

CIVIL SERVICE COMMISSION MINUTES

AUGUST 4, 2021

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

Present via Teleconference:

Bryan Fletcher
Melissa Johnson
Will Rodriguez-Kennedy
Ira Sharp

Absent:

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
September 1, 2021

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION
REGULAR MEETING MINUTES
AUGUST 4, 2021**

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters
and Pending Litigation

2:30 p.m. OPEN SESSION: Teleconference.

Notice pursuant to Government Code Section 54954.2.

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

- A. Commissioner Johnson: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(B)) **2021-004**, former Accounting Technician, appealing a Final Order of Removal and Charges from the Department of General Services.

- B. Commissioner Sharp: CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION (GOV. CODE SEC. 54956.9(a)) **2020-149**, former Protective Services Worker, alleging discrimination by the Health and Human Services Agency.

**OPEN SESSION AGENDA
Teleconference**

ORDER OF BUSINESS

A. **ROLL CALL**

Present: Fletcher, Johnson, Rodriguez-Kennedy, Sharp

Absent: Smith

B. **APPROVAL OF MINUTES:** Regular meeting of June 2, 2021.

Motion by Commissioner Johnson to approve the minutes of June 2, 2021; seconded by Commissioner Fletcher.

Motion carried with all Commissioners in favor.

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

None.

D. **AGENDA ITEM DISCUSSION:**

The Commission Secretary noted that agenda item #7 was pulled for discussion by the public.

E. **FORMATION OF CONSENT AGENDA**

Item Nos. 1-4 and 8-13 formed the Consent Agenda.

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

Motion carried with all Commissioners in favor.

F. **DISCUSSION ITEMS**

Item Nos. 5, 6, and 7 were pulled for discussion.

AGENDA ITEMS

CONFIRMATION OF ASSIGNMENT

1. Commissioner Smith: Greg Thedell, Advocacy Center Organizer, SEIU Local 221, on behalf of **2021-371**, Public Health Nurse, appealing a Final Order of Suspension and Charges from the Health and Human Services Agency.

Confirmed.

2. Commissioner Johnson: Greg Thedell, Advocacy Center Organizer, SEIU Local 221, on behalf of **2021-372**, Public Health Nurse, appealing a Final Order of Suspension and Charges from the Health and Human Services Agency.

Confirmed.

3. Commissioner Rodriguez-Kennedy: Greg Thedell, Advocacy Center Organizer, SEIU Local 221, on behalf of **2021-373**, Social Worker I, appealing a Final Order of Suspension and Charges from the Health and Human Services Agency.

Confirmed.

4. Commissioner Fletcher: **2021-374**, Fleet Standards Technician, alleging discrimination by the Department of General Services.

Confirmed.

DISCIPLINE

Findings

5. Commissioner Johnson: **2021-004**, former Accounting Technician, appealing a Final Order of Removal and Charges from the Department of General Services.

FINDINGS AND RECOMMENDATIONS:

Employee 2021-004 appealed a Final Order of Removal and Charges removing her from the position of Accounting Technician 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 dishonesty for failing to record absences and tardiness in the Kronos Timekeeping system thereby falsely claiming hours worked in order to deceive the Department for personal gain to receive regular pay and benefits for time not worked, insubordination for multiple incidents of blatantly refusing and ignoring supervisory directives to send daily check-in emails by the requested time, and violating the County Charter by disregarding and ignoring the Public Health Order mandated by the State of California by refusing to wear a protective mask or face covering while at work.

The appeal in this matter was filed on January 14, 2021, by Employee's representative, SEIU Local 221. As early as February 10, 2021, the Employee was aware that SEIU Local 221 would not be representing them in this matter. On March 11, 2021, the Commission set the hearing on this matter to take place on April 28, 2021, and Employee was notified of that hearing date.

On April 20, 2021, the Employee requested a continuance of the hearing for 45 to 60 days to "consult with an attorney or seek counsel." On April 20, 2021, the Hearing Officer approved a 30 to 45 day continuance of the hearing. On May 13, 2021, the hearing was rescheduled to take place on June 30, 2021, effectively a 63-day continuance.

On June 22, 2021, Employee requested a second continuance of indeterminate duration on the grounds that "additional time is needed to prepare for the hearing and consult legally [sic]." Employee's request for a second continuance was denied on June 23, 2021, as the Hearing Officer believed that the first continuance provided Employee with sufficient time to consult with legal counsel and prepare for the hearing. Thereafter, the Commission's Executive Officer notified Employee of the denial of the request and confirmed that the hearing would take place on June 30, 2021. Between June 23 and the hearing date the Commission's Executive Officer made several attempts to contact Employee by email, telephone, and videoconference (i.e., through the BlueJeans internet platform) to prepare for the hearing, with limited success, although finally communicating with the Employee as late as June 29, 2021.

