

CIVIL SERVICE COMMISSION MINUTES

APRIL 7, 2021

A meeting of the Civil Service Commission was held at 2:33 p.m.,
via Teleconference.

Present via Teleconference:

Bryan Fletcher
Melissa Johnson
William Rodriguez-Kennedy
Ira Sharp
Peter B. Smith

Comprising a quorum of the Commission

Support Staff Present via Teleconference:

Todd Adams, Executive Officer
Morgan Foley, Commission Legal Advisor

Approved
Civil Service Commission
May 5, 2021

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION
REGULAR MEETING AGENDA
APRIL 7, 2021**

- 1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters
and Pending Litigation
- 2:30 p.m. OPEN SESSION: Teleconference - Attendee Phone
Number (Listen Only): 1-800-520-9950
Enter PIN: 6325027 followed by # to confirm.
-

Notice pursuant to Government Code Section 54954.2.

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

- A. Commissioner Smith: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(B)) Edward J. Southcott, Esq., on behalf of **2020-024P**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.
- B. Commissioner Johnson: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(B)) Corey Kniss, Esq., on behalf of **2020-148**, former Building Maintenance Supervisor, appealing a Final Order of Removal and Charges from the Department of General Services.
- C. Commissioner Fletcher: CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION (GOV. CODE SEC. 54956.9(a)) **2020-147**, Supervising Human Services Specialist, alleging discrimination by the Health and Human Services Agency.

ORDER OF BUSINESS

A. **ROLL CALL**

**Fletcher, Johnson, Rodriguez-Kennedy, Sharp,
Smith**

Please note: Commissioner Fletcher joined the meeting late due to technical difficulties.

B. **APPROVAL OF MINUTES:** Regular meeting of March 3, 2021.

Motion by Commissioner Johnson to approve the minutes of March 3, 2021; seconded by Commissioner Rodriguez-Kennedy.

Motion carried with all Commissioners present in favor.

C. **NON-AGENDA PUBLIC COMMENT**

None.

D. **AGENDA ITEM DISCUSSION:**

The Commission received a request to pull item #2 for discussion.

E. **FORMATION OF CONSENT AGENDA**

Items Nos. 1 and 6-8 formed the Consent Agenda.

Motion by Commissioner Johnson to approve the Consent Agenda; seconded by Commissioner Smith.

Motion carried with all Commissioners present in favor.

F. **DISCUSSION ITEMS**

Items Nos. 2, 3, 4, and 5 were pulled for discussion.

AGENDA ITEMS

CONFIRMATION OF ASSIGNMENT

1. Commissioner Smith: **2020-022**, Office Assistant, appealing a Final Order of Suspension from the Health and Human Services Agency. (Previously assigned to Commissioner Sharp)

Confirmed.

2. Commissioner Rodriguez-Kennedy: Adriana Meza, Representation Specialist, SEIU Local 221, on behalf of **2021-182**, former Protective Services Worker, appealing a Final Order of Suspension and Charges from the Health and Human Services Agency.

After discussion by the Appellant's representative, Jennifer Spirit, SEIU Local 221; Appellant 2021-182; and Ramona Maag, Senior Department Human Resources Offices, regarding the validity of the discipline; the Commission asked for the recommendation of the Executive Officer, Todd Adams. Mr. Adams recommended that this assignment go forward to determine if the discipline appeal will go to hearing. This recommendation was put to a vote by the Commission.

Motion by Commissioner Smith to approve staff recommendation and assign Commissioner Rodriguez-Kennedy as hearing officer; seconded by Commissioner Johnson.

Motion carried with all Commissioners in favor.

Confirmed.

