Hilo, Hawaii
Tuesday, September 18, 2007

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, September 18, 2007.

Present:

Mr. Clifford Kaminaka, Vice 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. G. Rick Robinson, Chair

Vice Chair Kaminaka called the meeting to order at 9:30 a.m.

MINUTES OF AUGUST 21, 2007

MOTION: Ms. Chun moved that the minutes of August 21, 2007 be approved as circulated. The motion was seconded by Mr. Cohen and unanimously carried.

COMMUNICATIONS

Communication No. 07-11, dated September 4, 2007, from Diane A. Noda, Deputy Corporation Counsel, withdrawing the Employer's motion to dismiss Paul Paiva's appeal.

MOTION: Ms. Chun moved that Communication No. 07-11 be received and filed. The motion was seconded by Mr. Cohen and unanimously carried.

DIRECTOR'S REPORT

Mr. Ben reported the following:

1) The Chair for the Kauai Civil Service Commission is Gordon Yee with Rick Havilland, Jr. serving as the Vice Chair. Other members are Suzanne Aguiar, Ryan Delapena, and Karen Nacion.

2) The Chair for the City & County Civil Service Commission is Verta E.P. Hite with Lynn A. Ching serving as the Vice Chair. Other commission members are Gwen K. Rulona, Percy K. Kobayashi, and Kingsley K. M. V. Ah You.

3) The Chair for the Maui Civil Service Commission is Brian A. Cremer with Abe H. Kaahui serving as the Vice Chair. Other members are Gene E. Moore, Carol A. Summers, and Barbara J. Haliniak.

NEXT MEETING DATE

The next meeting was scheduled for October 16, 2007 at 9:30 a.m., followed by Randolph Kai, Sr.'s appeal hearing at 10:00 a.m.

The meeting recessed at 9:36 a.m.

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DELIBERATIONS – PAUL S. PAIVA – DID THE FIRE CHIEF VIOLATE ANY CIVIL SERVICE LAWS, RULES, OR REGULATIONS IN DENYING THE APPELLANT "BUREAU OPPORTUNITY BENEFIT INCENTIVE" PAY RETROACTIVE TO JULY 1, 2005?

Present:

Mr. Clifford Kaminaka, Vice 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

Excused:

Mr. G. Rick Robinson, Chair

Others Present:

Mr. Paul S. Paiva, Appellant
Ms. Diane A. Noda, Deputy Corporation Counsel

Vice Chair Kaminaka called the hearing to order at 9:45 a.m.

Vice Chair noted the presence of Ms. Balberde-Kamalii, who would be sitting in during the hearing but not participating, as she had not participated at the onset of the hearing.

MOTION: Mr. Cohen moved that the matter be continued to October 16, 2007, with a written motion to dismiss submitted to the Board from Ms. Noda no later than September 28, and a written response from Ms. Kubo no later than October 11, 2007. The

motion was seconded by Ms. Chun and unanimously carried.

The Board discussed the time it should schedule Mr. Paiva's continuance. It was noted that Mr. Kai's appeal hearing was also scheduled for October 16, 2007 at 10:00 a.m.

Mr. White suggested that since Mr. Paiva's case precedes Mr. Kai's case, the Board hear Mr. Paiva's case first, just as a courtesy to the parties.

Ms. Noda agreed that Mr. Paiva's case should go first, as it was scheduled for today; and there's a possibility after she reviews Mr. Kai's case that she may file a motion to dismiss the appeal based on lack of jurisdiction.

The Board scheduled both hearings at 10:00 a.m., with the intention of hearing Mr. Paiva's first.

The hearing adjourned at 10:16 a.m.

Hilo, Hawaii
Tuesday, September 18, 2007

HEARING – WILLIAM SHAPIRO – DID THE PLANNING DIRECTOR VIOLATE ANY CIVIL SERVICE LAWS, RULES, OR REGULATIONS IN TERMINATING APPELLANT FROM A PLANNER POSITION WITH THE PLANNING DEPARTMENT?

Present:

Mr. Clifford Kaminaka, Vice 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

Excused:

Mr. G. Rick Robinson, Chair

Others Present:

Ms. Diane A. Noda, Deputy Corporation Counsel

Vice Chair Kaminaka called the hearing to order at 10:21 a.m.

For the record, Vice Chair Kaminaka noted the absence of Mr. Shapiro. The Board received a fax yesterday from Mr. Shapiro requesting a continuance of his appeal hearing to December 18 because of teaching obligations and lack of transportation. Mr. Shapiro also requested the opportunity to participate in his hearing by video conference.

In response to Mr. Shapiro's request for a continuance, the Board received a communication from Ms. Noda objecting to the continuance based on four items: 1) the request for the

continuance is untimely under Title II, Chapter 104, Section 104-8(b)(2). Written requests should be received 10 working days prior to the scheduled hearing date; and in this case, it was not received within the 10 working days. 2) This appeal has been continued once before by Mr. Shapiro. His verbal request was made on June 18, 2007, one day prior to original hearing of June 19, 2007 citing transportation issues. 3) One of the Employer's witnesses is the Kona Planning Department supervisor who has made arrangements twice to travel to Hilo for the scheduled hearings; and 4) The Employer wishes to have closure on this matter.

Ms. Noda requested at this time that the Board consider the Employer's motion to dismiss the appeal based on untimely filing of the appeal before it considers Mr. Shapiro's request for a continuance. The reason is jurisdiction again--whether this Board actually has the authority to be considering this appeal, including his continuance.

Ms. Chun commented that she was unaware until now that one of Mr. Shapiro's issues was transportation; otherwise, she would have suggested meeting in Kona.

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

The Board convened into an executive session at 10:28 a.m. and reconvened at 10:45 a.m.

MOTION: Ms. Chun moved that the Board grant Mr. Shapiro his last continuance to December 18, 2007. The motion was seconded by Mr. Cohen.

Discussion:

Mr. White noted that it was the Board's intention to hold off on both motions until December 18 and that the Board expects Mr. Shapiro to be present at the appeal hearing to be held in Hilo. The continuance gives Mr. Shapiro time to respond to the motions.

The motion carried unanimously with Mr. Cohen noting his reservations about postponing the hearing.

Ms. Chun requested that Mr. Shapiro be reminded of the importance of notifying the Board whether he's going to be present or not and that he be notified that the Board will decide without him if he's not present.

Vice Chair Kaminaka stated that Mr. Shapiro needs to be aware of the cost involved as well.

ADJOURNMENT

MOTION: Mr. Cohen moved that the meeting be adjourned. The motion was seconded by Ms. Chun and unanimously carried.

The meeting adjourned at 10:52 a.m.

Respectfully submitted,

Secretary, Civil Service Commission

APPROVED:

G. Rick Robinson
Chair

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