

County of Santa Clara
Personnel Board



DATE: February 8, 2019, Business Meeting
TIME: 9:00 AM
PLACE: Conference Room 157
County Government Center – 70 W. Hedding Street, 1st Floor
San Jose, CA 95110

AGENDA

In compliance with the Americans with Disabilities Act and the Brown Act, those requiring accommodations in this meeting should notify the Clerk of the Personnel Board no less than 24 hours prior to the meeting at (408) 299-5001, or TDD (408) 993-8272.

Please note: To contact the Commission and/or to inspect any disclosable public records related to an open session item on a regular meeting agenda and distributed by the County to all or a majority of the Board of Supervisors (or any other commission, or board or committee) less than 72 hours prior to that meeting, visit our website at <http://www.sccgov.org> or contact the Clerk at (408) 299-5001 or 70 W. Hedding Street, 10th Floor, San Jose, CA 95110, during normal business hours.

Persons wishing to address the Commission on a regularly scheduled item on the agenda are requested to complete a request to speak form and give it to the Deputy Clerk. (Government Code Section 54953.3.) Individual speakers will be called by the Chairperson and are requested to limit their comments to two minutes. Groups of speakers on a specific item are asked to limit their total presentation to a maximum of twenty minutes for each side of the issue.

COMMUTE ALTERNATIVES: The Board of Supervisors encourages the use of commute alternatives including public transit, bicycles, carpooling, and hybrid vehicles.

For public transit trip planning information, contact the VTA Customer Service Department at (408) 321-2300 Monday through Friday between the hours of 6:00 a.m. to 7:00 p.m., and on Saturday from 7:30 a.m. to 4:00 p.m. Schedule information is also available on the web at www.vta.org.

Bicycle parking racks are available in the James McEntee, Sr., Plaza in front of the County Government Center building. If this Board or Commission does not meet in the County Government Center, please contact VTA for related routes.

Opening

1. Call to Order/Roll Call.
2. Public Comment.

This item is reserved for persons desiring to address the Board on any matter within the subject matter jurisdiction of the Board that is not on this agenda. Members of the public who wish to address the Board on any item not listed on the agenda should complete a request to speak form and give it to the Deputy Clerk. The Chairperson will call individuals to speak in turn.

Speakers are limited to the following: three minutes if the Chairperson or designee determines that five or fewer persons wish to address the Board; two minutes if the Chairperson or designee determines that between six and fourteen persons wish to address the Board; and one minute if the Chairperson or designee determines that fifteen or more persons wish to address the Board.

The law does not permit Board action or extended discussion of any item not on the agenda except under special circumstances. If Board action or response is requested, the Board may place the matter on a future agenda.

Regular Agenda

3. Minutes Approval:
 - a. Approve minutes of the January 11, 2019 Business Meeting.
 - b. Approve minutes of the January 25, 2019 Appeal Hearing.
4. Consider status of pending Findings of Fact.
 - a. Charlene Mahabali - Hearing on January 11, 2019
 - b. Karen Kao - Hearing on January 11, 2019
5. Receive verbal report from Office of Labor Relations.
6. Receive verbal report from the ad hoc subcommittee relating to Personnel Board scheduling matters.
7. Discuss pending hearing schedule/appeal backlog.

Verbal Reports

8. Announce Personnel Board decisions, if any, on disciplinary actions.
9. Receive report from County Counsel.
10. Make announcements.
11. Receive correspondence.

Adopt Findings of Fact

12. Adopt Findings of Fact for Lily Ha. (ID# 95123)
13. Announce that the appeal of Evan Dowling will be discussed in closed session.
14. Recess to closed session to consider the appeal of Evan Dowling pursuant to Government Code Section 54957(b)(1), relating to Public Employee Discipline/Demotion/Release.
15. Reconvene meeting to announce actions, if any, taken during closed session regarding the appeal of Evan Dowling.
16. Adopt Findings of Fact for Evan Dowling. (ID# 95195)

Appeal Hearing(s)

17. Convene hearing to consider the appeal of Penny Taganova relating to relating to dismissal from the Social Services Agency.
18. Announce that the appeal of Penny Taganova will be discussed in closed session.

19. Recess to closed session to consider the appeal of Penny Taganova pursuant to Government Code Section 54957(b)(1), relating to Public Employee Discipline/Demotion/Release.
20. Reconvene meeting to announce actions, if any, taken during closed session regarding the appeal of Penny Taganova.
21. Convene hearing to consider the appeal of John King relating to suspension from the Santa Clara Valley Health and Hospital System.
22. Announce that the appeal of John King will be discussed in closed session.
23. Recess to closed session to consider the appeal of John King pursuant to Government Code Section 54957(b)(1), relating to Public Employee Discipline/Demotion/Release.
24. Reconvene meeting to announce actions, if any, taken during closed session regarding the appeal of John King.

Adjourn

25. Adjourn to the next hearing on Friday, February 22, 2019 at 9:00 a.m. in Conference Room 157, County Government Center, 70 West Hedding Street, San Jose.



