

CIVIL SERVICE COMMISSION MINUTES

MAY 5, 2021

A meeting of the Civil Service Commission was held at 2:34 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
June 2, 2021

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION
REGULAR MEETING AGENDA
MAY 5, 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: 4727755 followed by # to confirm.
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Notice pursuant to Government Code Section 54954.2.

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

- A. Commissioner Johnson: CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION (GOV. CODE SEC. 54956.9(a)) **2020-151**, Facilities Analyst, Department of General Services, appealing a classification review under Civil Service Rule XII.
- B. Commissioner Fletcher: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(B)) **2020-049**, Library Technician II, appealing a Final Order of Suspension from the County Library.
- C. Commissioner Smith: CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION (GOV. CODE SEC. 54956.9(a)) Amy Margolies, Esq., on behalf of **2020-051P**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

ORDER OF BUSINESS

A. **ROLL CALL**

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

B. **APPROVAL OF MINUTES:** Meeting of April 7, 2021.

**Motion by Commissioner Johnson to approve the minutes of
April 7, 2021; seconded by Commissioner Smith.**

Motion carried with all Commissioners present in favor.

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

None.

D. **AGENDA ITEM DISCUSSION:**

None.

E. **FORMATION OF CONSENT AGENDA**

Items Nos. 4-9 formed the Consent Agenda.

**Motion by Commissioner Rodriguez-Kennedy to approve the
Consent Agenda; seconded by Commissioner Fletcher.**

Motion carried with all Commissioners present in favor.

F. **DISCUSSION ITEMS**

Items Nos. 1, 2, and 3 were pulled for discussion

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AGENDA ITEMS

CLASSIFICATION REVIEW

Findings

1. Commissioner Johnson: **2020-151**, Facilities Analyst, Department of General Services, appealing a classification review under Civil Service Rule XII.

FINDINGS AND RECOMMENDATIONS:

Employee 2020-151 appealed a Department of Human Resources classification review of his position 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.

Employee is a Facilities Analyst ("FA"), a classified position within the Department of General Services. In his position Employee is responsible for the operation of the Building Automation System ("BAS"). The BAS regulates the heating, ventilation, and air conditioning ("HVAC"), and some lighting systems, and is also utilized by others in the Department for energy monitoring of all County buildings integrated in the BAS.

Employee submitted a request for classification review with the desire to classify his position as a Group Program Manager ("GPM"), an unclassified position. The Department of Human Resources ("DHR") conducted a study which concluded that the Employee is spending 100% of his time performing duties within the scope of the FA classification, and that some, but less than 50% of work performed during the period of six months immediately preceding his request for review involved work expected from a GPM and denied the request.

There are four groups within the County of San Diego that serve multiple departments countywide. A GPM's main essential functions are as follows: To plan, organize, direct, and manage all activities of a large/major countywide program or project in or across departments within a group; to develop, recommend, and implement County policy and procedures; and to direct the development and implementation of short and long-range countywide and departmental plans and objectives related to the functions of a large/major program or project. Employee

argues that he is performing duties and responsibilities outside of the classification of FA and more aligned with the GPM classification. Employee asserts that of the 15 examples of "essential functions" expected of an FA he does none of them. On the contrary, he alleges that of the 15 examples of "essential functions" of a GPM, he performs 14 of them, all related to his work with the BAS.

Employee further argues that because his work involves the BAS in facilities countywide his request for reclassification is consistent with the essential functions of a GPM.

The DHR contends that 100% of the Employee's duties performed are consistent with the essential functions of an FA classification, although a portion of his duties are GPM duties. The DHR contends that the Department of General Services is not one of the four groups identified as serving multiple departments countywide.

The DHR also contends that Employee has failed to demonstrate that the amount of GPM duties making up the portion of Employee's time as a GPM add up to at least 50% of his time over a continuous six-month period preceding his request for reclassification.

