

CIVIL SERVICE COMMISSION MINUTES

OCTOBER 6, 2021

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

Present via Videoconference:

Bryan J. Fletcher
Melissa Johnson
Will Rodriguez-Kennedy
Ira Sharp

Absent:

Peter B. Smith

Comprising a quorum of the Commission

Support Staff Present:

Todd Adams, Executive Officer
Morgan Foley, Commission Legal Advisor

Approved
Civil Service Commission
November 3, 2021

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

- 1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation
- 2:30 p.m. OPEN SESSION: Videoconference/Teleconference
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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)) **2020-022/2021-001**, former Office Assistant, appealing a Final Order of Suspension and a Final Order of Removal from the Health and Human Services Agency.
- B. Commissioner Fletcher: CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION (GOV. CODE SEC. 54956.9(a)) **2020-152**, Account Clerk, alleging discrimination by the Health and Human Services Agency.

ORDER OF BUSINESS

A. **ROLL CALL**

Present: Fletcher, Johnson, Rodriguez-Kennedy, Sharp

Absent: Smith

B. **APPROVAL OF MINUTES:** Meeting of September 1, 2021.

Motion by Commissioner Rodriguez-Kennedy to approve the minutes of September 1, 2021; seconded by Commissioner Johnson.

Motion carried with all Commissioners present in favor.

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

None.

D. **AGENDA ITEM DISCUSSION:**

The Commission received one (1) request to pull agenda item #4 for discussion.

E. **FORMATION OF CONSENT AGENDA**

Items Nos. 1-3, 5, and 8-12 formed the Consent Agenda.

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

Motion carried with all Commissioners present in favor.

F. **DISCUSSION ITEMS**

Items No. 4, 6, & 7 were pulled for discussion.

AGENDA ITEMS

CONFIRMATION OF ASSIGNMENT

1. Commissioner Johnson: Edward J. Southcott, Esq., on behalf of **2021-534P**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

Confirmed.

2. Commissioner Rodriguez-Kennedy: Michael Begovich, Esq., on behalf of **2021-535P**, former Deputy Sheriff-Detentions/Courts Services, appealing an Order of Termination and Charges from the Sheriff's Department.

Confirmed.

3. Commissioner Fletcher: Adriana Meza, Representation Specialist, SEIU Local 221, on behalf of **2021-536**, former Human Services Specialist, appealing a Final Order of Removal and Charges from the Health and Human Services Agency.

Confirmed.

4. Commissioner Sharp: Vasu Vijayraghavan, Ph.D., Esq., on behalf of **2021-537**, Civil Engineer, appealing a Final Order of 90-Day Suspension and Charges from the Department of Public Works.

Vasu Vijayraghavan, Esq. inquired as to the Commission's process for assigning Commissioner Sharp as the Hearing Officer for case 2021-537. Todd Adams, Executive Officer, explained to Ms. Vijayraghavan that Commissioners are chosen in rotation order; and that Commissioner Sharp was next up in the rotation. No other inquiries were made.

Commissioner Rodriguez-Kennedy motion to confirm Commissioner Sharp as the Hearing Officer for case #2021-537; seconded by Commissioner Johnson.

Motion carried with all Commissioners present in favor.

5. Commissioner Smith: James J. Cunningham, Esq., on behalf of **2021-538**, Electronic Security and Systems Technician, appealing a Final Order of 90-Day Suspension from the Department of General Services.

Confirmed.

DISCIPLINE

Findings

6. Commissioner Smith: **2020-022/2021-001**, former Office Assistant, appealing a Final Order of Suspension and Charges and a Final Order of Removal and Charges from the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

Employee appealed a Final Order of Suspension and Charges (Case No. 2020-022) suspending Employee for three (3) workdays and a Final Order of Removal and Charges (Case No. 2021-001) removing him from the class and position of Office Assistant (Class No. 2700) in the Health and Human Services Agency. The Commission appointed Commissioner Peter B. Smith to hear the appeals and submit findings, conclusions, and recommendations to the Civil Service Commission. Both the Suspension appeal and the Removal appeal were consolidated into a single hearing.

The causes of discipline in the Final Order of Suspension were insubordination and conduct unbecoming an employee of

the County for repeatedly entering a County facility outside their work schedule despite numerous directives not to enter the building during non-work hours without prior approval.