DATE: January 11, 2019, Business Meeting
TIME: 9:00 AM
PLACE: Conference Room 157
 County Government Center – 70 W. Hedding Street, 1st Floor
 San Jose, CA 95110

MINUTES

Opening

1. Call to Order/Roll Call.

Member Murphy called the meeting to order at 9:11 a.m. A quorum was present.

On motion of Member Castaldi, seconded by Member Alvarez, the Board unanimously appointed Member Murphy to serve as Chairperson Pro Tempore pending the arrival of Chairperson Anderson and Vice Chairperson O'Neal during Item No. 3.

Attendee Name	Title	Status	Arrived
Martin Alvarez	Member	Present	
William Anderson	Chairperson	Late	9:14 AM
Linda Castaldi	Member	Present	
Susan Murphy	Member	Present	
Denis O'Neal	Vice Chairperson	Late	9:14 AM

2. Public Comment.

No public comments were received.

Regular Agenda

3. Approve minutes of the December 14, 2018 Business Meeting.

Chairperson Anderson and Vice Chairperson O'Neal took their seats at 9:14 a.m.
 Chairperson Anderson assumed duties of Chairperson.

3 RESULT:	APPROVED [UNANIMOUS]
MOVER:	Linda Castaldi, Member
SECONDER:	Martin Alvarez, Member
AYES:	Alvarez, Anderson, Castaldi, Murphy, O'Neal

4. Consider status of pending Findings of Fact.

a. Lily Ha - Hearing on November 30, 2018.

Minutes Acceptance: Minutes of Jan 11, 2019 9:00 AM (Minutes Approval:)

Matthew Cottrell, Principal Labor Relations Representative, Employee Services Agency, advised that the Findings of Fact for Lily Ha will appear for consideration at the next business meeting.

5. Receive verbal report from Office of Labor Relations.

No report was received.

6. Discuss pending hearing schedule/appeal backlog. (ID# 94862)

Taken out of order after Item No. 7.

Chairperson Anderson clarified that the Board does not consider appeals for employees released during original probation; however, he advised that the Board retains jurisdiction for appeals relating to the timeline of probationary employment.

Chairperson Anderson requested that Administration include a footnote on the calendar for the appeal of Sally Chavez noting that the Board shall solely consider whether the appeal qualifies as a probationary release for consideration, or whether the release of employment occurred during the original probationary period, which is ineligible for appeal. Chairperson Anderson further advised that the Board will not consider the appeal of disciplinary action until the resolution of the probationary employment timeline.

The Board confirmed calendars through April 2019.

Member Alvarez advised that he is unable to attend the January 25 and February 1, 2019 appeal hearings, and the April 12, 2019 business meeting.

Member Castaldi advised that she is unable to attend the April 26, 2019 appeal hearing.

Member Murphy advised that she is unable to attend the March 1 and March 22, 2019 appeal hearings.

On order of Chairperson Anderson, there being no objection, the Board cancelled the April 19, 2019 appeal hearing.

7. Receive verbal report from the ad hoc subcommittee relating to Personnel Board scheduling matters.

Taken out of order after Item No. 5.

Members Murphy and Castaldi advised of initial ad hoc subcommittee discussion at the January 4, 2019 meeting, and noted a tentative meeting later in the day, time permitting.

Chairperson Anderson requested the participation of the affected bargaining groups, as appropriate.

7 RESULT: RECEIVED

Adopt Findings of Fact

8. Adopt Findings of Fact for Norma Contreras. (ID# 94558)

Taken out of order after Item No. 6.

8 RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Denis O'Neal, Vice Chairperson
SECONDER:	Martin Alvarez, Member
AYES:	Alvarez, Anderson, Castaldi, Murphy, O'Neal

Verbal Reports

9. Announce Personnel Board decisions, if any, on disciplinary actions.

No decisions were made.

10. Receive report from County Counsel.

Steve Mitra, Assistant County Counsel, announced Greta Hansen as Chief Assistant County Counsel assigned to the Personnel Board.

11. Make announcements.

No announcements were made.

12. Receive correspondence.

No correspondence was considered.

Appeal Hearing(s)

13. Convene hearing to consider the appeal of Karen Kao relating to suspension from the Consumer and Environmental Protection Agency.

Taken out of order after Item No. 19.

Convened hearing at 10:30 a.m.

14. Announce that the appeal of Karen Kao will be discussed in closed session.

Chairperson Anderson announced that the appeal of Karen Kao would be discussed in closed session.

15. Recess to closed session to consider the appeal of Karen Kao pursuant to Government Code Section 54957(b)(1), relating to Public Employee Discipline/Demotion/Release.

Recessed to closed session at 4:00 p.m., with all members present.

16. Reconvene meeting to announce actions, if any, taken during closed session regarding the appeal of Karen Kao.

Minutes Acceptance: Minutes of Jan 11, 2019 9:00 AM (Minutes Approval:)

Reconvened at 4:15 p.m. Chairperson Anderson announced that the Board voted unanimously to reduce the suspension of Karen Kao to 108 hours.

