

CIVIL SERVICE COMMISSION MINUTES

DECEMBER 2, 2020

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

Present via Teleconference:

A.Y. Casillas
Bryan Fletcher
Melissa Johnson
Ira Sharp
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
January 6, 2021

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION
REGULAR MEETING MINUTES
DECEMBER 2, 2020**

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

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

Notice pursuant to Government Code Section 54954.2.

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

- A. Commissioner Fletcher: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(B)) Corbett Williams, Esq., on behalf of **2019-072**, former Protective Services Program Manager, appealing an Order of Removal and Charges from the Health and Human Services Agency.

- B. Commissioner Smith: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(B)) Edward J. Southcott, Esq., on behalf of **2020-019P**, former Deputy Sheriff-Detentions/Court Services, appealing an Order of Termination and Charges by the Sheriff's Department.

**OPEN SESSION AGENDA
Teleconference**

ORDER OF BUSINESS

A. **ROLL CALL**

Present: Casillas, Fletcher, Johnson, Sharp, Smith

B. **APPROVAL OF MINUTES:** Regular meeting of November 4, 2020.

Motion by Commissioner Casillas to approve the minutes of November 4, 2020; seconded by Commissioner Johnson.

Motion carried with all Commissioners in favor.

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

None.

D. **AGENDA ITEM DISCUSSION:**

None.

E. **FORMATION OF CONSENT AGENDA**

Item Nos. 1 - 9 and 12 - 18 formed the Consent Agenda.

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

Motion carried with all Commissioners in favor.

F. **DISCUSSION ITEMS**

Item Nos. 10 and 11 pulled for discussion.

AGENDA ITEMS

CONFIRMATION OF ASSIGNMENTS

1. Commissioner Fletcher: **2020-147**, Supervising Human Services Specialist, alleging discrimination by the Health and Human Services Agency.

Confirmed.

2. Commissioner Casillas: Greg Thedell, Advocacy Center Organizer, SEIU Local 221, on behalf of **2020-148**, former Building Maintenance Supervisor, appealing a Final Order of Removal and Charges from the Department of General Services.

Confirmed.

3. Commissioner Sharp: **2020-0149**, former Protective Services Worker, alleging discrimination by the Health and Human Services Agency.

Confirmed.

4. Commissioner Smith: **2020-150**, former Assessment Clerk, alleging discrimination by the Assessor/Recorder/County Clerk.

Confirmed.

5. Commissioner Johnson: **2020-151**, Facilities Analyst, Department of General Services, appealing a classification review under Civil Service Rule XII.

Confirmed.

6. Commissioner Fletcher: **2020-152**, Account Clerk, alleging discrimination by the Health and Human Services Agency.

Confirmed.

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

Confirmed.

8. Commissioner Sharp: Adriana Meza, Representation Specialist, SEIU Local 221, on behalf of **2020-154**, former Administrative Secretary II, appealing a Final Order of removal and Charges from the Probation Department.

Confirmed.

9. Commissioner Johnson: Edward J. Southcott, Esq., on behalf of **2020-018**, Crime Prevention Specialist, appealing an Order of Immediate Suspension by the Sheriff's Department. (Previously assigned to Commissioner Casillas.)

Confirmed.

DISCIPLINE

Findings

10. Commissioner Fletcher: Corbett Williams, Esq., on behalf of **2019-072**, former Protective Services Program Manager, appealing an Order of Removal and Charges from the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

Employee 2019-072 appealed an Order of Removal and Charges removing him from the position of Protective Services Program Manager in the Health and Human Services Agency ("Department"). The causes of discipline were acts which are incompatible with or inimical to the public service, conduct unbecoming, and failure of good behavior for accessing confidential case information in the Child Welfare Services/Case Management System relating to subordinate employees.

Employee has worked for the County for approximately 17.5 years. At the time of his removal Employee was assigned to a residential care facility for minors ("Facility") maintained by the Department. Employee's duties were, among other things, the oversight of seven cottages, including the overnight shift, which provide residential care to all children and youth on the Facility campus; and responsibility for staffing and scheduling of employees assigned to the Facility.

