

County of Santa Clara
Personnel Board



DATE: March 24, 2017, 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 Commission on any matter within the subject matter jurisdiction of the Commission that is not on this agenda. Members of the public who wish to address the Commission 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 Commission; two minutes if the Chairperson or designee determines that between six and fourteen persons wish to address the Commission; and one minute if the Chairperson or designee determines that fifteen or more persons wish to address the Commission.

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

Regular Agenda

3. Approve minutes of the February 10, 2017 Business Meeting.
4. Consider status of pending Findings of Fact.
 - a. Jerome Shaw - Hearing on March 3, 2017
 - b. Susan Newton - Hearing on March 10, 2017
5. Discuss finality of findings made after Personnel Board hearings.
6. Receive verbal report from Office of Labor Relations.
7. Discuss pending hearing schedule/appeal backlog. (ID# 85495)

Adopt Findings of Fact

8. Adopt Findings of Fact for Jimmy Smith. (ID# 85636)

Verbal Reports

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

Appeal Hearing(s)

13. Convene hearing to consider the appeal of Mark Borge relating to a demotion from the Parks and Recreation Department.
14. Announce that the appeal of Mark Borge will be discussed in closed session.
15. Recess to closed session to consider the appeal of Mark Borge pursuant to Government Code Section 54957(b)(1), relating to Public Employee Discipline/Demotion/Release.
16. Reconvene meeting to announce actions, if any, taken during closed session regarding the appeal of Mark Borge.

Adjourn

17. Adjourn to the next hearing on April 7, 2017 at 9:00 a.m. in Room 157, County Government Center, 70 West Hedding Street, San Jose.

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Personnel Board



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MINUTES

Opening

1. Call to Order/Roll Call.

Chairperson Anderson called the meeting to order at 9:05 a.m. A quorum was present.

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

2. Public Comment.

No public comments were received.

Regular Agenda

3. Consider revising Findings of Fact for Rolando Guiang.

Possible action:

- a. Deny request to revise Findings of Fact.

Discussion ensued among the Board members, Nancy Clark, Attorney, Office of the County Counsel, and Steven Cohn, Attorney for Rolando Guiang, relating to the request to revise the Findings of Fact for Mr. Guiang. Ms. Clark stated that the Board lacks jurisdiction to revisit Findings of Fact once they are approved. Chairperson Anderson stated that he did not find a compelling reason to modify the Findings, and Ms. Clark indicated that she will draft an order for the Board's signature. Chairperson Anderson requested that the issue of finality of hearings be placed on the next business agenda.

The Board approved denying the request to revise the Findings of Fact for Rolando Guiang.

Minutes Acceptance: Minutes of Feb 10, 2017 9:00 AM (Regular Agenda)

3.a RESULT: APPROVED [UNANIMOUS]
MOVER: Steven Cushing, Member
SECONDER: Denis O'Neal, Vice Chairperson
AYES: Anderson, Castaldi, Cushing, O'Neal
ABSENT: Alvarez

OR

b. Approve request to revise Findings of Fact.

3.b RESULT: DENIED

4. Approve minutes of the January 20, 2017 Business Meeting.

4 RESULT: APPROVED [UNANIMOUS]
MOVER: Linda Castaldi, Member
SECONDER: Steven Cushing, Member
AYES: Anderson, Castaldi, Cushing, O'Neal
ABSENT: Alvarez

5. Consider status of pending Findings of Fact.

a. Carl Rose - Hearing on October 28, 2016

Chris Nguyen, Management Analyst, Employee Services Agency, stated that the Findings of Fact for Carl Rose have been sent to the appellant for review and that he anticipates they will be presented at the next business meeting.

b. Daniel Bunnell - Hearing on November 4, 2016

Mr. Nguyen stated that the Findings of Fact for Daniel Bunnell will be presented at the next business meeting.

6. Receive verbal report from Office of Labor Relations.

No report was received.

7. Discuss pending hearing schedule/appeal backlog. (ID# 85019)

The Board confirmed calendars through April 2017. Chairperson Anderson stated that the April 14, 2017 business meeting would be cancelled and rescheduled to April 21, 2017.

8. Discuss use of transcripts in Personnel Board hearings.

Taken out of order after Item No. 9.

Discussion ensued relating to the use of transcripts in Personnel Board hearings. Chairperson Anderson requested that a subcommittee consisting of himself and member

Minutes Acceptance: Minutes of Feb 10, 2017 9:00 AM (Regular Agenda)

O'Neal meet on this topic and return to the full Personnel Board with a recommended rule on when transcripts will be used and who will bear the cost.

Adopt Findings of Fact

9. Adopt Findings of Fact for Tony Basuini. (ID# 84748)

Taken out of order after Item No. 10.

