

**ARIZONA STATE PERSONNEL BOARD**  
**MEETING MINUTES**  
**OCTOBER 18, 2016**

The Arizona State Personnel Board meeting was called to order by Joe Beers at 11:00 a.m. The meeting was held at 1400 West Washington Street, Suite 280, Phoenix, Arizona. Board members in attendance were Kevin Donnellan and Chad Kirkpatrick. Mark Ziska appeared 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, Mark Ziska moved to adopt the minutes from the September 15, 2016 meeting. Chad Kirkpatrick seconded the motion which carried unanimously.

The board considered the prohibited personnel practice complaint of **Elizabeth Grigg vs. Department of Economic Security, et al.**

Kevin Donnellan proposed the following motion:

"I move that the Elizabeth Grigg case be continued to the next regular scheduled board meeting."

Chad Kirkpatrick seconded the motion which carried unanimously.

Next, the board considered the dismissal appeal of **Andrew Almaguer vs. Department of Corrections.**

Mr. Almaguer opened by stating that the dismissal was excessive and that he has been an employee with the department for 12 years with no prior discipline. Mr. Almaguer continued by explaining that his urine sample was not re-tested, which is against department policy. Continuing, Mr. Almaguer explained that before his urinary analysis, he was told to drink as much water as possible and after the sample was handed over to the tester he was informed that the temperature of his urine was 50 – 100 degrees and Mr. Almaguer doubted the legitimacy of that data. Mr. Almaguer further added that he had a hair follicle test analysis taken on his own accord, which showed negative results.

Kevin Donnellan inquired as to whether Mr. Almaguer agreed to a settlement. Mr. Almaguer stated that in the beginning Ms. McDaniel told him that he had an excellent case, but two weeks later Ms. McDaniel told him that she could only offer him a settlement agreement, which would allow him to resign. Mr. Almaguer stated that Ms. McDaniel sent him the settlement agreement for signature and told him that once it was signed it would be sent to the director to see if he would accept the settlement agreement. Mr. Almaguer stated that he told Ms. McDaniel that he would "think about"

signing the settlement agreement. Mr. Donnellan asked Mr. Almaguer whether he agreed to the terms. Mr. Almaguer stated that he did agree to the terms, but changed his mind and wanted to pursue the matter and ended his relationship with Ms. McDaniel to pursue the matter on his own. Mr. Almaguer stated that he asked Ms. McDaniel if he could retire, but she told him he would have to inquire about that on his own; however in email communications that Ms. McDaniel had with an unknown entity, Ms. McDaniel stated that Mr. Almaguer would retire, but he claimed Ms. McDaniel never told him about that email exchange regarding his retirement; he found out later when Ms. McDaniel gave him copies of the emails. Furthermore, Mr. Almaguer stated that Ms. McDaniel told him later that if he signed the settlement agreement he could retire and he is still not sure if he can retire or not.

Chad Kirkpatrick asked for clarification as to whether Mr. Almaguer agreed to sign the settlement agreement or did he want to fight his dismissal. Mr. Almaguer stated that he wanted to fight due to too many discrepancies with the urine analysis he was given.

Kevin Donnellan asked why Ms. McDaniel communicated to the Attorney General's Office that he would sign a settlement agreement. Mr. Almaguer stated that he continued to do research and decided he did not want to sign the settlement agreement.

Mark Ziska inquired as to what prompted the urine analysis. Mr. Almaguer stated that he was told it was random, but he did not believe that was the case.

James Green, Assistant Attorney General representing the Department of Corrections, stated that this is an issue as to whether Mr. Almaguer entered into a binding agreement. Mr. Green explained that the urine analysis Mr. Almaguer received was random and that the results indicated it was a "substituted sample" and not a "diluted sample" and "substituted samples" are treated as a "fail" and therefore no re-testing is allowed by department policy. Mr. Green continued to explain that he received a call from Ms. McDaniel asking if Mr. Almaguer could resign in lieu of dismissal and Mr. Green agreed and sent Ms. McDaniel a settlement agreement and Ms. McDaniel replied by stating that her client would sign the settlement agreement. Mr. Green never received a signed copy by Mr. Almaguer, but he stated that the signature is just a formality. As explained by Mr. Green, he received a notice by Ms. McDaniel just before the scheduled hearing date that she was withdrawing as Mr. Almaguer's counsel and that he was wanting to reschedule an appeal hearing. Mr. Green stated that he issued a Motion to Dismiss based on lack of jurisdiction. Furthermore, there were no disputes as to the terms and conditions of the settlement agreement, but that this was an issue of "buyer's remorse" and that Mr. Almaguer's counsel had authority to legally bind him to the settlement agreement.

Joe Beers inquired as to the communication flow between the parties. Mr. Green explained that he only had communications with Ms. McDaniel and not Mr. Almaguer

and under the laws of agency whereby the agent is authorized to act on behalf of another, called the principal, to create legal relations with a third party. Consequently, Ms. McDaniel, the agent, had authority to act on Mr. Almaguer's behalf, the principal, and bind him to the terms of the agreement with the Department of Corrections, third party. Furthermore, Mr. Green stated that in a phone conversation with Ms. McDaniel, he was told that Mr. Almaguer was explained the terms of the agreement and that he understood.

Kevin Donnellan asked whether a signature is required. Mr. Green stated in the negative and that emails from Ms. McDaniel stating that her client would sign the agreement are satisfactory.

Chad Kirkpatrick inquired as to which exhibit states that Ms. McDaniel was accepting the terms and conditions of the settlement agreement. Mr. Green referenced Exhibit C. Mr. Kirkpatrick asked if it was a department policy to have a signature. Mr. Green answered in the negative.

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

"I move that the Hearing Officer's Findings of Fact and Conclusions of Law are adopted as the board's own. I further move that the respondent's Motion to Dismiss is granted as the board does not have the jurisdiction to hear the appeal."

Joe Beers seconded the motion which carried unanimously.

There being no further business before the board, Chad Kirkpatrick proposed the meeting be adjourned. Kevin Donnellan seconded the motion which carried unanimously. The meeting adjourned at 11:26 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:

  
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Robin Van Staeyen, Administrative Assistant II  
Arizona State Personnel Board

  
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Date Prepared