The Child Welfare System/Child Management System ("CWS/CMS") is a California state database that contains sensitive information concerning child abuse cases. While Employee was employed with the County, he had the highest security clearance that any employee can have in the Department. Employee accessed the files of CH because CH's mother contacted staff at the Facility about concerns for CH's children; and JD after JD suffered a black eye in a confrontation with her domestic partner. Employee had concerns that a child was present. Employee viewed JD's historical file, which dated as far back as 1991 to 1993 which involved JD as a minor where she herself was the victim. Employee did not see anything of concern in any of the employees' files that he accessed and therefore took no actions.

The Department asserts that Employee had no business-related reason to access the files of CH and JD. The Department asserts that federal and state regulations, and County policy instructs employees that they are not allowed to access the files of their subordinate employees.

Employee asserts there is no policy which prohibits employees from accessing their employees' files in CWS/CMS. Employee believed that looking at the files of the employees was a business need because he had to ensure that the employees were safe to work around the children at the

Facility and, if they were not, then he would have taken them "offline".

The Department's policies regarding accessing CWS/CMS did not clearly instruct Employee that he could not access the database to look up employees under his supervision to determine whether the safety of children might be at risk.

Employee had no prior discipline and strong performance evaluations. He was not placed on administrative leave while the disciplinary action was pending nor was his access to the CWS/CMS changed during this time indicating that the Department was not concerned that Employee would access the database to look up employees again, without Department approval.

Employee initially accessed the files of CH and JD for business related reasons. More specifically, he wanted to find out if there were children in the care of CH or JD and, if so, whether they were protected and free from any type of abuse or neglect. However, the access to the JD files included a review of files over twenty years prior to the incident, at a time when JD was a minor and the files related to incidents where she, herself, was the victim.

The Department has proven Cause I as it relates to inappropriate access of JD's files which were over twenty years old when JD was a minor and a victim herself. Employee's acts were incompatible with or inimical to the public service in that such records are sensitive and confidential and should only be accessed by Employee for valid business purposes. The Department proved the access occurred, and Employee did not provide a valid business purpose to access those records. However, the Department has not proven Cause I as it relates to inappropriate access of CH's files. While the Department proved that Employee did access the records, Employee has provided sufficient evidence that there was a valid business purpose for his actions. Employee's acts were not incompatible with or inimical to the public service for this incident.

The Department has proven Cause II as it relates to inappropriate access of JD's files. Employee is guilty of conduct unbecoming for this incident. However, the Department has not proven Cause II as it relates to inappropriate access of CH's files. Employee is not guilty of conduct unbecoming for this incident.

The Department has proven Cause III as it relates to inappropriate access of JD's files. Employee is guilty of failure of good behavior for this incident. However, the Department has not proven Cause III as it relates to inappropriate access of CH's files. Employee is not guilty of failure of good behavior for this incident.

In mitigation of Employee's conduct, the policies of the County and the Department, specifically, fail to clearly guide employees, including the Employee, in determining when access to the records is allowed for a valid business-related purpose. Additionally, there was no evidence Employee had any malicious intent when accessing the files to determine whether the safety of children might be at risk, nor that it was accessed, in Employee's perspective, without any business purpose whatsoever.

Therefore, termination of Employee is too severe of a penalty for his actions taken relating to JD's files. A more appropriate discipline for Employee is a twenty (20) work-day suspension for the sustained violations in Causes I, II and III.

Based on the findings and conclusions set forth above, it is hereby recommended that the Order of Removal be modified to a twenty (20) work-day suspension; that Employee be awarded back pay, benefits, and interest from the date of removal to the date of this decision minus wages attributable to the twenty (20) work day suspension (minus any wages, benefits or other compensation Employee received from other employment, unemployment benefits or other assistance programs); and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Commissioner Fletcher to approve the Findings and Recommendations; seconded by Commissioner Casillas.

Motion carried with all Commissioners in favor.

11. Commissioner Smith: Edward J. Southcott, Esq., on behalf of **2020-019P**, former Deputy Sheriff-Detentions/Court Services, appealing an Order of Termination and Charges by the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee 2020-019P appealed an Order of Termination and Charges terminating him from the position of Deputy Sheriff-Detentions/Court Services in the Sheriff's Department. The causes of discipline were dishonesty, conduct unbecoming, incompetency, negligence, and acts which are incompatible with and/or inimical to the public service.