17. Announce that the appeal of Charlene Mahabali will be discussed in closed session.

Taken out of order after Item No. 12.

Chairperson Anderson announced that the appeal of Charlene Mahabali would be discussed in closed session.

18. Recess to closed session to consider the appeal of Charlene Mahabali pursuant to Government Code Section 54957(b)(1), relating to Public Employee Discipline/Demotion/Release.

Recessed to closed session at 9:35 a.m., with all members present.

19. Reconvene meeting to announce actions, if any, taken during closed session regarding the appeal of Charlene Mahabali.

Reconvened at 10:00 a.m. Chairperson Anderson announced that the Board voted 4-1, with Member O'Neal voting no, to uphold the suspension of Charlene Mahabali.

Adjourn

20. Adjourn to the next hearing on Friday, January 18, 2019, at 9:00 a.m. in Conference Room 157, County Government Center, 70 West Hedding Street, San Jose.

Taken out of order after Item No. 16.

Chairperson Anderson adjourned the meeting at 4:15 p.m.

Respectfully submitted,

Colin Kutch

Deputy Clerk of the Board



DATE: January 25, 2019, Appeal Hearing
TIME: 9:00 AM
PLACE: Conference Room 157
 County Government Center – 70 W. Hedding Street, 1st Floor
 San Jose, CA 95110

MINUTES

Opening

1. Call to Order/Roll Call.

Chairperson Anderson called the meeting to order at 9:15 a.m. A quorum was present.

Attendee Name	Title	Status	Arrived
Martin Alvarez	Member	Absent	
William Anderson	Chairperson	Present	
Linda Castaldi	Member	Present	
Susan Murphy	Member	Present	
Denis O'Neal	Vice Chairperson	Present	

2. Public Comment.

No public comments were received.

Appeal Hearing(s)

3. Convene hearing to consider the appeal of Arvind Sharma relating to probationary release from the Technology Services and Solutions Department.

Convened hearing at 9:15 a.m.

4. Announce that the appeal of Arvind Sharma will be discussed in closed session.

Chairperson Anderson announced that the appeal of Arvind Sharma would be discussed in closed session.

5. Recess to closed session to consider the appeal of Arvind Sharma pursuant to Government Code Section 54957(b)(1), relating to Public Employee Discipline/Demotion/Release.

Recessed to closed session at 4:15 p.m., with Members Anderson, Castaldi, Murphy, and O'Neal present.

Minutes Acceptance: Minutes of Jan 25, 2019 9:00 AM (Minutes Approval:)

6. Reconvene meeting to announce actions, if any, taken during closed session regarding the appeal of Arvind Sharma.

Reconvened at 4:30 p.m. Chairperson Anderson announced that the hearing was continued to date uncertain.

7. Convene hearing to consider the appeal of Linda Folston relating to suspension from the County Communications Department.

No hearing was held.

8. Announce that the appeal of Linda Folston will be discussed in closed session.

No closed session was held.

9. Recess to closed session to consider the appeal of Linda Folston pursuant to Government Code Section 54957(b)(1), relating to Public Employee Discipline/Demotion/Release.

No closed session was held.

10. Reconvene meeting to announce actions, if any, taken during closed session regarding the appeal of Linda Folston.

No action was taken.

Adjourn

11. Adjourn to the next hearing on Friday, February 1, 2019, at 9:00 a.m. in Conference Room 157, County Government Center, 70 West Hedding Street, San Jose.

Chairperson Anderson adjourned the meeting at 4:35 p.m.

Respectfully submitted,

Colin Kutch

Deputy Clerk of the Board

County of Santa Clara
Personnel Board



95123

DATE: February 8, 2019

TO: Personnel Board

FROM: Colin Kutch, Board Clerk II

SUBJECT: Adopt Findings of Fact for Lily Ha

RECOMMENDED ACTION

Adopt Findings of Fact for Lily Ha.

ATTACHMENTS:

- Findings of Fact - Ha - Draft (PDF)

Matthew Cottrell, Labor Relations Representative
COUNTY OF SANTA CLARA
70 W. Hedding St.
8th Floor, East Wing
San Jose, CA 95110

COUNTY OF SANTA CLARA PERSONNEL BOARD
SUSPENSION APPEAL HEARING

Lily Ha,)	
)	Case No. D18-92-9494
Appellant)	
)	
vs.)	
)	
County of Santa Clara,)	
Valley Health Plan)	
)	
Respondent)	

FINDINGS OF FACT

Procedural Statement

This matter was presented at a hearing before the Santa Clara County Personnel Board on Friday, November 30, 2018. A quorum of the Board, consisting of William Anderson, Denis O’Neal, Martin Alvarez, and Linda Castaldi, was present to hear the appeal. Appearing on behalf of the County was Matthew Cottrell, Principal Labor Relations Representative. The Appellant, Lily Ha, was self-represented.