9 RESULT: HELD [NO VOTE] Next: 3/17/2017 9:00 AM

10. Adopt Findings of Fact for Elena Mayora. (ID# 85008)

Taken out of order after Item No. 9.

10 RESULT: APPROVED [UNANIMOUS]

MOVER: Steven Cushing, Member

SECONDER: Linda Castaldi, Member

AYES: Anderson, Castaldi, Cushing, O'Neal

ABSENT: Alvarez

Verbal Reports

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

No decisions were announced.

12. Receive report from County Counsel.

No report was received.

13. Make announcements.

No announcements were made.

14. Consider correspondence.

No correspondence was considered.

Appeal Hearing

15. Convene hearing to consider the appeal of Beatrice Navarro relating to a dismissal from the Department of Child Support Services.

Convened hearing at 10:30 a.m. with members Anderson, Castaldi, Cushing, and O'Neal present. Chairperson Anderson announced that the hearing would be continued to a date to be determined.

16. Announce that the appeal of Beatrice Navarro will be discussed in closed session.

No closed session was held.

Minutes Acceptance: Minutes of Feb 10, 2017 9:00 AM (Regular Agenda)

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

No closed session was held.

18. Reconvene meeting to announce actions, if any, taken during closed session regarding the appeal of Beatrice Navarro.

No closed session was held.

Adjourn

19. Adjourn to the next hearing on Friday, February 24, 2017 at 9:00 a.m. in Room 157, County Government Center, 70 West Hedding Street, San Jose.

Chairperson Anderson adjourned the meeting at 10:40 a.m.

Respectfully submitted,

Michele Neighbors

Deputy Clerk

County of Santa Clara
Employee Services Agency



85495 A

DATE: March 24, 2017
TO: Personnel Board
FROM: John P. Mills, Deputy County Executive
SUBJECT: Pending Hearing Schedule/Appeal Backlog

RECOMMENDED ACTION


Discuss pending hearing schedule/appeal backlog.

ATTACHMENTS:

- February 2017 Appeals (PDF)

County of Santa ClaraEmployee Services Agency
Labor Relations DepartmentCounty Government Center
70 W. Hedding Street, East Wing 8th floor
San Jose, California 95110-1705
(408) 299-5820 FAX (408) 286-4813

March 8, 2017

TO: Personnel Board
Agency/Department Heads
Employee OrganizationsFROM: Sandra J. Poole 
Labor Relations Director

SUBJECT: Status of Appealed Disciplinary Actions for the Period Ending February 28, 2017

Attached are two lists of all disciplines that have been appealed and are pending before the Personnel Board as of February 28, 2017. The first shows appealed dismissals, demotions and probationary releases that are before the Personnel Board. The second is a list of all appealed suspensions.

Employees with peace officer or custodial officer status are shown with case numbers as the law requires privacy for these employees.

The information is provided to keep the Personnel Board, each department, and employee organizations apprised of the docket of cases.

If you have any questions or suggestions, please contact the Labor Relations Department at (408) 299-5820.

Attachment

Santa Clara County Personnel Board

List of Suspension Appeals
as of February 28, 2017

Name	Status	Date	Department	Union	Type	Appeal Date
Fowler, Jamice	6)		SCVHHS	521	16 Hour	9/4/15
Ward, Ken			SCVHHS	521	40 Hour	2/29/16
Durazo, Myriam	6)		SSA	521	40 Hour	4/25/16
Cardoza, Claudia	6)		DA	521	24 Hour	4/29/16
Kaushik,Urvashi	1) B	4/28/17	SCVHHS	Self	40 Hour	5/20/16
D16-071-521-051			SSA	521	160 Hour	5/31/16
D16-072-521-052			SSA	521	160 Hour	5/31/16
Thompson, Amy	1) B	3/24/17	SCVHHS	521	16 Hour	6/8/16
Siaotong, Mary	1) P	4/21/17	SCVHHS	Self	32 Hour	7/5/16
King, John	1) B	3/17/17	SCVHHS	521	8 Hour	7/18/16
Martinez, Angelo	1) B	4/21/17	County Comm	Self	40 Hour	8/2/16
Sosa, Kristina	1) B	4/7/17	SSA	521	24 Hour	8/11/16
Fry, Elizabeth Delme	6)		Facilities & Fleet	521	24 Hour	9/20/16
Becker, Brian			ISD	521	160 Hour	9/27/16
Miller, Victor			SCVHHS	521	24 Hour	10/14/16
Moore, Michelle			Finance	Self	24 Hour	10/17/16
Amador, Rigoberto			SCVHHS	Self	24 Hour	10/19/16
Hernandez, Sandy			SCVHHS	Self	80 Hour	10/19/16
Talamante, Robertina			SSA	521	40 Hour	10/25/16
Adams, Susan			Roads	Self	24 Hour	11/18/16
Stewart, Linda			SCVHHS	CEMA	40 Hour	11/23/16
Silva, Helen			Assessor	521	40 Hour	11/29/16
Cota, James			SCVHHS	521	40 Hour	12/9/16
D16-06-7130			Probation	521	40 Hour	12/28/16
Ragins, Jeffrey			SCVHHS	521	80 Hour	12/29/16
Dowling, Evan			SSA	CEMA	40 Hour	1/30/17
Chahal, Rajwant			SCVHHS	Self	40 Hour	2/23/17