At all times prior to his request for reclassification, Employee performed 100% of the essential functions of an FA. During the continuous six months prior to his request for reclassification to GPM Employee performed some essential functions of a GPM but such work amounted to less than 50% of the total amount of his work. Employees have the burden of proof in a reclassification appeal. Here, the Employee has not met that burden.

Employee has not proven that he worked out of class in the GPM position for 50% of his time worked for the entire six-month period prior to his application for reclassification. The position of Group Program Manager is responsible for duties across an entire County Group. Employee's duties support the Department of General Services, which is not one of the four groups identified as serving multiple departments countywide.

The DHR's classification study, correctly, was about what work is being performed, not about how the work is being performed. While Employee failed to prove he is working out of his job classification, the evidence presented shows that he is an excellent employee. He has received numerous awards and

recognitions for his outstanding work ethic, great service to client departments, innovative solutions to complex HVAC problems, some resulting in saving the County tens of thousands of dollars, as well as his "in-depth knowledge and collaborative teamwork approach" to managing the BAS. He was awarded Employee of the Month in September 2019 for his "outstanding performance and lasting contributions" to the Department. A Performance appraisal submitted in this matter shows that Employee was rated as "Level A" (outstanding) on most factors he was rated during the time at issue for this appeal. Employee is a tremendous asset to the Department and the County, but he is working within his job classification.

Based on the findings and conclusions set forth above, it is hereby recommended that the request for reclassification be denied; 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 Rodriguez-Kennedy.

Motion carried with all Commissioners in favor.

DISCIPLINE

Findings

2. Commissioner Fletcher: **2020-049**, Library Technician II, appealing a Final Order of Suspension from the County Library.

FINDINGS AND RECOMMENDATIONS:

Employee 2020-049 appealed a Final Order of Suspension suspending her for ten workdays from the position of Library Technician II in the County Library. The Commission appointed, Commissioner Bryan J. Fletcher, to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission.

The causes of discipline were inefficiency, insubordination, and conduct unbecoming an employee of the County for failing to use work hours efficiently; failing to follow the instructions of her supervisors; failing to communicate professionally; failing to accept responsibility for errors; and failing to exercise the appropriate level of judgment in performing her job duties.

Employee has been employed by the Department since June 1996. She has promoted since her hire, and currently is a Library Technician II, working in the Strategic Analysis & Business Systems (SABS)/Metadata Division of the Department, as a cataloger of library materials. She is very experienced in cataloging library materials and has received appropriate training throughout her career as cataloging methods and practices have changed in the Department and throughout the industry.

During her employment Employee has suffered from chronic health issues. She has been repeatedly informed of her options for use of the appropriate leave when absences are necessary for obtaining medical care. Supervisors have provided repeated instructions that Employee's health information is private to her, and confidential. Despite these instructions, Employee frequently shares the specifics of her ailments in an effort to explain absences, tardiness, or other performance issues.

Employee is frequently tardy to work and is untimely in notifying her supervisor of her need to come to work later than scheduled, or at all. In some instances, Employee has obtained permission to come in late, but still showed up later than the time permitted or does not come to work at all. Employee has altered her work schedule without the permission of her supervisor in order to make up for her absences.

During an Audit performed in late 2019 to early 2020 Employee failed to follow instructions and repeatedly posed questions to her supervisors rather than simply exercise "cataloger's judgment." Her work during the audit (and at other times) reflected an extraordinary amount of time spent in the review of cart materials. Further, Employee repeatedly sought confirmation of instructions and directives given to her through follow up emails, often debating the correctness of the directive or its efficacy.

Beginning at least in April of 2012, Employee has received feedback, counseling, and reprimands generally due to tardiness, unexcused absences, the proper designation of leave, inefficiency, insubordination, and discourteous treatment of the public or other employees. Employee's annual performance evaluations reflect areas where her work was unsatisfactory.

As early as 2011 Employee has made complaints that she was being discriminated against, harassed, or suffered retaliation by co-workers, including allegations that she is being "sick-shamed" and "bullied". In each case Employee was given information on her right to file a complaint. There is no evidence that any such complaints were made by Employee to the offices, departments, or entities that have the authority to investigate her complaints.

