

CIVIL SERVICE COMMISSION MINUTES

February 1, 2023

A meeting of the Civil Service Commission was held at 2:31 p.m., via Videoconference/Teleconference.

Present via Videoconference:

Bryan J. Fletcher
Melissa Johnson
Ira Sharp
Peter B. Smith

Absent:

Will Rodriguez-Kennedy

Comprising a quorum of the Commission

Support Staff Present:

Todd Adams, Executive Officer
Morgan Foley, Commission Legal Advisor

Approved
Civil Service Commission
March 1, 2023

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION
REGULAR MEETING MINUTES
FEBRUARY 1, 2023**

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

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

Notice pursuant to Government Code Section 54954.2.

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

- A. Commissioner Sharp: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(B)) **2022-148**, former Office Assistant, appealing a Final Order of Removal and Charges from the Health and Human Services Agency.

OPEN SESSION AGENDA
Videoconference/Teleconference

ORDER OF BUSINESS

A. **ROLL CALL**

Present: Fletcher, Johnson, Sharp, Smith

Absent: Rodriguez-Kennedy

B. **APPROVAL OF MINUTES:** Regular meeting of January 4, 2023.

Motion by Commissioner Sharp to approve the minutes of January 4, 2023; 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

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

Motion by Commissioner Sharp to approve the Consent Agenda; seconded by Commissioner Smith.

Motion carried with all Commissioners in favor.

F. DISCUSSION ITEMS

Item No. 4 is 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 ASSIGNMENT

2. Commissioner Rodriguez-Kennedy: **2022-157**, Toxicologist I, Department of the Medical Examiner, alleging discrimination by the Sheriff's Department. (Previously assigned to Commissioner Sharp)

Confirmed.

3. Commissioner Fletcher: Amanda Gracia, Esq., on behalf of **2023-002P**, former Deputy Sheriff-Detentions/Court Services, appealing an Order of Termination and Charges. (Previously assigned to Commissioner Rodriguez-Kennedy)

Confirmed.

DISCIPLINE

Findings

4. Commissioner Sharp: **2022-148**, former Office Assistant, appealing a Final Order of Removal and Charges from the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

Employee 2022-148 appealed a Final Order of Removal and Charges removing him from the position of Office Assistant in the Health and Human Services Agency. The Commission appointed, Commissioner Ira Sharp, to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. A hearing was held on December 15, 2022.

The causes of discipline were conduct unbecoming, dishonesty, and acts incompatible with or inimical to the public service. The Employee held the position of Office Assistant in the Health and Human Services Agency beginning in March of 2019 thru October of 2021. On September 24, 2021, the Employee reported to the Electronic Record Management System at the Centralized Child Welfare Services - Document Processing Center, located in San Diego.

During the week of October 4-8, 2021, the Employee entered the Restroom. At that time, a female day porter ("MG"), employed by the County's janitorial contractor, was restocking and cleaning the Restroom. Upon realizing that the Employee intended on voiding into one of the urinals on the wall, MG, feeling uncomfortable being in the presence of the Employee, locked herself in one of the stalls, staying there until the Employee left the Restroom. This was the First Event.

When the Employee entered the Restroom on that day MG had left her rolling trash can in the doorway, the intent being to convey a message that the Restroom was being cleaned and restocked, and unavailable for use. MG did not place any other sign across the doorway indicating that the Restroom was closed for cleaning.

There is no evidence that the Employee was aware of MG's presence in the Restroom during the First Event. There is no evidence that MG observed the Employee's genitals during the First Event.

MG did not report the First Event to anybody for approximately two weeks.

On October 22, 2021, while MG was mopping the Restroom floor, the Employee again entered the Restroom to void into one of the urinals. During this Second Event MG had again placed the rolling trashcan in the doorway but this time she also placed a yellow pole horizontal across the doorway, at approximately 5 feet above the floor, with a hanging pennant with the message, "CLOSED FOR CLEANING," attached to the pole. In order to access the Restroom at this time the Employee, who stands at 6'2" tall, would have had to duck under the horizontal pole and the pennant.

Although the Employee does not deny seeing the rolling trashcan during the Second Event, he does deny seeing the horizontal pole and hanging pennant when entering the Restroom. The testimony of MG supports a finding that it is more likely than not that the trashcan, horizontal pole, and hanging pennant were in place as displayed in the photograph exhibit.

The Employee, while in the presence of MG, then unzipped his pants and used the urinal.

MG testified that when the Employee unzipped his pants, he "exposed" his genitals to her. The evidence from MG's testimony and her earlier statements to the Department's investigator on November 10, 2021, contain minor contradictions, which could be the result of challenges in translations and understanding of the term "expose." In her interview on November 10, 2021, only 12 days after the Third Event, MG "confirmed she saw the [Employee's] private parts as he faced her with his genitals exposed." This statement comes from the investigator's notes, not a transcript of the interview.

When testifying on this matter MG stated, through the interpreter, "So, I was mopping in the area of the urinaries [sic]; he came into the bathroom again, he unzipped his pants and in front of me he started to use the urinaries [sic]."

MG was next asked, "Did he expose his genitals to you?" To which she responded, "Yes, he unzipped his pants in front of me."

The Employee testified and insists that "I never exposed myself to, to [MG], never, not on one occasion; none, none of the occasions that, that she's [sic] says that I'm supposed to have exposed myself to her."

