

**Hilo, Hawaii
Tuesday, February 19, 2008**

The regular meeting of the Merit Appeals Board, County of Hawai`i, was held in the conference room of the Department of Human Resources, 101 Pauahi Street, Suite 2, Hilo, Hawai`i, on Tuesday, February 19, 2008.

Present:

**Mr. G. Rick Robinson, Chair
Ms. Kaliko Chun, Member
Mr. Joel Cohen, Member
Ms. Joanne Balberde-Kamalii, Member
Mr. Michael R. Ben, Director of Personnel
Ms. Diane Noda, Deputy Corporation Counsel
Ms. Velma Y. Menezes, Secretary-Reporter
Ms. Yumi Nakamura, Clerk III**

Excused:

Mr. Clifford Kaminaka, Vice Chair

Chair Robinson called the meeting to order at 9:40 a.m.

MINUTES OF JANUARY 15, 2008

MOTION: Mr. Cohen moved that the minutes of January 15, 2008 be approved as circulated. The motion was seconded by Ms. Balberde-Kamalii and unanimously carried.

COMMUNICATIONS

Communication No. 08-01, dated January 28, 2008, from Lincoln S.T. Ashida, Corporation Counsel, regarding Ethics Guide for County Employees – Distribution List.

Ms. Menezes distributed the guide to each Board member.

Mr. Ben called the Board's attention to page 3 of the Ethics guide. The statement in the middle of the page is not completely accurate, because if any of those listed people are on an eligible list, they may, in fact, be hired. However, if the person applied for an internal promotion, that person couldn't be promoted because the name does not show on the eligible list. Promotions are not off eligible lists; so then that statement would apply. That's the fine distinction there. Corporation Counsel will be issuing errata to amend that section.

DIRECTOR'S REPORT

Mr. Ben reported the following:

- 1) Corporation Counsel Lincoln Ashida is working hard on finding MAB replacements. He has one possible candidate and is working on finding a second candidate.**
- 2) Mr. Ben presented Ms. Chun with a certificate of appreciation on behalf of Mayor Kim for her valuable service to the County of Hawai`i.**
- 3) The "rehire the retiree" bill is before the Legislature for the third time, and it seems to be moving this time around. HGEA has testified in favor of the bill with some concerns. HGEA wants to limit it to the hard-to-fill shortage or difficult-to-fill positions, as determined by the HR director. The counties are still working with the ERS on some tax exempt issues where a break in service is required so that the retirees can maintain their tax-exempt status.**

4) Mr. Ben's meeting with a Council Aide concerning recruitment incentives that he reported on at the last meeting has now surfaced as a resolution (which will be on the Council's agenda in Kona) to provide for loans to employees towards a down payment up to \$20,000 on a first-time home purchase in Hawai'i County. It's limited to 20 employees per year. It's a resolution so there's no money attached to it; however, Mr. Ben did say that he would welcome any incentive that is afforded them. This particular incentive has been proven to work in other jurisdictions.

Chair Robinson recommended that the Board support the resolution, and he will appear before the Finance Committee to encourage it as a way to recruit employees for the County.

MOTION: Mr. Cohen moved that the Board support resolution 528-08. The motion was seconded by Ms. Chun and unanimously carried.

Ms. Noda opined that this action might not be within the scope of the Board's jurisdiction, as opposed to Chair Robinson supporting it as an individual; however, she will research it further.

NEXT MEETING DATE

The next meeting was scheduled for March 18, 2008 at 9:30 a.m. Chair Robinson noted that if no appeals come in that need to be scheduled, the Board will forego having a meeting.

The meeting recessed at 9:57 a.m.

Hilo, Hawai`i
Tuesday, February 19, 2008

APPEAL HEARING – BRIAN F. JORDAN – 1) WERE ANY CIVIL SERVICE LAWS, RULES, OR REGULATIONS VIOLATED IN THE REJECTION OF APPELLANT’S APPLICATION FOR THE CIVIL DEFENSE STAFF OFFICER RECRUITMENT BECAUSE OF APPELLANT’S FAILURE TO MEEET MINIMUM QUALIFICATION REQUIREMENTS? 2) WERE ANY CIVIL SERVICE LAWS, RULES, OR REGULATIONS VIOLATED IN THE REJECTION OF APPELLANT’S APPLICATION FOR THE CIVIL DEFENSE ADMINISTRATOR RECRUITMENT BECAUSE OF APPELLANT’S FAILURE TO MEET THE MINIMUM QUALIFICATION REQUIREMENTS?

Present:

Mr. G. Rick Robinson, Chair
Ms. Kaliko Chun, Member
Mr. Joel Cohen, Member
Ms. Joanne Balberde-Kamalii, Member
Mr. Julian White, Deputy Attorney General
Ms. Yumi Nakamura, Clerk III
Ms. Velma Y. Menezes, Secretary-Reporter

Others Present:

Mr. Brian F. Jordan, Appellant
Ms. Diane A. Noda, Deputy Corporation Counsel
Ms. Gabriella Cabanas, Personnel Program Specialist

Chair Robinson called the hearing to order at 10:08 a.m.