Statement of Facts

Consistent with its common custom and practice, the following findings and conclusions have been submitted by the prevailing party and are hereby adopted by the Board.

1. The Appellant was served with a letter, dated May 16, 2018, charging her with violating various Merit System Rules, County and Department policies and recommending that she be subsequently released from her position as a Credentials Specialist with the County of Santa Clara effective May 19, 2018.
2. Pursuant to the County Charter Section 708 (c), an appeal of the subsequent release was filed on May 29, 2018 on behalf of the Appellant by Mario Brito, Business Representative, Operating Engineers Public Employee Division/CEMA. The appeal was filed timely.

The Board finds the following based upon both the documentary evidence and testimony submitted at the hearing:

3. Appellant worked for the Valley Health Plan as a Credentials Specialist. The Appellant has been employed by the County since October 29, 2001. At the time of the Appellant's discipline, her duties included, the responsibility for collection and maintenance of files related to credentialing of Plan network providers and other duties as assigned.
4. On October 9, 2017 the Appellant was promoted to a Credentials Specialist with the Valley Health Plan. The Appellant was given the typical training for a Credentials Specialist, which included training on both organizations and practitioners. The first training was regarding Practitioners and the training was conducted by Michele Garzoni-Welch. The Appellant was also given training on Organizational Credentialing by another Specialist. The department hired another Credentialing Specialist one month after the appellant started and the appellant participated in all the training for a second time.
5. Vivian Smith, Provider Relations Manager testified to the type of work a credentials specialist must complete. Ms. Smith stated that the work is detailed orientated and the final product must be 100% error free. Ms. Smith testified to providing numerous trainings and coaching's to the appellant.
6. Ms. Smith testified that by February 2018 the appellants work was still not error free and required other employees to review and correct. Ms. Smith met with the appellant in late March to help and counsel as the appellants work was still error prone and at that time the appellant admitted that her files would be 90% correct. Ms. Smith advised in that meeting that the work must be 100% accurate.
7. On April 6, 2018 Ms. Smith testified that she met with the appellant and her union representative. In the meeting she notified the appellant that she wished to extend probation and provide more training and support to the appellant. Ms. Smith provided the appellant a punch list of her most frequent errors and how to correct them.
8. Ms. Smith testified to meeting with the appellant on April 18, 2018 regarding continued errors and went through all the mistakes the appellant had made. Ms. Smith testified that the appellants work consistently showed errors and had to be corrected or reviewed by other specialists for the prior months. This extra work resulted in 138 hours of overtime.
9. The County provided the appellant multiple coaching's, extra training and the extension of probation.
10. The County issued the subsequent probationary release on May 16, 2018.

11. The Board found the evidence credible that Ms. Ha was given training, support and extra time regarding the expectations in her job. The Board also found Ms. Smith was a credible witness as she was a direct witness to the meetings, expectations and actual work performed by the appellant.
12. The County as the appointing authority acted within the bounds of reason to subsequently release the Appellant from her position as a Credentials Specialist with the Valley Health Plan. The Board upheld the following:

Violation of Merit System Rules, Article 11:

- Section A25-301(a) (1) “Violation of the County Charter, merit system rules and regulations, and written and published departmental rules and policies which do not conflict with this article.”
- Section A25-301 (a) (2) “Inefficiency, incompetence, or negligence in the performance of duties, including failure to perform assigned task or failure to discharge duties in a prompt, competent and responsible manner.”
- Valley Health Plan Policy and Procedures Operating Manual: Provider Relations. 7000. Commercial. Credentialing Organizational Providers

Conclusion

The parties presented testimony and documentary evidence regarding the subsequent probationary release of Appellant, Lily Ha. The Personnel Board deliberated in private on the matter of the appeals. On November 30, 2018, the Personnel Board announced its decision in these cases. In a unanimous vote, the Board upheld Section A25-301 (a) (1) “Violation of the County Charter, merit system rules and regulations, and written and published departmental rules and policies which do not conflict with this article” and Section A25-301 (a) (2) “Inefficiency, incompetency, or negligence in the performance of duties, including failure to perform assigned task or failure to discharge duties in a prompt, competent and responsible manner.” The board found violation with some inconclusiveness to the entirety on Valley Health Plan Policy and Procedures Operating Manual: Provider Relations. 7000. Commercial. Credentialing Organizational and in a unanimous decision upheld the subsequent probationary release.

Further Action

The Board hereby advises Appellant that she may seek judicial review of the Board decisions by filing a petition for writ of mandate pursuant to California Code of Civil Procedure Section 1094.5. The writ petition must be filed with a court of competent jurisdiction no later than the 90th day following the date on which the Board decision becomes final when it is mailed by first-class mail, postage prepaid, including a copy of the certificate of mailing to the party seeking such writ.

Date: _____

Chairperson, Santa Clara County Personnel Board

Attachment: Findings of Fact - Ha - Draft (95123 : Adopt Findings of Fact for Lily Ha)

**County of Santa Clara
Personnel Board**



95195

DATE: February 8, 2019

TO: Personnel Board

FROM: Colin Kutch, Board Clerk II

SUBJECT: Adopt Findings of Fact for Evan Dowling

RECOMMENDED ACTION

Adopt Findings of Fact for Evan Dowling.

