

**CIVIL SERVICE COMMISSION MINUTES**

**December 15, 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  
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**  
**January 5, 2022**

**CIVIL SERVICE COMMISSION MINUTES**

**DECEMBER 15, 2021**

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

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 Johnson: CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION (GOV. CODE SEC. 54956.9(a)) **2020-153**, former Senior Office Assistant, alleging discrimination by the Health and Human Services Agency.
- B. Commissioner Fletcher: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(B)) James J. Cunningham, Esq., on behalf of **2020-020**, former Fleet Master Technician, appealing a Final Order of Removal and Charges from the Department of General Services.

**ORDER OF BUSINESS**

A. **ROLL CALL**

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

B. **APPROVAL OF MINUTES:** Regular meeting of December 1, 2021.

**Motion by Commissioner Rodriguez-Kennedy to approve the minutes of December 1, 2021; seconded by Commissioner Smith.**

**Motion carried with all Commissioners present in favor.**

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

None.

D. **AGENDA ITEM DISCUSSION:**

Item No. 3 was pulled for discussion by appellant's representative.

E. **FORMATION OF CONSENT AGENDA**

Items Nos. 1 and 4 formed the Consent Agenda.

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

**Motion carried with all Commissioners present in favor.**

F. **DISCUSSION ITEMS**

Item No. 2 and 3 were pulled for discussion.

**AGENDA ITEMS**

**TELECONFERENCED PUBLIC MEETINGS**

1. Continuance of Teleconferencing Meeting Option Pursuant to Government Code Section 54953(e).

RECOMMENDATION: Approve motion to find, pursuant to Government Code section 54953(e)(3), the Civil Service Commission has reconsidered the circumstances of the State of Emergency and state and local officials continue to recommend measures to promote social distancing.

**Approved.**

**DISCRIMINATION**

**Findings**

2. Commissioner Johnson: **2020-153**, former Senior Office Assistant, alleging discrimination by the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

The Civil Service Commission appointed Commissioner A. Melissa Johnson, as its member to be the investigating officer in the matter of the complaint submitted by 2020-153, former Senior Office Assistant, which alleged discrimination based on "Disability/FML use" 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 and conclusions set forth above, Commissioner Johnson recommended that 2020-153's Rule VI discrimination complaint be denied; and 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 Johnson to approve the Findings and Recommendations; seconded by Commissioner Smith.**

**Motion carried with all Commissioners present in favor.  
Findings**

## **DISCIPLINE**

### **Findings**

3. Commissioner Fletcher: James J. Cunningham, Esq., on behalf of **2020-020**, former Fleet Master Technician, appealing a Final Order of Removal and Charges from the Department of General Services.

### **FINDINGS AND RECOMMENDATIONS:**

James J. Cunningham, Esq., requested to speak about this matter and made comments to the Commission on behalf of his

client. Following these comments, Commissioner Fletcher presented his report to the Commission.

Employee 2020-020 appealed a Final Order of Removal and Charges removing him from the position of Master Fleet Technician in the Department of General Services. The Commission appointed Commissioner Bryan J. Fletcher to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. A hearing was held on November 12, 2021.

The Department's causes of discipline were inefficiency, conduct unbecoming, and acts incompatible with or inimical to the public service.

Employee was first hired by the County in May of 2003 and was promoted to Master Fleet Technician in May of 2006. He served in that position during the remainder of his employment with the County. As a permanent, full-time employee with the Department, Employee's work schedule was Monday through Friday from 7:30 a.m. until 4:00 p.m.

For much of his employment Employee struggled with unplanned, unscheduled, and unprotected absences (hereinafter collectively called "Unscheduled Absences"), for which he received multiple confirmation of conferences, warnings, was placed on a Performance Improvement Plan, been reprimanded, and suspended. He has been repeatedly informed of his options for use of FMLA time for his health issues, and the opportunity to take advantage of the County's EAP to help him address the causes of the Unscheduled Absences. With the assistance of HR staff, the Employee successfully applied for FMLA time off for some of the Unscheduled Absences, but it was not until after receiving his Notice of Intent to Remove him from his position that he first took advantage of the County's EAP.

Employee missed work on September 16, October 2, 4, 7, 21, 30; November 20; December 2, 3, 10, 17, 18, 23, 24, 26, 27, 30; and January 2, 8, 9, 15, 27, 28, 29, 30, 2020, all of which were Unscheduled Absences. In each case the Department was required to provide coverage from other Master Fleet Technicians for work not being performed by Employee. Each Unscheduled Absence created disruption in Departmental work, including the need to delay existing tasks and repeat tasks previously performed by the Employee. Such disruptions reduced productivity on the part of Employee and the Department.

Department has proven Cause I. Employee is guilty of inefficiency by failing to meet the expected attendance of a Master Fleet Technician due to an unacceptable number of Unscheduled Absences during his employment, and specifically during the period of September 1, 2019, through January 31, 2020. Employee's Unscheduled Absences were of such a magnitude during this period that he could not accrue sufficient paid leave time (sick leave personal or vacation), that over 45% of his Unscheduled Absences resulted in leave without pay.

Department has proven Cause II. Employee is guilty of conduct unbecoming despite the Department's efforts to change his behavior through counseling, warnings, discipline, and encouragement, Employee's Unscheduled Absences only temporarily improved but then returned to his prior pattern of tardiness or absences.

Department has proven Cause III. Employee is guilty of acts incompatible with or inimical to the public service. Employee's Unscheduled Absences, even limited to the period of time between September 1, 2019, through January 31, 2020, have adversely affected ongoing operations of the Department and his ongoing conduct is inimical and incompatible with the service expected from Departmental employees.

Employee has argued that because his last discipline was only a suspension of five days, that progressive discipline requires something less than removal, and that removal is an abuse of discretion.

Employee ignores the fact that his Unscheduled Absences were comparable to the percentages that existed prior to his five-day suspension, even though he was assigned to work sites much closer to his residence.

Starting in 2011 and up to his removal in 2020, Employee's excessive Unscheduled Absences were repeatedly documented and addressed in six confirmation of conferences, five performance appraisals, a Performance Improvement Plan, and two letters of warning. Employee was formally disciplined with a reprimand, and then a 5-day suspension with a warning that "additional incidents will result in further disciplinary action, up to and including termination". Even with all the counseling, warnings, and disciplines, Employee's absenteeism failed to improve in a sustained, long-lasting way and he always returned to his prior pattern of tardiness or absences. Considering this history,

Department's removal of Employee is an appropriate progression of discipline.

Based on the findings and conclusions set forth above, Commissioner Fletcher recommended that 2020-020's Final 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 Fletcher to approve staff's recommendation; seconded by Commissioner Johnson.**

**Motion carried with all Commissioners present in favor.  
Findings**

#### **INFORMATION**

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

**Withdrawn.**

ADJOURNED: 3:09 p.m.

#### **ASSISTANCE FOR THE DISABLED:**

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