

CIVIL SERVICE COMMISSION MINUTES

May 4, 2022

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
June 1, 2022

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION
REGULAR MEETING AGENDA
MAY 4, 2022**

- 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)) **2021-538**, former Electronic Security and Systems Technician, appealing a Final Order of 90-Day Suspension from the Department of General Services.
- B. Commissioner Fletcher: CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION (GOV. CODE SEC. 54956.9(a)) **2021-374**, Fleet Standards Technician, alleging discrimination by the Department of General Services.

OPEN SESSION AGENDA
Videoconference/Teleconference

ORDER OF BUSINESS

A. **ROLL CALL**

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

B. **APPROVAL OF MINUTES:** Regular meeting of April 6, 2022.

Motion by Commissioner Johnson to approve the minutes of April 6, 2022; seconded by Commissioner Sharp.

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. 1-5 and 8-9 formed the Consent Agenda.

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

Motion carried with all Commissioners present in favor.

F. **DISCUSSION ITEMS**

Item Nos. 6 and 7 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.

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Rodriguez-Kennedy: Greg Thedell, Advocacy Center Organizer, SEIU Local 221, on behalf of **2022-148**, former Office Assistant, appealing a Final Order of Removal and Charges from the Health and Human Services Agency.

Confirmed.

3. Commissioner Fletcher: Greg Thedell, Advocacy Center Organizer, SEIU Local 221, on behalf of **2022-149**, former Recordable Documents Specialist II, appealing a Final Order of Removal and Charges from the Assessor/Recorder/County Clerk.

Confirmed.

4. Commissioner Sharp: **2022-150**, former Revenue and Recovery Officer, appealing a Final Order of Removal and Charges from the Auditor and Controller.

Confirmed.

5. Commissioner Smith: Donovan J. Jacobs, Esq, on behalf of **2022-151P**, Deputy Sheriff Detention/Court Services, appealing an Order of Suspension and Charges from the Sheriff's Department

Confirmed.

DISCIPLINE

Findings

6. Commissioner Smith: **2021-538**, former Electronic Security and Systems Technician, appealing a Final Order of 90-Day Suspension from the Department of General Services.

FINDINGS AND RECOMMENDATIONS:

Employee 2021-538 appealed a Final Order of 90-day Suspension and Charges suspending him from the position of Electronic Security and Systems Technician in the Department of General Services. The Commission appointed, Commissioner Peter B. Smith, to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. Thereafter, a hearing was held on March 16, 2022.

The Department's causes of discipline were insubordination and acts which are incompatible with and/or inimical to the public service.

The Employee was hired by the Department on July 1, 2016. In his position the Employee is expected to work on-site; remote work was not an option.

In and around March of 2020, the Coronavirus disease (COVID-19) emerged throughout the world, and more particularly infections were identified in the State of California and San Diego County. As a result, the County of San Diego took action it deemed necessary in efforts to slow and help prevent the spread of the virus in County facilities. By definition the COVID-19 virus was a pandemic (i.e., occurring over a wide geographic area, affecting a great number of people), as early as the first quarter of 2020.

In late winter mid-2021, State and County health orders were modified to allow non-essential employees to return to work "in place," but with restrictions, including wearing facemasks, to help prevent the spread of the virus.

On August 16, 2021, the Director of the Department of Human Resources approved HR Policy 121, making it effective for all County non-health care employees on August 23, 2021.

HR Policy 121 does not mandate a vaccination; rather, employees were required to either provide proof of vaccination for the COVID-19 virus or undergo COVID-19 testing each calendar week, provide verification of COVID-19 testing to their supervisor or departmental human resources officer ("DHRO") after each test, and "continue to observe all other infection control requirements, including face coverings."

Notably, HR Policy 121 provides that unvaccinated employees are allowed to be tested on County time and had the option of testing by their personal health care provider, at a County or State testing site, or at a County provided self-testing option, provided verification was completed and collected. HR Policy 121 was forwarded to each of the Department's employees on August 17, 2021, by the Director of the Department of General Services, along with an email generally explaining the policy. The message from the Director concluded with the admonition for those unable to comply with the vaccination or testing requirements to contact their DHRO, immediately.