DISCIPLINE

Findings

3. Commissioner Smith: Edward J. Southcott, Esq., on behalf of **2020-024P**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee 2020-024P appealed an Order of Termination and Charges terminating him from the position of Deputy Sheriff in the Sheriff's 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 discourteous treatment of the public, incompetency, dishonesty, insubordination, inefficiency, failure of good behavior, conduct unbecoming, and acts incompatible with and/or inimical to the public service for entering a residence without legal justification, failing to activate his body worn camera, failing to report and properly document a suspected child abuse incident, and being untruthful in an interview related to the investigation of this incident. Employee has worked for the Department since 2011. His shift was from 6:00 p.m. to 6:30 a.m., the following day.

In the evening of May 5, 2019, at or about 6:00 p.m., Employee was dispatched to investigate a complaint of domestic violence at a residence in Fallbrook. Three minor children were present when the Suspect allegedly threw the Victim into a doorframe and wall, and the youngest, at 9 months of age, who was being held by the Victim at the time, sustained some minor scrapes. Following his investigation Employee transported the Suspect to the Vista Detention Facility where he was booked and charged with domestic violence with visible injury.

Later in his shift the Employee began to prepare his arrest report for the incident involving the Suspect, the Victim, and her three minor children. Because the 9-month-old suffered some minor scrapes, and the two older children witnessed the incident, Employee began to prepare a Suspected Child Abuse Report form for each of the children.

Employee did not have the birthdates for any of the children and attempted to obtain the information from the Victim by calling her telephone 13 times beginning at 8:06 p.m. on May 5th and stopping his efforts at 12:30 a.m. on May 6th. Later that day, at the start of his next shift, Employee tried reaching the Victim 5 more times between 5:51 p.m. and 7:02 p.m. Because he was still unable to reach the Victim, Employee drove to the Residence and proceeded to knock on the door.

Having received no responses to his several knocks, and not hearing any sounds from within the house but seeing a car in the driveway, Employee walked around to the east side of the attached garage, walked south through an open gate, then along the south side of the garage to a door to enter

the garage. He then went into the garage to a door that enters the house. For the first time he heard a cry from a baby and entered the door to the Residence. Employee first contacted the communications center to inform the Department of his location after he was inside the Residence.

Between the time he first entered the house from the garage and when he activated his body worn camera ("BWC") nearly three minutes later, Employee had some communication with the Victim and her children. BWC Video confirms that for a period of 3 minutes and 31 seconds, Employee was alone with the children, outside the master bedroom, there is no conversation with the Victim, and she was still in the bedroom.

When the Victim emerged from her bedroom the BWC video records the conversation between her and the Employee. At no time during the recording of this encounter does Employee ask, nor is he told, the birth dates for the three children. Employee does not remember who told him the birthdates during his time at the Residence, and the Victim does not recall giving him this information. The Victim assumes her sons might have provided this information to Employee between the time they came out of the bedroom and before the BWC was activated.

After departing from the Residence, Employee returned to the substation and Employee then edited Suspected Child Abuse Report forms for each of the three children and submitted the forms 5 seconds later. The submittal of the form by the Employee does not send it to Chile Welfare Services ("CWS"); rather, it moves the form along for review and approval by Employee's supervisor.

The Suspected Child Abuse Report form contains a field to be completed to report which agency was notified of the suspected child abuse, the address for the agency notified, the date and time of the phone call to the agency, along with the name of the person contacted and the telephone number called. Each form submitted by Employee in this investigation reflects that he "reported" the suspected child abuse on by contacting himself at the substation.

In 2019, in addition to the referrals in the incident involving the Victim and the Suspect, Employee made CWS/CMS referrals to himself in 5 other cases involving suspected child abuse. None of those cases, like the referrals that

are the subject to this action, were ever received by the agency by fax or email, and there are no records reflecting telephone calls to the agency, whether through the Law Enforcement Hotline or otherwise.

Employee is guilty of discourteous treatment of the public when, in a follow up investigation, he entered Victim's Residence without expressed consent of the Victim.

Employee is guilty of incompetency by failing to timely activate his body worn camera when returning to the Victim's Residence.

