

CIVIL SERVICE COMMISSION MINUTES

JANUARY 6, 2021

A meeting of the Civil Service Commission was held at 2:30 p.m., via Teleconference.

Present via Teleconference:

Bryan Fletcher
Melissa Johnson
Ira Sharp
Peter B. Smith

Absent:

A.Y. Casillas

Comprising a quorum of the Commission

Support Staff Present via Teleconference:

Todd Adams, Executive Officer
Morgan Foley, Commission Legal Advisor

Approved
Civil Service Commission
February 3, 2021

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION
REGULAR MEETING MINUTES
JANUARY 6, 2021**

- 1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters
and Pending Litigation
- 2:30 p.m. OPEN SESSION: Teleconference.
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Notice pursuant to Government Code Section 54954.2.

**CLOSED SESSION AGENDA
Videoconference - Not open to public**

- A. Commissioner Sharp: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(B)) **2020-023**, former Human Resources Specialist, appealing a Final Order of Removal and Charges from the Department of Public Works.
- B. Commissioner Smith: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(B)) Warren Beck, Esq., on behalf of **2019-064**, former Senior Protective Services Worker, appealing a Final Order of Removal and Charges from the Health and Human Services Agency.

**OPEN SESSION AGENDA
Teleconference**

ORDER OF BUSINESS

A. **ROLL CALL**

Present: Fletcher, Johnson, Sharp, Smith
Absent: Casillas

B. **APPROVAL OF MINUTES:** Regular meeting of December 2, 2020.

Motion by Commissioner Sharp to approve the minutes of December 2, 2020; seconded by Commissioner Johnson.

Motion carried with all Commissioners in favor.

C. **NON-AGENDA PUBLIC COMMENT:**

None.

D. **AGENDA ITEM DISCUSSION:**

The Commission Secretary noted that item #4 has been pulled for discussion by the public.

E. **FORMATION OF CONSENT AGENDA**

Items Nos. 2 and 5-7 formed the Consent Agenda.

Motion by Commissioner Sharp to approve the Consent Agenda; seconded by Commissioner Fletcher.

Motion carried with all Commissioners in favor.

F. **DISCUSSION ITEMS**

Item Nos. 1, 3, and 4 pulled for discussion.

AGENDA ITEMS

ELECTIONS

1. Election of President and Vice President of the Civil Service Commission for 2021.

Commissioner Johnson motioned to nominate Commissioner Sharp as the President and Commissioner Fletcher as the Vice President of the Civil Service Commission for 2021; seconded by Commission Smith.

Motion carried with all Commissioners in favor.

CONFIRMATION OF ASSIGNMENT

2. Commissioner Smith: Greg Thedell, Advocacy Center Organizer, SEIU Local 221, on behalf of **2021-001**, former Office Assistant, appealing a Final Order of Removal and Charges from the Health and Human Services Agency.

Confirmed.

DISCIPLINE

Findings

3. Commissioner Sharp: **2020-023**, former Human Resources Specialist, appealing a Final Order of Removal and Charges from the Department of Public Works.

FINDINGS AND RECOMMENDATIONS:

Employee 2020-023 appealed a Final Order of Removal and Charges removing her from the position of Human Resources Specialist ("HRS") in the Department of Public Works. The Commission appointed Commissioner Ira Sharp to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. The causes of discipline were acts incompatible with or inimical to the public service, conduct unbecoming, and failure of good behavior for intentionally accessing and using confidential personnel records for personal use.

Employee has worked as an HRS with the Department for approximately 12 years. As an HRS, Employee is required to handle, and has access to, highly confidential and sensitive information regarding employees in the Department. Essential functions of the position include entering and processing human resources related transactions and information into employee tracking systems operated by the County. The position requires skills and abilities commensurate with the position, most importantly, the ability to maintain confidentiality, and to exercise appropriate judgment in releasing information with the ability to analyze and project consequences of decisions and/or recommendations.

On November 8, 2019, a Letter of Warning ("LOW") was issued to Employee. The LOW asserted that Employee used poor judgment, was unprofessional, and was absent without leave. On November 21, 2019, Employee responded to the LOW by sending a lengthy email to the Deputy Director of the Department, filled with numerous complaints she had with her manager and supervisor. Attachments to the email included three confidential personnel records. The three documents were: (1) a completed Code of Ethics acknowledgement sheet from her superior; (2) a Performance Appraisal of her superior; and (3) a copy of a performance exam for an Administrative Analyst II position that she was asked to proctor, which included a candidate's name.