Ms. Noda asked that the Board consider the Motion to Dismiss for Lack of Jurisdiction first. The motion is based on Mr. Jordan failing to exhaust the internal complaint procedures of the Human Resources department.

Mr. Jordan noted that he did receive a copy of the motion; however, he did not find out until Friday night or Saturday that jury duty was cancelled, so he prepared just a one-page statement.

Ms. Noda stated the following in regards to her motion:

As set forth in her memorandum of law in support of the motion, the Civil Service Commission/Merit Appeals Board rule, Section 104.3, says that this Board shall not hear an appeal if other requirements are not met. The other requirement is set forth in state law, Hawai`i Revised Statutes, Section 76-42, which says that the director for the department will establish a set of rules for complaints and a procedure within the department before it comes up before the Merit Appeals Board.

Ms. Noda noted that there is another provision of Section 76-42, which is provision b, and that provision says that all internal complaint procedures shall be exhausted before an appeal is filed with the Merit Appeals Board. The word “shall” indicates that it is a requirement before they can come to this Board.

Attached to the memorandum are the application packets for both the Civil Defense Staff Officer’s position and the Civil Defense Administrator’s position. The announcements for both of these positions are attached as Exhibits 1 and 2. Exhibit 1 is the Staff Officer’s announcement, and Exhibit 2 is the announcement for the Administrator’s position. Page 2 on both these announcements gives clear instructions for administrative review and appeals. The applicant, if unhappy with the decision, must submit specific information for an administrative review within ten days. Only if and when the applicant is unhappy with the decision of the administrative review should it go before the Merit Appeals Board. That initial step, which is required to be taken before an appeal can be filed with the Board, was not done.

Mr. Jordan stated that this is where the confusion lies for him. When he was told that he didn’t meet the standards the first time, he went back to see Mr. Kincaid (sic), who asked Mr. Jordan to resubmit. Mr. Jordan resubmitted, then he was rejected. He

thought that was the second administrative appeal; that's why he went to the Merit Appeals Board.

Before they even had a hearing, Mr. Jordan received a phone call from this office asking him if he'd like to have his records made public to the press. He said no. That bothered him because he thought it was an internal procedure up until that time. His wishes were honored, but since Mr. Sur of the Tribune Herald had called, he was polite and said he had no gripe with the County's rationale at the time. He was here to try and see if he could help the system, and that's how he feels about this. He doesn't want this to be adversarial or waste any time and money. When he came before the Board two meetings ago, he asked for five minutes "to explain in common sense" so they wouldn't have to go through all this.

He received a written response from the County saying that he was not qualified due to his education and poor driving record. He had one ticket in eight years. He did get it recently. As he was passing a bus on Railroad Avenue, the bus driver waved him, and a police officer caught him just as he was accelerating. He noted that he hadn't had an accident in 25 years.

Chair Robinson asked whether the written response from the County conveyed the administrative review process.

Mr. Jordan responded that by that time, he thought they were at the Merit Appeals. He made a bad assumption on his part. He thought they had now done the second part; he had resubmitted. Then he started gathering up his credentials. He went to see Ms. Noda, who then informed him that there would be a motion to dismiss. He gave her a one-page statement because he didn't believe he was going to be here, as he had been scheduled for jury duty.

MOTION: Ms. Chun moved to convene into an executive session to consult with counsel. The motion was seconded by Mr. Cohen and unanimously carried.

The Board convened into an executive session at 10:21 a.m. and reconvened into the hearing at 10:59 a.m.

Chair Robinson stated that in recognition of Mr. Jordan's preparation for jury duty, the Board is willing to allow him until March to respond to the motion.

Mr. Jordan stated that he would first thank everybody for putting up with this. Second, he wouldn't have been so persistent if he didn't know he had real life experience. He has done rescues; he is qualified. When a person is a liaison, that person knows most of the jobs. He has extensive experience in team building and he is a quick learner. He does have direct accounting skills, inventory control, logistics, rifles up to aviation simulators, complete building, teaching OSHA matters, was part of civil defense at K-Bay and did aftermath studies of what structures were like, for which construction and industry experience were helpful. He can teach young teens to older ones. When a person is at Civil Defense, that person may be grabbing people in transportation, Police, medical, EO's, and must have the ability to communicate. He is also in the international association of broadcasters.

Ms. Noda objected, stating that it goes beyond the scope of addressing the motion to dismiss.

Chair Robinson noted Ms. Noda's objection and instructed Mr. Jordan to continue.