Employee worked for the Department for approximately 4 years. He was assigned to work as an Inmate Worker Deputy in a jail. As an Inmate Worker Deputy, he oversaw and maintained security for inmate workers at the jail who performed basic services during the day. One such inmate worker under Employee's supervision, BE, was designated the "office lead" of the inmate workers. As office lead, he had a close working relationship with the Employee. BE, during a telephone call with his domestic partner, AM, directed her to purchase a coffee maker, coffee and other items, and deliver the package of goods to the jail, specifically to the attention of the Employee.

On December 11, 2018, AM drove to the jail and, after entering the public lobby, asked to see the Employee. With her was a bulky object in a bag. Employee was summoned to the first floor by Sergeant B with the explanation that Employee's wife was in the lobby looking for him. Upon his arrival Employee encountered Sergeants C and F. The sergeants made comments that employees of the Sheriff's Department were not allowed to accept gifts. Employee explained that he knew the person in the lobby.

Employee next looked through the "pass-through" window, saw AM and told her that he would meet her in the lobby. Employee entered the lobby from the secure area, walked up to AM at which time she handed him the bag containing the coffee maker and coffee. Employee then escorted AM out of the building to the sidewalk outside and walked her to her vehicle. After some conversation Employee re-entered the lobby, and returned to the secure area of the jail, and subsequently took the bag with the coffee maker to his office where he left it, unopened for a period of time. When asked by Sergeant B about the identity of AM, Employee referred to her as either his sister, or sister-in-law and told the Sergeant that she was delivering an early Christmas present.

At no time did Employee explain that it was AM, not his wife nor any relative or friend, who delivered the coffee maker and coffee; Employee admits that he had never seen AM before that day. At some point during his time with AM Employee told her that inmate BE was "a nice guy," and that he was "happy to have him on our team." He also stated to her that he told everybody she was his sister. Employee did not examine the package; he did not open it, he did not x-ray it, and left it in his office, overnight.

Employee participated in training about how dangerous it is for law enforcement personnel to accept gifts from, or perform even nominal favors for, inmates and their families.

The Department's policies prohibit Departmental personnel from accepting gifts if it may reasonably be inferred that the person providing the gift seeks to affect the performance or non-performance of an official duty, or if the person providing the gift has an interest that may be substantially affected directly or indirectly by the performance or non-performance of an official act.

Inmate worker BE and Employee had a close association through their work together at the jail. Inmate worker BE directed his domestic partner AM to purchase a new coffee maker, of substantial value, and to provide the coffee maker along with two bags of ground coffee to Employee, which he accepted.

At no time until the investigation into his conduct did Employee inform any jail personnel, and specifically his superior officers, that AM was not his wife, nor his sister or sister-in-law, and that she had delivered the package as a gift to him or to the Department. Further, at no time did Employee attempt to correct the mistaken beliefs of personnel of the jail who had clearly assumed that AM was either his wife or a close relative or relation.

Department has proven all causes of discipline. Employee is guilty of dishonesty, conduct unbecoming, incompetency, negligence, and acts which are incompatible with and/or inimical to the public service. Employee's request for a reduction in his discipline from termination to some sort of suspension or other lesser level should be denied.

Based on the findings and conclusions set forth above, it is hereby recommended that the Order of Termination 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 Johnson.

Motion carried with all Commissioners in favor.

DISCRIMINATION

Late Complaint

12. **2020-155**, Protective Services Worker, requesting acceptance of a late complaint alleging discrimination by the Health and Human Services Agency.

RECOMMENDATION: Deny Request

Item No. 12 Denied

ABANDONED APPEAL

13. **2019-074**, former Human Services Specialist, appealing a Final Order of Removal and Charges from the Health and Human Services Agency.

RECOMMENDATION: Deem Appeal Abandoned

Item No. 13 Deemed Abandoned

SELECTION PROCESS

Findings

14. **2020-156**, Applicant, appealing the Department of Human Resources' removal of his name from the employment list for Radio Trainee.

15. **2020-157**, Applicant, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet-Detentions/Court Services.

16. **2020-158**, Applicant, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet-Detentions/Court Services.

17. **2020-159**, Applicant, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet-Detentions/Court Services.

RECOMMENDATION: Ratify items 14-17. 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. 14 - 17 Ratified

OTHER MATTERS

Extension of Temporary Appointments

18. Health and Human Services Agency

1 Building Maintenance Engineer: **2020-160**

5 Residential Care Workers II: **2020-161, 2020-162, 2020-163, 2020-164, and 2020-165**

RECOMMENDATION: Ratify

Item No. 18 Ratified

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.