SUMMARY	
Scheduled Suspensions:	6
Unscheduled Suspensions:	21
Total Suspensions Listed:	27

KEY TO STATUS:
1 = Scheduled to be heard by Personnel Board
2 = Scheduled to be heard by Suspension Panel
3 = Scheduled to be heard by Hearing Officer
4 = Heard by Hearing Officer, recommended decision pending
5 = Heard, Personnel Board decision pending
6 = Hearing continued, to be rescheduled
7 = Hearing extended; additional date/s to be scheduled
8 = Requesting Suspension Panel

P = Primary
B = Back-up

Attachment: February 2017 Appeals (85495 : Pending Hearing Schedule/Appeal Backlog)

Santa Clara County Personnel Board
 List of Dismissal, Demotion, Probationary Release Appeals
 as of February 28, 2017

Name	Status	Date	Department	Union	Type	Appeal Date
Vo, Quang	1) P	5/5/17	Probation	Self	Demotion	7/2/15
Navarro, Beatrice	1) P	3/24/17	DCSS	521	Dismissal	11/12/15
Valino, Marion	6)		COB	Self	Dismissal	11/13/15
Byrne, Maura			SSA	521	Dismissal	11/18/15
Garcia-Feliciano, Roberto			SCVHHS	521	Dismissal	11/19/15
Borge, Mark	1) B	3/24/17	Parks	521	Demotion	3/21/16
Newton, Susan	1) P	3/10/17	SCVHHS	CEMA	Prob. Release	4/22/16
Valiente, Xiomara			SCVHHS	Self	Dismissal	5/18/16
Tamez, Darlene			SSA	521	Dismissal	5/19/16
Orozco, Eddie			SSA	521	Prob. Release	6/20/16
Espinoza, Fernando			SCVHHS	521	Prob. Release	7/1/16
Nguyen, Maggie			Probation	521	Prob. Release	7/19/16
Garcia, Ronald	1) P	4/7/17	DCSS	Self	Dismissal	7/29/16
Durazo, Myriam			SSA	Self	Demotion	8/9/16
Ruiz Esparza, Diego			SCVHHS	Self	Prob. Release	8/10/16
Torrecillas, Natasha			SSA	521	Dismissal	8/22/16
Quittan, Giorgio			SCVHHS	Self	Dismissal	11/9/16
Ransom, Erica			SCVHHS	Self	Dismissal	12/28/16
Cordero, Steve			SCVHHS	Self	Prob. Release	1/18/17
Taganova, Penny			SSA	521	Dismissal	2/6/17
Matthews, Syreeta			SCVHHS	CEMA	Dismissal	2/13/17

SUMMARY	
Scheduled dismissals/demotions/probationary releases:	5
Unscheduled dismissals/demotions/probationary releases:	16
Total listed:	21

KEY TO STATUS:
1 = Scheduled to be heard by Personnel Board
2 = Scheduled to be heard by Suspension Panel
5 = Heard, Personnel Board decision pending
6 = Hearing continued, date to be rescheduled
7 = Hearing extended, additional date(s) to be scheduled

P = Primary
 B = Back-up

Attachment: February 2017 Appeals (85495 : Pending Hearing Schedule/Appeal Backlog)



85636

DATE: March 24, 2017
TO: Personnel Board
FROM: Marissa Greene, Board Clerk
SUBJECT: Adopt Findings of Fact for Jimmy Smith

RECOMMENDED ACTION

Adopt Findings of Fact for Jimmy Smith.

COMMITTEE RECOMMENDATIONS

FISCAL IMPLICATIONS

CONTRACT HISTORY

REASONS FOR RECOMMENDATION

CHILD IMPACT

The recommended action will have no/neutral impact on children and youth.

SENIOR IMPACT

The recommended action will have no/neutral impact on seniors.

SUSTAINABILITY IMPLICATIONS

The recommended action will have no/neutral sustainability implications.