Employee is guilty of incompetency by failing to make timely and proper reports and referrals of suspected child abuse.

Employee is guilty of dishonesty after telling the investigator interviewing him that it was his belief that he telephoned CWS/CMS through the Law Enforcement Hotline, then later submitted the referral by fax. There is no evidence that CWS/CMS either received a telephone call from Employee or received a fax or email communication containing the forms.

Employee is guilty of insubordination by failing to obey a lawful order contained in a Memorandum of Discussion addressing the proper use of a BWC when he failed to properly and timely activate it when he returned to the Residence for a follow up interview.

Employee is guilty of insubordination by failing to obey a lawful order contained in a Memorandum of Discussion addressing search and seizure procedures when he entered into a private residence without legal justification.

Employee is guilty of inefficiency by failing to properly and accurately complete the mandated Suspected Child Abuse Report forms for the three minor children.

Employee is guilty of failure of good behavior by failing, as a mandated reporter, to timely and properly notify CWS/CMS of the suspected child abuse of three children, and failed to send, fax, or email a follow-up report to CWS/CMS.

Employee is guilty of conduct unbecoming when he entered the curtilage of the Residence of the Victim and continued

to progress to the point of entering the house without permission.

Employee is guilty of incompetency when he failed to activate his BWC when he arrived at the Residence and did not notice this oversight until he was already inside the Residence and already had contact with the Victim and her family.

Employee is guilty of acts incompatible with and/or inimical to the public service after committing the acts as described above.

Employee's position in this matter is that all the mistakes made by him are merely "oversights," and that this proceeding is the culmination of "a runaway train . . . fueled by Lieutenant L." He asserts that Lieutenant L created a hostile work environment and that the stress of such an environment and outside influences somehow influenced his decisions as described herein. However, there is no evidence that such an environment existed, and even if it existed how it affected his actions those two days.

Importantly, two of the very actions that were proven to have occurred were the subject of a Memorandum of Communication less than three weeks prior to this incident - the use of the BWC and proper search and seizure procedures. After acknowledging that communication from Lieutenant L, which is deemed an order, he proceeded to disregard the proper use of his BWC, and violated the Fourth Amendment Rights of the Victim when he passed through the open gate - the curtilage - and ventured all of the way into the Victim's garage without legal justification or the existence of exigent circumstances. Inside the garage, at the door to the house, he then hears the infant's cry, and determines that he needs to enter the closed door to the house without consent.

In addition, Employee failed to properly and timely notify CWS/CMS of the suspected child abuse. He asserts that there is overwhelming evidence that he didn't know how to complete the Suspected Child Abuse Report forms properly. However, the record reflects that he, in fact, did complete that form accurately and timely and properly notified CWS/CMS in the past; evidence that he did receive proper training and (if necessary) oversight in meeting his obligations as a

mandated reporter. Employee's termination from the Department is appropriate.

Based on the findings and conclusions set forth above, it is hereby recommended that the Order of Termination and Charges 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 Rodriguez-Kennedy.

Motion carried with all Commissioners in favor.

4. Commissioner Johnson: Corey Kniss, Esq., on behalf of **2020-148**, former Building Maintenance Supervisor, appealing a Final Order of Removal and Charges from the Department of General Services.

FINDINGS AND RECOMMENDATIONS:

Employee 2020-148 appealed a Final Order of Removal and Charges removing him from the position of Building Maintenance Supervisor in the Department of General Services. The Commission appointed, Commissioner A. Melissa Johnson, to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission.

The causes of discipline were discourteous treatment of the public and other employees, insubordination, and conduct unbecoming an employee of the county for inappropriate, disrespectful, and abusive conduct toward employees he supervised and customers of the department and failing to follow directives of his supervisor.