Employee disputes that she accessed the confidential records without authorization because, as a Human Resources Specialist, she received the Code of Ethics acknowledgement sheet and Performance Appraisal of her superior via email from the Deputy Director. After processing the documents for filing in her superior's personnel records, the email transmitting the documents to her remained in her mailbox. As for the performance exam for an Administrative Analyst II position, Employee contends that the document was sent to her as a proctor while at the same time she was a candidate for the same recruitment.

The County's policies provide that an employee's performance appraisal, an employee's signed Code of Ethics acknowledgement sheet, and recruitment performance examinations are to be treated as confidential.

Employee, in her position, is required to handle, and has access to, highly confidential and sensitive information regarding other employees in the Department. Employee failed to maintain confidentiality when attaching the Performance Appraisal and the Code of Ethics acknowledgement sheet of her superior to an email sent to the Deputy Director. Employee deliberately disclosed this confidential information. At no time did Employee have the permission of her superiors to access or transmit confidential personnel records to the Deputy Director or any other person.

Following receipt of the email from the Employee, the Department initiated an investigation into the conduct of the Employee. The investigation found that Employee did not intentionally access confidential records related to the Administrative Analyst II exam, for which she was a candidate on one list. A mistake was made in asking her to proctor another candidate and in sending the materials to Employee, which included the other candidate's name, while she was also on the list. In spite of the mistake, Employee kept a copy of the performance exam, with the candidate's identification, and transmitted it to the Deputy Director to support her complaint that she was not being treated fairly by her superiors.

Employee is guilty of acts which are incompatible with and/or inimical to the public service by knowingly accessing confidential personnel records of her superior and a confidential performance exam, and purposely, for her own benefit, emailing those to the Deputy Director.

Employee is guilty of conduct unbecoming an employee of the County by knowingly violating the County of San Diego Code of Ethics and Administrative Manual, and by failing to perform her duties in accordance with applicable federal, state, and local laws, rules, regulations, ordinances, and policies. Employee failed to secure and protect confidential personnel information and documents and disclosed them to a third party for her own personal benefit. Employee is guilty of failure of good behavior for each of those reasons set forth above.

Employee's only previous discipline is the LOW. Termination is appropriate because Employee's misconduct was serious. Employee admittedly did not follow clear Departmental policies which are intended to keep personnel records of County employees confidential. Although each of the three documents initially came into her possession in the course of her employment as an HRS with the Department, Employee violated County policies when she accessed them in her retained email folders and transmitted them to the Deputy Director. Her excuse that the documents remained in her email folders does not give her permission to use the emails or their attachments for her own personal benefit. Employee has never denied accessing the documents and appears to continue to believe that it was appropriate conduct.

Based on the findings and conclusions set forth above, it is hereby recommended that the Final Order of Removal be affirmed; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Commissioner Sharp to approve the Findings and Recommendations; seconded by Commissioner Johnson.

Motion carried with all Commissioners in favor.

4. Commissioner Smith: Warren Beck, Esq., on behalf of **2019-064**, former Senior Protective Services Worker, appealing a Final Order of Removal and Charges from the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

Prior to Commissioner Smith presenting his findings and recommendations to the Commission, Mr. Beck, Employee's attorney, addressed the Commission giving a summation of

the reasons why the Employee's removal should be overturned. Ms. Maag, department representative, was available for questions.

Employee 2019-064 appealed a Final Order of Removal and Charges removing him from the position of Senior Protective Services Worker in the Health and Human Services Agency ("Department"). The Commission appointed Commissioner Peter B. Smith to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. The causes of discipline were negligence resulting in significant risk of harm to the public, inefficiency, and conduct unbecoming for failing to comply with California Welfare and Institutions Codes and Child Welfare Services ("CWS") Policies, and failing to adequately follow-up on health concerns relating to a baby assigned to his caseload.

Employee worked for the County for approximately 12 years. Senior Protective Services Workers are the most experienced Protective Services Workers at the County and are assigned higher risk cases and have a higher level of responsibility than Protective Services Workers. Their duties are to provide technical guidance and training to Protective Services Workers, Social Workers, and support staff. They are expected to have knowledge of laws, rules, regulations, and policies and procedures pertaining to Child Welfare Services, child abuse reporting as well as laws and requirements pertaining to child abuse and neglect.

On or around May 3, 2019, Employee was assigned the case of Baby AD who was born with cocaine in her system. While Employee was handling the case, Baby AD lived with a foster parent. A CWS policy requires that more than 50% of the visits with a child in foster care must be at the foster parent's home and no more than two consecutive months can pass without having an in-placement visit with the child. The purpose of this policy is to monitor the health and safety of the child's living and sleeping arrangements.

