

the spirit of the law is to promote employees to have the courage to step forward and asked the Board to protect Mr. Wade and return him to work.

Mark Ziska inquired as to whether the Board is only to rule on the whistleblower matter. Mr. Wade answered in the affirmative.

There being no further discussion, Joe Beers proposed the following motion:

"I move we adopt the hearing officer's Findings of Fact and Conclusions of Law as our own. I further move the complaint be dismissed and no relief be granted."

Kevin Donnellan seconded the motion which carried unanimously.

The Board then considered scheduling the future Board meetings. Mark Ziska proposed the following motion:

"I move we hold our next regularly scheduled open public meetings of the Board on August 23, 2017 and September 20, 2017 at 11:00 o'clock a.m. at 1400 West Washington Street, Suite 280, Phoenix, Arizona. I further move we hold an executive session on the same dates at the same location at 10:30 a.m."

Joe Beers seconded the motion which carried unanimously.

There being no further business before the Board, Mark Ziska proposed the meeting be adjourned. Joe Beers seconded the motion which carried unanimously. The meeting adjourned at 11:46 a.m.

(Quotations of Board members in these minutes have been reviewed by staff for grammatical content, and certain grammatical changes may have been made by staff administratively. No changes to content have been made by staff administratively or otherwise.)

Respectfully submitted:

Robin Van Staeyen
Robin Van Staeyen, Administrative Assistant II
Arizona State Personnel Board

July 10, 2017
Date Prepared