LINKS:

- [Linked To: 92491 : Adopt Findings of Fact for Evan Dowling.](#)

ATTACHMENTS:

- [Revised Personnel Board Findings -- Dowling Matter -- FINAL \(PDF\)](#)

PERSONNEL BOARD
COUNTY OF SANTA CLARA
FINDINGS FOLLOWING APPEAL HEARING

In Re the Matter of
EVAN DOWLING

Case No. D16-92-7306

BACKGROUND

This disciplinary proceeding pertains to a forty-hour suspension of Evan Dowling, a Management Analyst in the Social Services Agency’s Department of Aging and Adult Services, based on events that took place on March 4, 2016. Mr. Dowling’s suspension was based upon the following alleged violations of the County Merit System Rules, as set forth in the January 17, 2017 Notice of Final Disciplinary Action provided to Mr. Dowling by the Skelly Officer who issued the notice of suspension (County Exhibit A¹):

Section A25-301(a)(2): “Inefficiency, incompetence, or negligence in the performance of duties, including failure to perform assigned task or failure to discharge duties in a prompt, competent and responsible manner.”

Section A25-301(a)(9): “Failure to maintain satisfactory and harmonious working relationships with the public and other employees.”

These two charges and the associated discipline are the only issues before the Personnel Board (“Board”).²

¹ County Exhibit A includes the January 19, 2017 Notice – Final Disciplinary Action – Hearing Officer’s Decision and the attachments thereto, bates numbered 001-282.

² Mr. Dowling has also provided the Board with information and materials regarding a number of other disputes, disagreements, and/or issues he has raised regarding his supervisors and/or other County officials. Those issues are not before the Personnel Board. They include but are not limited to: Civil Grand Jury reports or findings, whistle blower complaint(s), age discrimination complaint(s), the fitness for duty process, and union grievance(s) and/or alleged contract violations.

Attachment: Revised Personnel Board Findings -- Dowling Matter -- FINAL (95195 : Adopt Findings of Fact for Evan Dowling)

1 On March 23, 2018 and May 4, 2018, the Board heard Mr. Dowling’s appeal regarding the
 2 forty-hour suspension. On May 4, 2018, the Board deliberated in closed session and then announced
 3 its conclusions in open session. Board members William Anderson (Chairperson), Denis O’Neal,
 4 Linda Castaldi, Sue Murphy, and Martin Alvarez were present for each day of the hearing and for the
 5 deliberations and announcement of conclusions. Bryan Anderson, Deputy County Counsel, and
 6 Anthony Walters, Labor Relations Representative, appeared on behalf of the County of Santa Clara.
 7 Zeb Feldman, CEMA representative, appeared on behalf of Mr. Dowling.

8 The County called four witnesses: James Ramoni, Terri Possley, Tina Paskert, and Renae
 9 Bhader. Mr. Dowling called two witnesses: John Freeseemann and himself. The County argued that
 10 it justifiably suspended Mr. Dowling based on the evidence presented to the Board. Mr. Dowling
 11 argued that the suspension was unwarranted, unjust, and issued in retaliation for his whistleblower
 12 complaint.

13 Based on the sworn testimony and documentary evidence presented at the hearing, the Board
 14 unanimously upheld the County’s forty-hour suspension of Mr. Dowling, based on its finding that
 15 Mr. Dowling violated Section A25-301(a)(9) of the County Merit System Rules. The Board further
 16 found that there was insufficient evidence to support the charge that Mr. Dowling had violated
 17 Section A25-301(a)(2), and insufficient evidence to support Mr. Dowling’s defense of retaliation for
 18 “whistle blower” and/or other activities.

19 The parties agreed that the minimum discipline for CEMA covered employees for the
 20 violation found was a forty-hour suspension.

21 The Board directed the County to prepare draft Findings of Fact and Conclusions, which the
 22 County provided to Mr. Dowling’s representative for comment and correction before submission to
 23 the Board. The Board hereby adopts the County’s proposed Findings of Fact and Conclusions, as
 24 modified herein.

25 //
 26 //
 27 //
 28 //

Attachment: Revised Personnel Board Findings -- Dowling Matter -- FINAL (95195 : Adopt Findings of Fact for Evan Dowling)

FINDINGS OF FACT

1
2 1. Mr. Dowling was hired by the County on January 14, 2002 and has worked in the
3 Department of Aging and Adult Services (DAAS) as a Management Analyst since August 8, 2011.

4 2. On October 6, 2014, Mr. Dowling was administratively transferred to In-Home
5 Supportive Services as a Management Analyst, reporting to Renae Bhader, Management Analyst
6 Program Manager. (County Exhibit A at 0024).