Employee did not visit the home of the foster parent from May 6, 2019 to when he was placed on administrative leave on August 20, 2019. Employee saw and observed Baby AD when she was brought to the CWS facility in El Cajon for visits with her mother in May, June, and July 2019. Employee did not conduct any surprise visits of the foster mother's home. Baby AD was seen by a doctor on January 10, 2019. At that time, the baby was in the 42nd percentile of weight.

Baby AD was seen again on January 18th and was in the 25th percentile. On May 16th she had fallen to the 2nd percentile of weight. On a July 5th visit she remained in the 2nd percentile. On August 15th Baby AD was removed from her foster parent's house and received a diagnosis of failure to thrive with moderate malnutrition.

A CWS policy states that protective services workers are to act as the CWS Hotline. Baby AD's file contained information that she was underweight, so Employee was aware of this when he received her case file. Employee did not consult with a Public Health Nurse regarding Baby AD. Employee disputes whether visiting the home of Baby AD's foster mother would have made a difference in the baby's care and health. He also disputes that Baby AD's mother called the Hotline to make a child abuse report. He asserts that the visitation coach called the Hotline at his direction. Evidence was presented that Employee elevated the case to his supervisor, which the Department disputed.

The Department asserts that Employee should have consulted with a Public Health Nurse and implemented an action plan. Employee asserts that there was a sufficient plan with regards to Baby AD because the baby was being monitored through Rady Children's Hospital and the Developmental Screening Enhancement Program of the County Child Welfare Service Department, so that others were aware of Baby AD's weight concerns.

Employee knew that Baby AD had weight issues when he received her case. Despite this, Employee did not make any efforts to ensure that she was in good health or gaining weight. Employee did not follow clear established policy. Employee's actions or inactions evidence a lack of follow through in handling Baby AD's case. He conducted no surprise visits to the foster parent's home. Employee made little to no effort to see Baby AD in her foster home setting in order to observe the environment and care being provided, relying solely on Baby AD's visits to the CWS facility in El Cajon. He took no action to address Baby AD's deteriorating health condition by reviewing medical notes as her condition worsened. Even though it was his primary responsibility, Employee relied upon other people with regards to Baby AD's case. Rather than acting "as the Hotline" when receiving reports or referrals from a mandated reporter, as required by policy, Employee directed the reporting party to call the Hotline to report Baby AD's serious health concerns.

Employee is guilty of negligence resulting in significant risk of harm to the public, specifically, harm to Baby AD. Employee is guilty of inefficiency by failing to make in-placement visits of Baby AD and failing to act as a Hotline to Baby AD's mother. As a result, additional resources of the department, law enforcement personnel, and Rady Children's Hospital physicians and personnel were required. Employee is guilty of conduct unbecoming an employee of the County by failing to act as a Hotline when Baby AD's mother contacted him about the care of the child, delayed in ensuring appropriate visits with the pediatrician in a timely manner, and where his actions or inactions placed Baby AD's life in jeopardy.

Employee has never been disciplined before. Termination is appropriate for a first offense in instances of serious misconduct. Employee's misconduct was serious. Employee admittedly did not follow clear Departmental policies which are intended to keep children safe. He also did not demonstrate the skills and abilities required of his position. Specifically, he failed to analyze situations; he failed to assess the client's and families' immediate needs to ensure receipt of needed services through personal service or the making of appropriate referrals when such efforts fail; and he failed to provide prompt, efficient and responsive service for Baby AD. Given the level of harm to Baby AD that did occur and could have occurred if others had not stepped in, termination is appropriate.

Based on the findings and conclusions set forth above, it is hereby recommended that the Final Order of Removal be affirmed; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Commissioner Smith to approve the Findings and Recommendations; seconded by Commissioner Sharp.

Motion carried with all Commissioners in favor.

SELECTION PROCESS

Findings

5. **2021-002**, Applicant, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet-Detentions/Court Services.

RECOMMENDATION: Ratify.

Item No. 5: Ratified

OTHER MATTERS

Extension of Temporary Appointments

6. Health and Human Services Agency

1 Residential Care Worker II: **2021-003**

RECOMMENDATION: Ratify.

Item No. 6: Ratified

INFORMATION

7. Adriana Meza, Representation Specialist, SEIU Local 221, on behalf of **2020-154**, former Administrative Secretary II, withdrawing the appeal of a Final Order of Removal and Charges from the Probation Department. (Commissioner Sharp)

Withdrawn.

ADJOURNED: 3:04 p.m.

ASSISTANCE FOR THE DISABLED:

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