Later that evening Employee communicated to the Executive Officer by email unilaterally withdrawing from the hearing on June 30th, asserting that "additional time is needed to prepare for the hearing," and "I don't feel that I should proceed without representation from legal counsel. To ensure adequate and fair procedure, it's best that I consult further with counsel regarding the handling of this matter." The Commission's Executive Officer replied to Employee's email advising that refusing or failing to appear for the hearing may result in the Commission dismissing the appeal and affirming the Order of Removal.

On June 30, 2021, at 9:30 a.m., the time and place set for the hearing in this matter the Employee was not present. After waiting for Employee to make an appearance the hearing was commenced at 9:37 a.m., then recessed until 9:50 a.m., to allow ample time for the Employee to join the hearing. The Hearing Officer found that the Employee has had months to prepare and seek legal advice or retain counsel to appear in this matter. The Hearing Officer further found that Employee's reasons for the additional continuance were the same as expressed in the first request, which was previously granted; and that the Commission's Executive Officer has given the Employee numerous opportunities to inform the Commission of efforts taken to prepare, to seek legal advice, or retain counsel, which information has never been provided.

Civil Service Rule 7.7.5 provides that "[i]f the employee refuses to appear or fails to appear, the Commission may order that the appeal be stayed until the employee appears or may dismiss the appeal and affirm the order of reduction in compensation, suspension, demotion, or removal."

Approximately one (1) hour after the hearing was completed the Employee emailed the Commission's Executive Officer, stating, "I sent an email to you on 06/29/2020 [sic] regarding withdrawing from the hearing due to the need for legal counsel. Based on our previous conversations, it was my understanding that method of notification would be accepted." There is no question whether email is an acceptable means of communication with the Commission or its staff; that is not the point. Sending an email withdrawing from the hearing is not an acceptable means to continue the hearing, particularly after the Hearing Officer previously denied the Employee's request for a continuance.

Based on the above, it is hereby recommended that the Commission determine that Employee's appeal be dismissed; that the Department's Order of Removal 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 Johnson to approve the Findings and Recommendations; seconded by Commissioner Rodriguez-Kennedy.

Motion carried with all Commissioners in favor.

DISCRIMINATION

Findings

6. Commissioner Sharp: **2020-149**, former Protective Services Worker, alleging discrimination by the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

On December 2, 2020, the Civil Service Commission appointed Commissioner Ira Sharp, to investigate the complaint submitted by 2020-149, a former Protective Services Worker, which alleged discrimination based on physical and mental disability 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. The Investigating Officer has received and reviewed OEC's report and has taken into consideration all documentation submitted in this matter.

The Investigating Officer 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.

It is therefore recommended that 2020-149'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.

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

Motion carried with all Commissioners in favor.

SELECTION PROCESS

Appeal

7. **2021-375**, Senior Cadastral Technician, appealing his non-selection for the classification of Cadastral Supervisor by the Assessor/Recorder/County Clerk.

RECOMMENDATION: Deny Request for Hearing

After hearing from the appellant and department, Commissioner Rodriguez-Kennedy motioned to uphold staff's recommendation to deny appellant's request for a hearing. Motion seconded by Commissioner Johnson.

Motion carried with all Commissioners in favor.

Findings

8. **2021-376**, Applicant, appealing the Department of Human Resources' removal of her name from the employment list for Deputy Sheriff Cadet-Detentions/ Court Services.

9. **2021-377**, Applicant, appealing the Department of Human Resources' removal of her name from the employment lists for Deputy Sheriff Cadet and Deputy Sheriff Cadet -Detentions/Court Services.

10. **2021-378**, Applicant, appealing the Department of Human Resources' removal of her name from the employment lists for Deputy Sheriff Cadet and Deputy Sheriff Cadet-Detentions/ Court Services.

RECOMMENDATION: Ratify items 8 - 10. 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 Nos. 8-10: Ratified.

OTHER MATTERS

Extension of Temporary Appointments

11. Planning Development Services

4 Code Enforcement Officers: **2021-379 through 2021-382**

12. Health and Human Services Agency

1 Office Support Specialist: **2021-383**

Extensions Related to COVID-19 Response:

1 Administrative Analyst I: **2021-384**

5 Building Maintenance Engineers: **2021-385 through 2021-389**

6 Communicable Disease Investigators: **2021-390 through 2021-395**

109 Office Assistants: **2021-396 through 2021-504**

1 Operations Research Analyst: **2021-505**

6 Pharmacists: **2021-506 through 2021-511**

4 Program Coordinators: **2021-512 through 2021-515**

3 Public Health Nurses: **2021-516 through 2021-518**

5 Staff Nurses: **2021-519 through 2021-523**

1 Stock Clerk: **2021-524**

1 Health Information Specialist I: **2021-525**

RECOMMENDATION: Ratify Items 11 & 12

Item Nos. 11 and 12: Ratified.

INFORMATION

13. James J. Cunningham, Esq., on behalf of **2020-017**, Equipment Operator, withdrawing an appeal of a Final Order of Suspension and Charges from the Department of Public Works. (Commissioner Johnson)

Withdrawn.

ADJOURNED: 2:59 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION: SEPTEMBER 1, 2021

ASSISTANCE FOR THE DISABLED:

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