Employee is guilty of inefficiency. She has failed to complete assignments in a timely fashion. Employee has also unnecessarily taken up the time of her co-workers and supervisors by (1) disclosing personal medical information as a means of explaining her performance at work, her tardiness, and her absences; (2) responding to meetings, directives, evaluations, and counseling with follow-up explanations, excuses, or questions, without using her own judgment as a cataloger should; and (3) making claims of harassment, discrimination, or retaliation on the part of co-workers, without providing any evidence to support her claims or filing a complaint using established procedures.

Employee is guilty of insubordination by failing to follow directives related to work; challenging the need or reason for an assignment; and disregarding written and verbal instructions.

Employee is guilty of conduct unbecoming through the display of anger toward co-workers; and making what must be considered false allegations of harassment, discrimination, or retaliation on the part of co-workers.

The Department imposed a 10-day suspension without pay. Employee is a long-term employee with the Department and has been promoted over the years. Her supervisors believe her skills to be such to succeed at that position, despite the discipline imposed. The Department has provided evidence that patience and progressive discipline has not solved Employee's problems, which seem to have increased over the past few years.

By affirming the 10-day suspension there is some affirmation that the Department believes that the Employee can learn from this level of discipline, restore her career with the Department, and provide a level of service that is required of her position. That belief should not be ignored.

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

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

Motion carried with all Commissioners in favor.

3. Commissioner Smith: Amy Margolies, Esq., on behalf of **2020-051P**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee 2020-051P 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 failure of good behavior, conduct unbecoming an officer, and acts which are incompatible with and/or inimical to the public service for using law enforcement databases to access information for which he had no legitimate law enforcement reason and while not in the performance of official duties, and disseminating that information to members of the public who were not authorized to receive it.

Employee has worked for the Department since 2008. He does not dispute any of the findings of violations as set forth in the Department's charges. Therefore, there is no material substantive evidence that is in dispute.

Employee disputes whether, procedurally, the Department concluded its investigation into the charges within one year of its discovery as required by Government Code section 3304(d)(1).

Employee conducted queries on his ex-girlfriend, and her ex-boyfriend, through the SDLaw database, CLETS, and NetRMS approximately 59 times for no legitimate law enforcement reason and while not in the performance of official duties;

and all 59 queries were for his own personal use, without any "need to know," or a "right to know," the information. Further, Employee inappropriately shared the information collected from these queries with third persons.

Procedurally, the Commission must address the Employee's motion to "dismiss" his discipline on the grounds that the Department failed to comply with Government Code section 3304(d)(1), which requires that where the public agency determines that discipline may be taken it must both complete its investigation and notify the officer of its proposed discipline "by a Letter of Intent or Notice of Adverse Action articulating the discipline" within a period of one year.

Employee acknowledges that the one-year period may be tolled if the Employee's act is also the subject of a criminal investigation. In this case, there was a criminal investigation that lasted for a period of 175 days. Therefore the 175 days must be subtracted from the actual time beginning when the Department determined that discipline may be taken and when the Department notified the Employee of its proposed discipline.

The parties agree that the Department's determination that discipline might be taken was on January 15, 2019. What the parties disagree on is when the Department notified the Employee of its proposed discipline.

The Department asserts the date the notification was given was on July 6, 2020, when Employee was shown a Notice of Proposed Disciplinary Action, setting forth the charges and recommended discipline. The Employee admits signing the Notice on that date but contends that it does not satisfy section 3304(d)(1) as it is neither labeled "Letter of Intent," or "Notice of Action," nor did it include all of the documents necessary to provide to a public safety officer in support of proposed discipline. It is Employee's contention that the actual date that he received notice was on July 27, 2020, some three weeks later, when a Notice of Intent of Termination and Charges was hand delivered to him.

Factoring in the tolling period of the criminal investigation the Department's calculation is that notification of its proposed discipline occurred at 363 days. Employee's calculation is that the Department's notification occurred 21 days later, 384 days following the date that it first determined discipline may be imposed.