Employee was hired by the Department in 2006 as a welder. He assigned to the position of Building Maintenance Engineer Assistant ("BMEA") in 2012. In 2014 Employee promoted to Building Maintenance Engineer ("BME") and in 2018, he was promoted to, Building Maintenance Supervisor ("BMS").

As a BMS Employee oversaw maintenance of a number of County-owned or leased properties in Zone H, including the County Psychiatric Hospital, the Rosecrans Facility, which

includes the Health Services Complex, the Southeast Family Resource Center, and the Hall of Justice, among others.

A BMS is responsible for planning, coordinating and supervising the maintenance program for complex county facilities and buildings. A BMS is expected to confer with facility tenants; establish effective working relationships with management, employees, employee representatives, and the public, representing diverse cultures and backgrounds; treat County employees, representatives of outside agencies, and members of the public with courtesy and respect; exercise appropriate judgment in answering questions and releasing information; and provide others with information in a courteous, efficient, and timely manner.

Employee was in charge of buildings in Zone H. Employee failed to timely complete the Next Level Supervising training following his promotion to BMS.

Employee failed to consistently make timely decisions, to the detriment of operations conducted in Zone H facilities. This includes his failure to timely determine the cause of the water leaking onto the kitchen floor at the Psych Hospital, despite repeated requests for an investigation and repairs to remedy the problem. Employee's comments to the facility's Dietician and others, including the need for a work order before any work would be performed by the Zone H crew, was frustrating to County staff and contract staff at Zone H facilities, as well as some of his crew, and others not under his supervision but working alongside his crew at Rosecrans.

The evidence suggests a conflict between Employee, who sought to use the Tririga 10 work order system to make, manage, track, and prioritize work orders, and others who were used to the older way of requesting work by: 1) using the "Red Book" which BMEAs, BMEs and BMSs would check as they made rounds; and/or 2) directly contacting a BMA, BME, or BMS.

Employee's treatment of BMEA 1 was inappropriate for a supervisor when he didn't respond to requests for the FY 2019-20 boot voucher for approximately two months, and when he took more than four months to approve the acquisition of basic and necessary tools for BMEA 1's use.

Employee's verbal confrontation with the Manager of Administrative Services for the Psych Hospital in a meeting was discourteous, lacked respect for a fellow employee, was abusive, accusatory, and name-calling. Employee's own supervisor was present, but failed to intervene, nor did he provide counseling or corrective action.

Employee's relationship with his direct supervisor, Facilities Support Manager ("FSM"), was strained to the point that communication between the two was difficult and confusing.

There is insufficient evidence to support any discriminatory animus toward any protected class in Employee's conduct, statements, or treatment; in particular, there is insufficient evidence that Employee discriminated based on ethnicity, sexual orientation, or gender.

Department has proven Cause I. Employee is guilty of discourteous treatment of the public and other employees by his unwillingness to timely address his subordinate's requests for new tools following his hiring, a boot voucher, and adequate access to facilities where his subordinate was assigned. Further, Employee is guilty of discourteous treatment of the Psych Hospital Dietician and her staff, and the Administrative Services Manager, in failing to timely address and explain problems at the Psych Hospital, and for his unacceptable outburst and verbal confrontation with the Administrative Services Manager in a meeting.

Department has proven paragraph E of Cause II. Employee is guilty of insubordination for failing to timely complete the assigned Next Level Supervising training, which training is useful in orienting new supervisors to their new position, and provides valuable skills to address topics and concerns that come with their new position.

However, Department has failed to meet its burden in proving paragraphs A through D of Cause II. In mitigation to the charge of insubordination Employee has provided evidence that he was unavailable for a hastily called meeting; that it was Employee who scheduled the recurring meetings that were eventually canceled by his supervisor; and the Department has failed to present sufficient evidence to support paragraphs C and D of Cause II.

Department has proven Cause III. Employee is guilty of conduct unbecoming for his conduct as described in Causes I and II, above, and in this decision.