Mr. Jordan stated that he was a supervisor for 18 years. The Board may be depriving the County of good workers by not understanding there's a gap between military lingo and civilian lingo on what they do. He has handled trauma cases and has had to decide which one was going to die, which one was going to live. Just because someone has a BA, trauma triage is not something they teach. He also took first responder training every three months. He is in good physical condition.

He does have only one question. They are now at nine months. By the time any action has been taken, it will probably be a year. The wheels of bureaucracy are slow. He is not accident

prone. He doesn't have a criminal record. When County employees get moving violations, do they lose their job or lose their driving or vehicle? He received a note stating that he has a poor driving record. If these County employees aren't held to the same standard, then that's not right. He doesn't think three tickets in 27 years is a poor driving record. He came here because he has skills to help the County.

Ms. Noda addressed the motion to dismiss, pointing out that there are specific rules and procedures in place just as there are rules for any sports game so that everyone knows what the parameters are and there's an orderly process. If the County did not require each person to follow these rules, there would be a mess with people coming in with different ways of voicing disagreements. The employer has the sole jurisdiction to be setting minimum qualification requirements. That's the employer's prerogative.

In response to Mr. Jordan's dismay that he had not been selected for any job, if someone else was selected, it was because they were as qualified or better qualified, because there is a pool of applicants. It was Mr. Jordan's burden – as they have seen various letters come trickling in – to obtain documents and organize it and present it in written form to the Department of Human Resources before the deadline so that the Department of Human Resources could make an educated, informed decision on Mr. Jordan's qualifications. That was his responsibility and his burden.

MOTION: Mr. Cohen moved that the appeal be dismissed as the requirements of Section 76-42 were not met. The motion was seconded by Ms. Chun.

Discussion

Mr. Cohen stated that they appreciate Mr. Jordan being here. He is concerned that the burden is placed on prospective applicants regarding this issue. The burden of communication is the employer's responsibility, and he has concerns about that. In looking at the evidence, there was a final filing date of October 23. He had seen a second notice of October 29, and there was

notification prior. From an HR management situation regarding the second notice Mr. Jordan received, there should have been more clarity even though it's in the job announcement regarding his appeal rights and what he needed to do.

Chair Robinson agreed that the October 29 letter should have been clearer as to what Mr. Jordan's internal appeal rights were.

Ms. Chun commented that the Board does make the effort to see that applicants have had a fair hearing, not only at this process but along the way when they make their application. She, therefore, concurs with Mr. Cohen's remarks. They vote on the motion with the remarks that he made.

The motion was voted on and carried unanimously with reservations.

Chair Robinson noted that the internal complaint procedure was not followed so Mr. Jordan's appeal to the Merit Appeals Board is not the process he should have taken. The Board does note that the County needs to provide greater clarity so that applicants are fully informed as to what the internal complaint procedure is. Chair Robinson thanked Mr. Jordan for following through with his appeal and helping them to understand this better.

Mr. Jordan suggested that the forms be on the computer and assistance be provided by the department in completing them. After obtaining the forms, he experienced difficulty in finding a typewriter to complete the forms.

The hearing adjourned at 11:23 a.m. and reconvened into the Board's regular meeting.

Mr. Cohen noted that there was an opportunity to explain it better on the second letter. He's not suggesting that that particular communication be put in every letter. It is on the job announcement, and it's clear. His only concern is that more explanation or clarity is necessary.

Ms. Noda noted that the application forms are available online at the County website.

Ms. Cabanas stated that it doesn't matter whether the application is handwritten or typed. For her, it's gathering information and having questions answered that helps in the review of qualifications. The instructions are to do a supplemental sheet, but what Mr. Jordan did was bunch up all his years and expected her to decipher that. Even when given a second opportunity, Ms. Cabanas still didn't get anything substantial. The portfolio he submitted at the hearing is what he should have done early on to help himself.

The Board recessed at 11:30 a.m. and reconvened at 11:31 a.m.

Ms. Noda stated that in revisiting resolution 528-08 that Mr. Ben had brought up earlier and which the Board had voted for Board input to the County Council Finance Committee tomorrow, first, she did confirm that the Finance Committee is meeting tomorrow at the Sheraton Keauhou at 1:30. Regarding input from the Board, she would advise the Board that it cannot give input and support any recruitment incentive as a Board. The Merit Appeals Board rules state that a limitation of jurisdiction for this Board is limited to those matters covered by the provisions of Hawai`i Revised Statutes, Sections 76-14, 76-41, and 76-47, in its functions as Hawai`i County's Merit Appeals Board. It limits the Board to hearing appeals in civil service employment matters.

Ms. Noda stated that she would advise the Board to go as individual members of the community and their input be as an individual and not as a board making a recommendation.

ADJOURNMENT

The meeting adjourned at 2:51 p.m.

Respectfully submitted,

Secretary, Civil Service Commission

APPROVED:

**G. Rick Robinson
Chair**

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