

**MEETING MINUTES
BOARD OF PERSONNEL APPEALS
1805 Prospect Ave, Conference Room B, Second Floor
Zoom Meeting
Helena, Montana
9:00 a.m.
March 18, 2021**

Call to Order – Establish Quorum – Introduction of Board & Staff Members Present: (00:01:39)

Members Present via Zoom:

Brian Hopkins, Board Chair
Kevin McRae, Management Member
Jenny Stringer, Management Member
Stacey Yates, Labor Member

Staff Present via Zoom:

Amber Carpenter, Compliance & Investigation Bureau Chief
Theresa Sroczyk, Dispute Resolution Section Manager
Jacquie Haney, Board Secretary
Haley Nelson, Attorney, Department of Labor
Dave Luckey, Dispute Resolution Mediator
Wendy Jackson, Dispute Resolution Mediator

Approval of Minutes of May 21, 2020 meeting (04:25)

Member McRae moved to approve the December 14, 2020 meeting minutes as presented. Member Stringer seconded the motion. The vote was unanimous. Minutes of the December meeting are approved. Member Stringer moved to approve the minutes from the February 23, 2021 orientation meeting. Member Yates seconded the motion and the vote was unanimous. The motion carries.

Public Opportunity to Comment (2-3-103 MCA) (06:25):

There were no comments by the Public.

Staff/Attorney Comments (07:50):

Theresa commented that DLI is in the process of upgrading the website, so it looks a little different, and is a little hard to find some things. She will be working with the new IT person to iron out the details, which, in the long run should make it easier to find items on the website.

Haley Nelson, Board Attorney, noted just prior to the meeting and the recording starting there was a brief procedural discussion about approval of the meeting minutes. The outgoing members are no longer on the board and the incoming members were not present at the last meeting. On the advice of counsel, the members who were present at the meetings made the motions to approve the minutes.

The other thing to note is there will be rules coming before the Board. There was a bill presented to the 20-21 legislature that repeals the Fish Wildlife & Parks and Montana Department of Transportation grievance process from this Board. The bill was signed by the Governor on March 8th. Any grievance after that date will no longer be under the jurisdiction of this Board. However, any grievances already in process could still come before the Board. Chair Hopkins posed the question of what date determines if a grievance comes before the Board. Board Attorney Nelson will research what date would determine if a grievance would fall within the Boards jurisdiction going forward.

15 Minute Recess (13:51):

Recording stopped (16:31) Oral argument set to begin at 9:30 a.m.

Oral Argument (16:35): Grievance Case #20192592

Petitioner: Thomas Flowers
Respondent: Montana Department of Fish, Wildlife, & Parks

Presiding Officer Hopkins reconvened the meeting taking role call of the Board members who acknowledged they had received and reviewed the entire record. The Presiding Officer explained the hearing process to all parties and cautioned referencing transcript matters that have been redacted.

Mr. Holm, representing Thomas Flowers, began by giving a brief background of Thomas Flowers tenure with Montana Department of Fish, Wildlife & Parks. He presented his argument and requested that this legal conclusion and findings of fact be reversed, and the three grieved actions be granted and removed from Mr. Flowers record.

Aimee Hawkaluk, representing Montana Department of Fish, Wildlife & Parks (FWP), opened stating FWP asks the Board to uphold the Hearing Officers Recommended Order. She argued the Hearing Officers conclusions of law are well supported by the record and should be upheld.

The Board asked some clarifying questions of the parties. Board members shared their thoughts on the issue, expressed empathy for the grievant, but ultimately felt the Hearings Officer did her job. Board Attorney Nelson reminded the Board of the standards of review that should be considered when making a motion.

Chair Hopkins moved to reject the request by the Department of Fish, Wildlife & Parks to appeal the decision of the Hearing Officer, regarding the grievability of the two writeups and the performance appraisal, because they were not properly preserved through the filing of an exception. Member McRae seconded the motion. The vote was 4 – 0. The motion is approved.

Member McRae further moved that the Board concludes the Findings of Fact are supported by substantial credible evidence, and the conclusions of law are correct, and the Hearing Officer exercised discretion appropriately, without abuse of discretion, on the question of recusal, on the issue of alleged exparte communication and improper transcript distribution. Member Stringer seconded the motion. The vote was 4 – 0. The motion carries.

A written order will be prepared and mailed to the parties giving notice of the Board's decision.

Board Chair Hopkins concluded the Boards consideration of the case for Thomas Flowers vs. Montana Department of Fish, Wildlife & Parks.

Board Action - (1:55:13):

There was no further board action.

Miscellaneous (55:13):

There was no miscellaneous business.

Scheduling of Next Meeting (1:56:03):

Theresa Sroczyk reported the Board is scheduled for an April 15th meeting, but as of today, there are no cases to come before the Board. She recommended canceling the April BOPA meeting. Board Attorney Nelson requested to pend determination of the meeting due to the pending rules projects that were mentioned earlier. The Board will be notified if a meeting needs to be scheduled to review the rules changes.

Meeting adjourned. (1:59:03)

There being no further business to come before the Board, Member Stringer moved to adjourn the meeting. Board Chair Hopkins seconded the motion and the meeting was adjourned.