BACKGROUND

CONSEQUENCES OF NEGATIVE ACTION

STEPS FOLLOWING APPROVAL

ATTACHMENTS:

- Smith, Jimmy - Findings of Facts (PDF)

1 JAMES R. WILLIAMS, County Counsel (S.B. #271253)
NANCY J. CLARK, Lead Deputy County Counsel (S.B. #157839)
2 OFFICE OF THE COUNTY COUNSEL
70 West Hedding Street, East Wing, Ninth Floor
3 San Jose, California 95110-1770
Telephone: (408) 299-5900
4 Facsimile: (408) 292-7240

5 Attorneys for COUNTY OF SANTA CLARA

8 SANTA CLARA COUNTY
PERSONNEL BOARD
9 SUSPENSION HEARING

11 In the Matter of
12 Jimmy Smith

Case No. D16-052-521-038

14 **FINDINGS OF FACT**

15 This matter came on for a hearing before the Santa Clara County Personnel Board on March
16 3, 2017. Board members present were Denis O’Neal, Steve Cushing, Linda Castaldi and William
17 Anderson. Nancy J. Clark, Lead Deputy County Counsel, appeared on behalf of the County of Santa
18 Clara, along with Janice Lawton, Labor Relations Representative. Appellant Jimmy Smith was
19 provided notice of the hearing via certified mail but failed to appear.

20 Due to Smith’s failure to appear, the Board asked the County to proceed with a *prima facie*
21 showing of cause for discipline pursuant to Section 10.6 of the Santa Clara County Personnel Board
22 Rules of Procedures. The County made that *prima facie* showing of cause to support the request that
23 Smith’s appeal of the termination decision be denied. The Board accepted the County’s documents
24 into evidence and unanimously rendered a default decision against Smith, upholding the termination.

25 On March 3, 2017 by certified mail, the Board notified Smith in writing of its default
26 decision. The Board’s notice advised Smith that he must file a written request for relief with the
27 Board within fifteen calendar days from the date of mailing of the written notice if he wished to seek
28 relief from the default decision. Smith failed to submit such a request.

Attachment: Smith, Jimmy - Findings of Facts (85636 : Adopt Findings of Fact for Jimmy Smith)

1 Consistent with custom and practice, the County, as the prevailing party, submitted the
 2 following findings of fact and conclusions, which the Board hereby adopts. These findings and
 3 conclusions are based on the documentary evidence and sworn testimony at the March 3, 2017
 4 hearing before the Board.

5 1. Jimmy Smith was hired by the County of Santa Clara on February 2, 2009 as a
 6 Janitor. Smith was employed in a full-time code as a Janitor assigned to work the pm shift at the
 7 Santa Clara Valley Medical Center (“SCVMC”). In that position he was responsible for performing
 8 a full range of janitorial duties including but not limited to, cleaning, sweeping and mopping floors;
 9 dusting and polishing wood work, furniture and metal work; maintaining restrooms in a clean and
 10 sanitary condition and removing trash.

11 2. Smith began a leave of absence on November 9, 2014 and remained off work since
 12 that time. He presented a medical note extending his leave through December 9, 2015 but because
 13 of the length of time he had remained on unpaid leave, the County sent Smith a notice in January of
 14 2016 that he needed to return to work with or without accommodation. Smith did not respond to that
 15 notice and did not respond to voice messages left on his phone.

16 3. Mr. Smith remained on leave without explanation so on April 4, 2016, Donnell
 17 Thomas, the then Director of Environmental Services sent a notice of Recommended Action –
 18 Release from Employment. That notice stated that Mr. Thomas was recommending Smith be
 19 released from County employment based upon his continued absence and apparent “Physical and
 20 mental incapability for performing duties” in violation of County Merit Rule Section A25-301(a)(3).

21 4. A hearing was scheduled before Barbara Morris on April 14, 2016 but Mr. Smith did
 22 not appear. Based on the evidence presented, Hearing Officer Morris adopted the recommended
 23 action and a Notice of Final Disciplinary Action – Hearing Officer’s Decision upholding the Release
 24 From Employment was issued on or about April 15, 2016. Smith’s separation of employment was
 25 effective April 29, 2016.

26 CONCLUSIONS

27 Based upon the evidence established by witness testimony and the documentary evidence
 28 presented at the hearing, the Board unanimously determined that the County established by a

1 preponderance of the evidence that Appellant Jimmy Smith violated the following County Merit
2 System Rules:

3 Section A25-301(a)(1): Violation of the County Charter, merit system
4 rules and regulations, and written and published departmental rules
and policies which do not conflict with this article.

5 Section A25-301(a)(3): Physical or mental incapability for performing
6 duties.

7 The Board unanimously voted to uphold the release from employment.

8 **FURTHER ACTION**

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

17 DATED: _____

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

Attachment: Smith, Jimmy - Findings of Facts (85636 : Adopt Findings of Fact for Jimmy Smith)