"Exposure," in this setting, should be considered a voluntary action on the part of the Employee to display his genitals while in the presence of MG. If the evidence was clear that the Employee turned and faced MG with his penis outside of his pants, before zipping up, using the term "expose" would be appropriate.

The evidence supports a finding that during his first entry into the Restroom on October 22, 2021, the Employee's actions in unzipping his pants and voiding into the urinal, in MG's presence, made his penis visible to MG.

Shortly after leaving the Restroom on that day the Employee returned and re-entered the Restroom while MG was still present. The rolling trashcan, horizontal pole, and hanging pennant were still in place. On this second visit the Employee never used the urinal; instead, he spoke with MG explaining that he had lost one of his ear buds, and asked her where the lost and found office was located in the building.

MG told the Employee to ask, "the office of facilities or utilities," and the Employee left. The Employee's second entry into the closed Restroom that day made MG feel "very bad," and "very scared."

On October 28, 2021, while MG was cleaning the Restroom, the Employee again entered the Restroom, admittedly to void into one of the urinals. During this Third Event MG had again placed the rolling trashcan in the doorway and placed a yellow pole horizontal across the doorway, at approximately 5 feet above the floor, with the hanging pennant notifying all that the Restroom was closed for cleaning.

During this Third Event the Employee never used the urinal. He asked her if it was okay for him to use the Restroom, and MG said "No, it [was] closed; he could not use it at this time." At some point during this exchange the Employee was standing in front of a urinal, with his back to MG as reflected in the photograph taken by MG. He unzipped his pants, and MG told him, "I am a woman and he could not do those things in front of me; and if he asked [me] in a kind manner, then [I would] come out."

While MG testified that the Employee, again, exposed his genitals to her, it is more likely than not her interpretation of the term, "expose," is very broad, and that the Employee never voluntarily displayed his genitals to her. It is more likely than not that based on MG's verbal and emotional reaction to his presence that the Employee never used the urinal in the Third Event, although it is possible that in his attempt to use the urinal he removed his penis from his pants, then returned it into his pants and left the Restroom.

Employee is guilty of conduct unbecoming by four times entering into the first floor men's restroom for employees while it was closed for cleaning. Further, on three of those occasions the entry was clearly signed to indicate that the facilities were closed for cleaning; on two of the occasions the Employee used the urinal when he knew, or should have known, that a day porter was present; and on three of the occasions, he knew that the day porter, a female, was working in the closed restroom.

Employee is *not guilty* of dishonesty due to lack of evidence that both the Employee and the sole witness to his conduct clearly understood the definition of "expose," in any of its derivative forms, to mean such time while incidental to his voiding into a urinal, or the brief moments necessary to remove his penis from, or replace it in, his pants in order to void into the urinal. In any event, the potential ambiguity caused by not using a clear definition is likely to have caused the Employee to misunderstand what was meant by the investigator.

Employee is guilty of acts that are incompatible with or inimical to the public service regardless of whether he intended to discreetly use the urinal in the presence of the female day porter, the Employee should never have entered the Restroom while it was being cleaned. It is even more incompatible and adverse to the public that he would enter the Restroom contrary to signs or indications that it was closed for cleaning while recognizing that MG, a female day porter, was present, and then actually use, or attempt to use, the facilities in the Restroom.

Although the Employee has no history of prior discipline, his complete disregard of signs or universal indications that a restroom was closed for cleaning, and his lack of respect of a female day porter who was in the process of cleaning a men's restroom by remaining in, and utilizing the urinal in her presence, is intolerable.

The Employee vigorously denies exposing himself to the female day porter; however, his conduct in attempting to use, and in at least one instance actually using, the urinal knowing that she is present and in close proximity to him is completely unacceptable. Even after she angrily explained his repeated misconduct to him in the Third Event the Employee showed no understanding of why the day porter was upset with his repeated disregard of how she had been treated by him.

Based upon the evidence presented as well as the foregoing analysis of the Employee's conduct, and even rejecting the charge of dishonesty in Cause II, it would not be acceptable for the Commission to overturn the Department's decision to remove the Employee.

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

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

Motion carried with all Commissioners in favor.

SELECTION PROCESS

Findings

5. **2023-006**, Applicant, appealing the Department of Human Resources' removal of his name from the employment list for Reserve Deputy.

RECOMMENDATION: Ratify. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2 and his name has been returned to the employment list.

Ratified.

OTHER MATTERS

Extension of Temporary Appointments

6. Auditor & Controller

1 Human Resources Specialist: **2023-007**

RECOMMENDATION: Ratify

7. Health and Human Services Agency

2 Staff Accountants: **2023-008** and **2023-009**

1 Account Clerk: **2023-010**

RECOMMENDATION: Ratify

Ratified.

INFORMATION

8. Bradley Fields, Esq., on behalf of **2022-211P**, **2022-212P**, and **2022-213P**, withdrawing their appeals of their non-selection for the classification of Deputy Probation Officer by the Probation Department. (Commissioner Smith)

Withdrawn.

ADJOURNED: 2:54 p.m.

ASSISTANCE FOR THE DISABLED:

Agendas and records are available in alternative formats upon request. Contact the Civil Service Commission office at (619)531-5751 with questions or to request a disability-related accommodation. Individuals requiring sign language interpreters should contact the Americans with Disabilities Coordinator at (619)531-4908. To the extent reasonably possible, requests for 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.