7 3. Mr. Dowling had prior progressive discipline. A Letter of Reprimand was issued to
8 Mr. Dowling on October 31, 2016, which was sustained by Mr. Ramoni over Mr. Dowling's appeal.
9 (County Exhibit A at 0043-53; March 23, 2018 Hearing 16 Transcript at 60:6-12; May 4, 2018
10 Hearing Transcript at 312:7-313:7, 313:17-315:11)

11 4. A second Letter of Reprimand was issued to Mr. Dowling on March 16, 2015, which
12 was sustained by Mr. Ramoni over Mr. Dowling's appeal. (County Exhibit A at 0037-042; March
13 23, 2018 Hearing Transcript at 60:6-12; May 4, 2018 Hearing Transcript at 312:7-313:7, 313:17-
14 315:11).

15 5. The events that led to Mr. Dowling's discipline in the matter currently before the
16 Board are as follows:

17 6. In March 2016, Terri Possley, Social Services Program Manager, had several email
18 communications with Mr. Dowling regarding a hearing in a matter that had been set for March 30,
19 2016, before the California Labor Commissioner. (County Exhibit A at 0036). Mr. Dowling's duties
20 as a Management Analyst in IHSS included compiling records relevant to such Labor Commissioner
21 hearings. (March 23, 2018 Hearing Transcript at 103:10-106:22). On March 4, 2016, Ms. Possley
22 forwarded to Mr. Dowling a request from Cheryl Stevens, Deputy County Counsel, for information
23 necessary to submit an answer in a matter before the Labor Commissioner which was due that same
24 day. (County Exhibit A at 0034; March 23, 2018 Hearing Transcript at 108:6-109:11, 111:7-116:3).
25 Mr. Dowling testified that he opened this forwarded email on the afternoon of March 4, 2018.
26 (March 23, 2018 Hearing Transcript at 238:10-22, 240:21-242:8; May 4, 2018 Hearing Transcript at
27 318:14-320:19).

28 //

1 7. Also in March 2016, Mr. Dowling was working on matters related to a contract
2 between the County and a company called Sourcewise. On February 25, 2016, Mr. Dowling
3 received an email from Kimberly Marlar of Sourcewise providing revisions to a budget plan for an
4 amendment to Sourcewise's agreement with the County. (County Exhibit A at 0029; May 4, 2018
5 Hearing Transcript at 331:18-332:9). Mr. Dowling was assigned to work as a Management Analyst
6 on the legislative file through which the Sourcewise amended agreement would be presented to the
7 County's Board of Supervisors. (March 23, 2018 Hearing Transcript at 60:13-61:24).

8 8. Mr. Dowling forwarded the revised budget plan to Jose Ascano on March 3, 2018.
9 (Exhibit A at 0029; May 4, 2018 Hearing Transcript at 332:10-332:20). On March 4, 2016, Mr.
10 Ascano replied to Dowling asking that he obtain further information from Sourcewise. (Exhibit A at
11 0028; May 4, 2018 Hearing Transcript at 332:21-24).

12 9. On March 4, 2016, Dowling forwarded the email from Mr. Ascano to Sourcewise and
13 copied James Ramoni, Director of DAAS, on the email. (Exhibit A at 0028; May 4, 2018 Hearing
14 Transcript at 332:25-333:8). Mr. Ramoni and Mr. Dowling further corresponded by email on March
15 4, 2016, and in that correspondence Mr. Ramoni instructed Mr. Dowling to work with Sourcewise
16 and to provide a status report by 4:00 p.m. the same day. (Exhibit A at 0027; March 23, 2018
17 Hearing Transcript at 60:13-61:24; May 4, 2018 Hearing Transcript at 333:9-337:23).
18 At 4:01 p.m. on March 4, 2016, Mr. Dowling informed Mr. Ramoni that he had just returned to the
19 office from a meeting with County Counsel at 373 W. Julian and there were no further updates.
20 (Exhibit A at 0026; May 4, 2018 Hearing Transcript at 333:9-337:23). At 4:20 p.m., Mr. Ramoni
21 responded that Mr. Dowling should detail the efforts he had made to work with Sourcewise to secure
22 the necessary information. (*Id.*) Mr. Ramoni also passed on a request by Ms. Stevens for
23 information for the filing due in the matter before the Labor Commission. (*Id.*) Mr. Dowling
24 reported to Mr. Ramoni at 5:39 p.m. that he had sent two emails and left a voice mail with
25 Sourcewise seeking the requested information, but his contact was not in the office, that he had not
26 been aware of the Labor Commission matter and had offered to provide Ms. Stevens information if
27 the notice from the Labor Commission was forwarded to him. (Exhibit A at 0025).