On August 23, August 27, August 31, and September 7, 2021, the Department emailed the Employee to remind him that he needed to provide proof of testing for the weeks prior to the dates in the emails. These communications were made based on the Employee's identification by the Department as being unvaccinated for the COVID-19 virus, in accordance with HR Policy 121. Each communication from the Department also provided the Employee with information relative to (1) the location of testing sites; (2) whether there is a cost for the test; and (3) other information to assist the Employee in obtaining the tests.

The Employee never provided either appropriate proof that he has received any of the COVID-19 vaccinations or proof that he has been tested for the COVID-19 virus for any of the weeks following the effective date of HR Policy 121.

While the Employee asserted that he could not undertake weekly testing using the "nasal swab" test due to a medical condition, he never provided the Department with any doctor's note or order prohibiting the use of nasal swab testing for the COVID-19 virus or setting forth any medical need to restrict his testing to only saliva tests.

The evidence supports a finding that Employee is guilty of insubordination. Employee refused to provide proof of either full COVID-19 vaccination or testing for the COVID-19 virus for each of the periods of time set forth in the emails from the Director, the Sr. DHRO, or the DHRO, dated August 17, 2021, August 23, August 27, August 31, and September 7, 2021. The Employee's objections to HR Policy 121 include his belief that it cannot be required of him to participate in a testing procedure without his consent to the manner of testing, on the basis that he has a medical need to avoid the nasal swab test, and he should be allowed a reasonable accommodation by using an alternative testing procedure to be supplied by the County, that is, the saliva test.

Nothing in the record supports the Employee's assertion that the County is obligated to accommodate his request and provide the alternative testing through its testing sites or through other means. There is no evidence that using the nasal swab test is prohibited by any medical opinion or doctor's orders obtained by the Employee. As the Department points out, the desire for this alternative method of testing is the Employee's "personal preference."

Further, the Department presented ample evidence to support its efforts to work patiently with the Employee to find a provider that uses the saliva test without cost to the County or the Employee. These efforts included the suggestion that the Employee pay for the weekly testing through his health care flexible spending account ("FSA"), which the County annually funds up to a limited amount since he received his health care from the government, i.e., the Department of Veterans Affairs.

The evidence supports a finding that Employee is guilty of acts incompatible with and/or inimical to the public service for the same reasons.

The Department's 90-day suspension without pay is reasonable. The Employee has admitted that since August 23, 2021, the effective date of HR Policy 121, he has not received the COVID-19 vaccination and will not undertake testing other

than through a saliva test, paid for by the County. The Department has provided evidence that utilizing patience and reason in responding to Employee's continued objections to the method of testing, and its reasonable efforts to attempt to demonstrate to the Employee that he can use the saliva test method - initially at his own cost and expense but the cost of each test refunded through his FSA - supports a finding that the Employee showed no signs that he might ever comply with the policy.

Based on the findings and conclusions set forth above, it is hereby recommended that the Final Order of 90-day Suspension 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 Sharp.

Motion carried with all Commissioners in favor.

DISCRIMINATION

Findings

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

FINDINGS AND RECOMMENDATIONS:

The Civil Service Commission appointed, Commissioner Bryan J. Fletcher, as its member to be the investigating officer in the matter of the complaint submitted by 2021-374, Fleet Standards Technician, which alleged discrimination based on race and national origin by the Department of General Services. 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. I have received and reviewed OEC's report and have taken into consideration all documentation submitted in this matter. Commissioner Fletcher concurred with OEC's Report and has concluded that the evidence does not support a finding of probable cause in that a violation of discrimination laws occurred.

It is therefore recommended that 2021-374'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 Sharp.

Motion carried with all Commissioners in favor.

SELECTION PROCESS

Appeals

8. **2022-152**, candidate, appealing her non-selection for the classification of Office Support Specialist by the Health and Human Services Agency

RECOMMENDATION: Deny request for a selection process hearing

Item No. 8 Recommendation Approved

OTHER MATTERS

Extension of Temporary Appointments

9. Health and Human Services Agency

2 Administrative Analyst II: **2022-153** and **2022-154**

RECOMMENDATION: Ratify

Item No. 9 Ratified.

ADJOURNED: 2:55 p.m.

ASSISTANCE FOR THE DISABLED:

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