It is the Commission's finding that the Department's Notice, on July 6, 2020, satisfied the notice required under Government Code section 3304(d)(1), within the one-year period of limitations.

By his own admission, Employee is guilty of failure of good behavior, conduct unbecoming an officer, and acts incompatible with and/or inimical to the public service when he accessed confidential information on the SDLaw, CLETS, and NetRMS systems a total of 59 times, then released information from these queries to his ex-girlfriend, her ex-boyfriend, and his ex-girlfriend's mother, none of whom were authorized by law to receive such information. Further, he did so without any legitimate law enforcement reason, and while not in the performance of his official duties.

The Department terminated the Employee for his misconduct. Employee does not dispute his misconduct and admits to each of the Charges. Employee's sole reason for his appeal is to reverse his termination in exchange for some lesser discipline.

The original recommendation of the Employee's 2nd Level Supervisor was for a 90-day suspension. Employee's 3rd Level Supervisor concurred in the findings of the 2nd Level Supervisor, but presented an alternative discipline, i.e., termination. In explaining her reasoning for the alternative disciplinary recommendation, the 3rd Level Supervisor testified that (1) the number of violations, over many years, (2) the annual training Employee took during these years, and (3) his acknowledgement of the restrictions on access following each annual training, yet he continued to violate the restrictions, led her to believe that a suspension would not serve the purpose of changing his judgment or decision-making in the future.

In mitigation, Employee provided evidence of support of supervisors, members of the public, co-workers, evaluations, and commendations. In aggravation Employee has had three (3) prior disciplinary matters reflecting failures in meeting standards, insubordination, and off-duty misconduct. More importantly, Employee inappropriately accessed his Victim Copy of a Crime Report while he was under investigation for misuse of Departmental records without a law enforcement need or purpose, and for his own personal use.

Considering the totality of the circumstances, Employee's termination should be affirmed.

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.

SELECTION PROCESS

Appeal

4. **2021-186**, Office Assistant, appealing his non-selection for the classification of Human Services Specialist by the Health and Human Services Agency.

RECOMMENDATION: Deny Request

Item No. 4: Denied.

Findings

5. **2021-187**, Applicant, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet.

6. **2021-188**, Applicant, appealing the Department of Human Resources' removal of his name from the employment lists for Deputy Sheriff Cadet and Deputy Sheriff Cadet-Detentions/ Court Services.

7. **2021-189**, Applicant, appealing the Department of Human Resources' removal of his name from the employment lists for Deputy Sheriff Cadet and Deputy Sheriff Cadet-Detentions/ Court Services.

RECOMMENDATION: Ratify items 5-7. 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. 5-7: Ratified.

OTHER MATTERS

Extension of Temporary Appointments

8. Health and Human Services Agency

1 Residential Care Worker II: **2021-190**

Extensions Related to COVID-19 Response:

5 Administrative Analysts I: **2021-191 through 2021-195**

6 Departmental Clerks: **2021-196 through 2021-201**

23 Human Services Specialists: **2021-202 through 2021-224**

2 Library Technicians I: **2021-225 and 2021-226**

96 Office Assistants: **2021-227 through 2021-322**

2 Public Health Microbiologists: **2021-323 and 2021-324**

2 Public Health Nurses: **2021-325 and 2021-326**

1 Records Clerk: **2021-327**

26 Staff Nurses: **2021-328 through 2021-353**

1 Supervising Office Assistant: **2021-354**

RECOMMENDATION: Ratify

Item No. 8: Ratified.

INFORMATION

9. Jennifer Spirit, Senior Advocacy Center Organizer, SEIU Local 221, on behalf of **2021-182**, former Protective Services Worker, withdrawing appeal of a Final Order of Suspension and Charges that was rescinded by the Health and Human Services Agency. (Commissioner Rodriguez-Kennedy)

Withdrawn

ADJOURNED: 3:06 p.m.

ASSISTANCE FOR THE DISABLED:

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