28 //

1 10. After receiving Ramoni's 4:20 p.m. email, Mr. Dowling entered the office of Renae
2 Bhader. (March 23, 2018 Hearing Transcript at 116:4-120:24, 158:18-162:9, 164:18-166:10,
3 171:21-195:6, 245:2-251:19; May 4, 2018 Hearing Transcript at 337:24-338:6)

4 11. Prior to entering Bhader's office, Mr. Dowling was observed by Tina Paskert to be
5 noticeably agitated. (March 23, 2018 Hearing Transcript at 156:20-162:9, 164:18-166:10). Ms.
6 Paskert is a Social Worker Coordinator in IHSS, and her office has a window that allows her to see
7 Dowling at his workspace. (*Id.*) Ms. Paskert testified she did not hear any loud conversation or
8 yelling after the door to Ms. Bhader's office closed. (*Id.* at 162:23-163:13).

9 12. Mr. Dowling admitted that he was upset when he entered Ms. Bhader's office.
10 (County Exhibit A at 0070; March 23, 2018 Hearing Transcript at 245:2-251:19; May 4, 2018
11 Hearing Transcript at 338:7-339:7).

12 13. Only Ms. Bhader was present in her office at the time Mr. Dowling entered. (March
13 23, 2018 Hearing Transcript at 171:21-195:6, 245:2-251:19; May 4, 2018 Hearing Transcript at
14 342:5-12).

15 14. After entering Ms. Bhader's office, Mr. Dowling closed Ms. Bhader's door, stood in
16 front of her closed door, and at least for some period maintained his hand on the door knob. (March
17 23, 2018 Hearing Transcript at 171:21-195:6, 245:2-251:19; May 4, 2018 Hearing Transcript at
18 339:8-18). Mr. Dowling remained in Ms. Bhader's office for approximately five to six minutes.
19 (May 4, 2018 Hearing Transcript at 339:16-18).

20 15. Ms. Bhader testified that Mr. Dowling was very upset and agitated when he entered
21 Ms. Bhader's office and he was shaking. She believed he was upset about the emails that Mr.
22 Ramoni sent that day. (March 23, 2018 Hearing Transcript at 171:21-195:6). Ms. Bhader asked
23 several times that Mr. Dowling calm down and to leave her office. (*Id.*) Ms. Bhader was frightened
24 by Mr. Dowling's behavior and his failure to leave her office as requested. (*Id.*) Ms. Bhader did not
25 call security at the time because she was scared and just wanted him out of her office. (*Id.*)

26 16. After Mr. Dowling left her office, Ms. Bhader went to speak with her supervisor,
27 Terri Possley. Ms. Possley testified that Ms. Bhader appeared extremely distraught. (March 23, 2018
28 Hearing Transcript at 116:4-120:24). At Ms. Possley's request, Ms. Bhader accompanied and stood

1 next to Ms. Possley when Ms. Possley spoke to Mr. Dowling at his cubicle after the incident. (*Id.* at
2 175:16-176:5). Ms. Bhader could not recall what was discussed between Ms. Possley and Mr.
3 Dowling because Ms. Bhader was upset and shaken. (*Id.*)

4 17. Ms. Bhader subsequently went on a leave of absence at the direction of her doctor due
5 to the mental trauma she suffered from the incident with Mr. Dowling. (March 23, 2018 Hearing
6 Transcript at 178:5-180:25).

7 18. Mr. Dowling denied he was angry when he went into Ms. Bhader's office on the
8 afternoon of March 4, 2016, denied that he threatened Ms. Bhader, denied that he refused to leave
9 Ms. Bhader's office when requested, and accused Ms. Bhader of threatening him. (March 23, 2018
10 Hearing Transcript at 245:2-251:19; May 4, 2018 Hearing Transcript at 338:7-344:9). The Board
11 finds that several of Dowling's factual assertions about his interactions with Ms. Bhader, as well as
12 his attempts to diminish the significance of the incident, are not credible.

13 19. Mr. Dowling admitted he was upset when he entered Ms. Bhader's office and
14 remained in her office for five to six minutes with her door closed and blocking her ability to exit.
15 (*Id.*)

16 20. Mr. Dowling's refusal to acknowledge that Ms. Bhader might have been frightened
17 by his demeanor also demonstrates indifference to Ms. Bhader's clear trauma resulting from the
18 incident. (May 4, 2018 Hearing Transcript at 356:12-365:8). In contrast, Ms. Bhader's description
19 of the incident in her office was credible and supported by the contemporaneous observations by Ms.
20 Paskert and Ms. Possley, and by Mr. Dowling's admission that he was upset when he entered Ms.
21 Bhader's office, that he closed and blocked her door, and that he remained in her office for five to six
22 minutes.

23 21. Mr. Dowling presented testimony from his pastor and offered the Board memoranda
24 concerning his character. The Board finds this testimony and proffered evidence is not persuasive as
25 to the events in Ms. Bhader's office on March 4, 2016. Pastor Freeseemann admitted that he did not
26 observe Mr. Dowling on March 4, 2016 and had never met Renae Bhader. (March 23, 2018 Hearing
27 Transcript at 210:21-202:9). Instead, Pastor Freeseemann offered general testimony regarding
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1 Dowling's good character and noted that when Mr. Dowling believes he is right about something,
2 that he is "tenacious like a bull dog."