Employee has worked for the Department for 14 years. He has never been disciplined. The Department seeks the denial of Employee's appeal and confirmation of Employee's removal. Removal may be appropriate in some instances, but only for serious misconduct. While this appeal reflects serious shortcomings in Employee's supervisory role, the charges are not entirely supported by the evidence and therefore some were not sustained. Employee has a long tenure with the Department, but it is clear that any continued employment cannot, at this time, include work as a Building Maintenance Supervisor.

The evidence presented shows that Employee worked successfully in previous positions without issues like those subject to this appeal.

There were many opportunities for the Department to counsel Employee or use progressive discipline to improve Employee's shortcomings, inform him that his discourteous behavior was unacceptable, and provide more effective supervision. The principles of progressive discipline should apply in this case. Discipline is appropriate in this matter, but removal is not. A more appropriate discipline is a demotion to his former position of Building Maintenance Engineer and a ten (10) workday suspension.

Employee provided evidence refuting and mitigating some allegations and regarding his behavior. Regardless of any possible mitigation, it is important for Employee to understand that his behavior is unacceptable, and the Department cannot be expected to tolerate discourteous treatment of fellow employees and the public. Employee is on notice that additional incidents of this nature may result in further disciplinary action, up to and including removal.

Based on the findings and conclusions set forth above, it is hereby recommended that the Final Order of Removal and Charges be modified to a demotion to the position of Building Maintenance Engineer and a ten (10) workday suspension; that Employee be awarded back pay (at the Building Maintenance Engineer rate), benefits, and interest from the date of removal to the date of this decision, minus wages attributable to the ten (10) workday

suspension, and minus any wages, benefits or other compensation Employee received from other employment, unemployment benefits or other assistance programs; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

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

Motion carried with all Commissioners in favor.

DISCRIMINATION

Findings

5. Commissioner Fletcher: **2020-147**, Supervising Human Services Specialist, alleging discrimination by the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

On December 2, 2020, the Commission appointed Commissioner Bryan J. Fletcher to investigate the complaint submitted by 2020-147, Supervising Human Services Specialist, which alleged discrimination based on race, national origin, personal reasons, and retaliation by the Health and Human Services Agency. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Ethics and Compliance ("OEC") for investigation.

The OEC concluded the discrimination investigation and has reported its findings to the Commission. Commissioner Fletcher received and reviewed OEC's report and took into consideration all documentation submitted in this matter. Commissioner Fletcher concurs with OEC's Report and has concluded that: the evidence does not support a finding of probable cause that a violation of discrimination laws occurred.

Based on the findings and conclusions set forth above, it is therefore recommended that 2020-147's Rule VI discrimination complaint be denied; and that the Commission approve and file this report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

Commissioner Comments:

Commissioner Rodriguez-Kennedy recommended that there be a more robust interview process by OEC.

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

SELECTION PROCESS

Findings

6. **2021-183**, Applicant, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet-Detentions/Court Services.

7. **2021-184**, Applicant, appealing the Department of Human Resources' removal of her name from the employment list for Deputy Sheriff Cadet-Detentions/Court Services.

8. **2021-185**, Applicant, appealing the Department of Human Resources' removal of her name from the employment list for Correctional Deputy Probation Officer I.

RECOMMENDATION: Ratify items 6-8. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2 and their names have been returned to the employment lists.

Item No. 6-8: Ratified.

ADJOURNED: 3:28 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION: MAY 5, 2021

ASSISTANCE FOR THE DISABLED:

Agendas and records are available in alternative formats upon request. Contact the Civil Service Commission office at (619)531-5751 with questions or to request a disability-related accommodation. Individuals requiring sign language interpreters should contact the Americans with Disabilities Coordinator at (619)531-4908. To the extent reasonably possible, requests for accommodation or assistance should be submitted at least 24 hours in advance of the meeting so that arrangements may be made. An area in the front of the room is designated for individuals requiring the use of wheelchair or other accessible devices.