The causes of discipline in the Final Order of Removal were conduct incompatible with or inimical to the public service, insubordination, conduct unbecoming an employee of the County, discourteous treatment of the public or other employees, and failure of good behavior for inappropriately and unlawfully electronic recording their co-worker's phone conversation in a place where the co-worker had a reasonable expectation of privacy, then emailing the recording to a third party.

The appeal of the Suspension Order was filed on May 8, 2020, by Employee's representative, SEIU Local 221; and the appeal of the Removal Order was filed on December 18, 2020, also by SEIU Local 221. Employee was informed by SEIU Local 221 that they would not represent Employee in the hearings as early as June 2020 regarding the suspension and February 2021 regarding the removal. Commission staff allowed Employee approximately two (2) months within which he was allowed to locate and retain legal representation for his appeals. On May 17, 2021, the Commission set the hearing on this matter to take place on August 30, 2021, at 9:00 a.m. and Employee was notified of that hearing date and time. Except for the original approximately 60-day delay for Employee to retain legal counsel the Employee has not requested a continuance, and communications from Employee were spotty, at best.

Beginning on August 17, 2021, the Commission's Executive Officer communicated to Employee through an email, offering him an opportunity to go over hearing procedures, reminding Employee of the date the exhibits were due in the Commission's office, and requesting time to conduct a videoconference practice session with Employee prior to the upcoming hearing. Because of Employee's history of poor communication with the Commission office, when the Executive Officer didn't hear back from Employee the next day, he called his phone number and left a voicemail asking Employee to contact the Commission's office. Over the next two weeks the Executive Officer attempted to contact Employee by both email and telephone every weekday, in each instance leaving messages on the Employee's voicemail at his telephone number.

In each of the last four voicemails and emails sent to Employee the Commission's Executive Officer included a warning that refusing or failing to appear for the hearing

may result in the Commission dismissing the appeals and affirming both the Order of Suspension and the Order of Removal.

On August 30, 2021, at 9:00 a.m., the time and place set for the hearing in these matters, the Employee was not present. After waiting for Employee to make an appearance the hearing was commenced at 9:05 a.m., then recessed until 9:15 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 these matters.

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."

At no time following the completion of the hearing has the Employee communicated with the Commission regarding the hearing, or to provide any excuse justifying the further continuance of the matters.

Based on the findings and conclusions set forth above, on behalf of Commissioner Smith, Commissioner Johnson recommended that the Commission determine that Employee's appeals be dismissed; that the Department's Final Order of Suspension and Charges and its Final Order of Removal and Charges both 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 present in favor.

DISCRIMINATION

Findings

7. Commissioner Fletcher: **2020-152**, Administrative Analyst II, alleging discrimination by the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

On December 2, 2020, the Civil Service Commission appointed, Commissioner Bryan J. Fletcher, to investigate the complaint submitted by 2020-152, Administrative Analyst II, which alleged discrimination based on retaliation for "reporting abusive/unreasonable treatment to senior management" 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.

Based on the findings it is therefore recommended that 2020-152'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 Fletcher to approve the Findings and Recommendations; seconded by Commissioner Johnson.

Motion carried with all Commissioners present in favor.

SELECTION PROCESS

Findings

8. **2021-539**, Applicant, appealing the Department of Human Resources' removal of her name from the employment list for Correctional Deputy Probation Officer I.

9. **2021-540**, Applicant, appealing the Department of Human Resources' removal of his name from the employment list for Correctional Deputy Probation Officer I.

RECOMMENDATION: Ratify items 9 & 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. 8-9 Ratified.

OTHER MATTERS

Extension of Temporary Appointments

10. Health and Human Services Agency

1 Residential Care Worker II: **2021-541**

100 Housing Specialists I: **2021-542 through 2021-641**

32 Human Services Specialist: **2021-642 through 2021-673**

1 Office Assistant: **2021-674**

RECOMMENDATION: Ratify

Item No. 10 Ratified.

Ratification of Medical Provider

11. Susan M. Brazeau, Director, Department of Human Resources, requesting approval to add Maura Kane, Psy.D., to the approved list of medical providers to be used for pre-employment Peace Officer Standards and Training (POST) psychological exams.

RECOMMENDATION: Approve

Item No. 11 Ratified.

INFORMATION

12. **2021-526**, Residential Care Worker II, withdrawal of appeal of a Final Order of Suspension and Charges from the Health and Human Services Agency. (Commissioner Smith)

Withdrawn

ADJOURNED: 2:53 p.m.

ASSISTANCE FOR THE DISABLED:

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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.