3 As to the memoranda offered by Mr. Dowling at the hearing, most were admittedly written
4 by Mr. Dowling, all were hearsay statements which neither the County nor the Board could examine,
5 and none purported to describe Mr. Dowling's demeanor and behavior on the afternoon of March 4,
6 2016. (March 23, 2018 Hearing Transcript at 26 256:6-259:8; May 4, 2018 Hearing Transcript at
7 299:17-301:18, 365:23-374:4).

8 22. Mr. Dowling testified that the March 4, 2016 emails from Mr. Ramoni were "cyber-
9 bullying" and retaliation for his "whistle blower complaint." (March 23, 2018 Hearing Transcript at
10 244:4-245:1, 249:14-250:15; May 4, 2018 Hearing Transcript at 321:4-20, 331:18-338:1). The
11 Board finds that Mr. Dowling's assertions regarding retaliation are not credible, and his
12 characterizations of the tone and content of the emails are inaccurate. (*See, e.g.*, County Exhibit A at
13 0026-0029; March 23, 2018 Hearing Transcript at 116:4-120:24, 158:18-162:9, 164:18-166:10,
14 171:21-195:6, 245:2-251:19; May 4, 2018 Hearing Transcript at 338:2-344:3, 352:14-356:8, 384:10-
15 388:9). Further, even if Mr. Dowling's descriptions of the emails from Mr. Ramoni were accurate,
16 those emails would not excuse Mr. Dowling's behavior towards Ms. Bhader.

17 23. Mr. Dowling argued that his leave of absence for a fitness for duty examination
18 should be considered in assessing whether the forty-hour suspension was just. (March 23, 2018
19 Hearing Transcript at 29:7-30:18). However, the alleged loss of vacation and sick time resulting
20 from Mr. Dowling's leave for a fitness for duty examination is not on appeal before this Board. (*Id.*
21 at 32:7-36:3). Also, Mr. Dowling was initially found not fit to return to work. (*Id.* at 121:17-
22 122:11). Finally, Mr. Dowling's assertions regarding the fitness for duty examination do not
23 mitigate his behavior towards Ms. Bhader nor Mr. Dowling's lack of remorse or empathy for the
24 trauma he caused Ms. Bhader.

25 24. Mr. Dowling further argued that he was deprived of due process because he was not
26 timely interviewed about the incident in Ms. Bhader's office. (May 4, 2018 Hearing Transcript at
27 344:18-345:1, 38:7-381:7). However, a failure by the County to timely interview Mr. Dowling does
28 not preclude discipline for his behavior towards Ms. Bhader. The Board agrees that the best practice

1 would have been for the County to interview Mr. Dowling as part of the investigation of Ms.
2 Bhader’s charges prior to seeking Mr. Dowling’s suspension, but the failure to do so does not
3 prevent him from being suspended. Further, Mr. Dowling was provided with the opportunity to
4 present testimony and evidence in the Skelly process and hearing and prior to the issuance of the
5 Notice-Final Disciplinary Action – Hearing Officer’s Decision, as well as in the present appeal of
6 that decision before this Board.

7 **CONCLUSIONS**

8 1. Based on the evidence at the hearing, the Board unanimously found that Mr. Dowling
9 violated departmental policies and the following section of the County Merit System Rules,
10 justifying the County’s forty-hour suspension of Mr. Dowling based on his behavior toward Ms.
11 Bhader on March 4, 2016:

12 Section A25-301(a)(9): “Failure to maintain satisfactory and harmonious working
13 relationships with the public and other employees.”

14 2. The Board unanimously found that Mr. Dowling did not violate County Merit System
15 Rule A25-301(a)(2) (“Inefficiency, incompetence, or negligence in the performance of duties...”).
16 Mr. Dowling’s alleged inefficiency, incompetence, or negligence with respect to the Sourcewise
17 issue was rejected by the Skelly Officer, and the Board does not sustain the Skelly Officer’s finding
18 of a violation of this provision of the Merit System Rules as to the matter before the Labor
19 Commission.

20 3. The Board unanimously found that Mr. Dowling’s allegation of “retaliation” for his
21 “whistle blower” complaint and related activities was not supported by the record and was therefore
22 rejected by the Board.

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Attachment: Revised Personnel Board Findings -- Dowling Matter -- FINAL (95195 : Adopt Findings of Fact for Evan Dowling)

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FURTHER ACTION

The Board hereby advises Appellant Evan Dowling that he may seek judicial review of this Board decision by filing a petition for writ of mandate pursuant to California Code of Civil Procedure section 1094.5. The writ petition must be filed with a court of competent jurisdiction no later than the 90th day following the date on which the Board decision becomes final (California Code of Civil Procedure § 1094.6). The Board decision becomes final when it is mailed by first-class mail, postage prepaid, including a copy of a certificate of mailing to the party seeking any such writ.

Dated: _____

By: _____
William Anderson
Chair, Santa Clara County Personnel Board

Attachment: Revised Personnel Board Findings -- Dowling Matter -- FINAL (95195 : Adopt Findings of Fact for Evan Dowling)