

Hilo, Hawaii
Tuesday, December 19, 2006

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, December 19, 2006.

Present:

Mr. G. Rick Robinson, Chair
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
Mr. Michael J. Udovic, Deputy Corporation Counsel
Ms. Velma Y. Menezes, Secretary-Reporter

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

MINUTES OF November 21, 2006

Mr. Cohen noted a duplication of a sentence on page 13 of the minutes that was repeated on the next page.

MOTION: Mr. Kaminaka moved that the minutes of November 21, 2006 be approved with the amendment. The motion was seconded by Mr. Cohen and unanimously carried.

COMMUNICATION

Communication No. 06-16, dated December 4, 2006, from Leslie H. Kondo, Director, Office of Information Practices, regarding Legislative Proposals to Amend the Sunshine Law.

Mr. Ben explained that OIP is basically informing all of the boards and commissions that they've been unsuccessful in trying to get legislative enacted to take care of all the little things that boards and commissions have been complaining about in terms of what they can do and cannot do. They're giving notice that they won't be introducing anything this time but will be able to assist the boards and commissions in any legislation they might want to pursue.

Communication No. 06-16 was received and filed.

NEW BUSINESS

Communication No. 06-14, petition of appeal, received November 13, 2006, from Ralph Kuheana, appealing the determination by the Department of Human Resources that he did not meet the minimum qualification requirements for Solid Waste Transfer Attendant.

Mr. Kuheana was present for this portion of the meeting. His appeal hearing was scheduled for January 16, 2007 at 10:00 a.m.

DIRECTOR'S REPORT

Mr. Ben reported the following:

- 1) The department is now at full staff with the last vacancy filled yesterday.**
- 2) The County Building has been vacated for renovations. The County Council is upstairs of Ben Franklin Crafts; the Mayor's Office, along with Finance, on Ululani Street; Data Systems, Research & Development, Fire, and Environmental Management are at Puainako Town Center.**
- 3) Just for the Board's information, one of the things the department is facing is the noncompliance of other County departments in following certain requirements, such as adding the**

equal opportunity statement on all documents, and including accessibility statements on notices of hearings and meetings. Mr. Ben has had to continually remind the departments to comply.

4) They're in the process of negotiations again, and Mr. Ben finds it very disturbing that House Speaker Say is saying that the Governor is missing \$350-400 million in the budget for pay raises and that 8 or 9% should be the floor from which it starts, which is what UHPA got the last two years.

Fire fighters will be arbitrating in January followed by the nurses. Mr. Ben reported that Hawai`i County will have one nurse on board soon at the Police Department's insistence that they have a nurse rather than an administrative position doing sexual assault work. Because of that, they're now part of the Unit 9 collective bargaining group for one person.

Mr. Ben doesn't know where HGEA will fit in, as they are getting no direction from the State. Police will be going last.

5) Unlike the State, the Mayor did grant administrative leave to County employees for Christmas and New Years as a reward for their hard work in the past year.

Mr. Cohen asked whether everything is still going forward with the Police Cadet, and Mr. Ben responded in the affirmative. Recruitment is scheduled to begin in January, and the program will be effective July 1.

NEXT MEETING DATE

The Commission scheduled its next meeting for January 16, 2007 at 9:30 a.m., followed by Ralph Kuheana's appeal hearing at 10:00 a.m.

The Board recessed at 9:50 a.m.

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**SECOND APPEAL HEARING – TROY FAMILAR – TO OBTAIN
FURTHER EVIDENCE ON THE INTERNAL COMPLAINTS
PROCEDURE IN PLACE AT THE TIME OF APPELLANT’S
EMPLOYMENT WITH THE DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT.**

Present:

**Mr. G. Rick Robinson, Chair
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. Suellen Tanoue, Clerk III
Ms. Velma Y. Menezes, Secretary-Reporter**

Others Present:

**Mr. Michael J. Udovic, Deputy Corporation Counsel
Ms. June Rabago, Hawaii Division Director, UPW
Mr. Troy Familiar, Appellant**

The following was sworn in and testified:

**Ms. Margaret Almada, Personnel Management Specialist,
Environmental Management**

The following exhibit was entered into the record:

Employer’s Exhibit No. 4 – Receipt of forms

Chair Robinson called the hearing to order at 10:30 a.m.

The hearing was held in a closed session.

The Commission entered into deliberations.

Mr. Cohen stated that this is a difficult situation, and he reiterated that he does not feel that a probationary employee has the same rights as a permanent employee who has passed probation.

Aside from legal issues, he is very concerned about good management and supervision, and good communication. He's concerned that the orientation program consisted of putting a bunch of papers together with a very brief orientation. He believes that more needs to be done.

He's also concerned that when Mr. Familiar received his notice of termination there wasn't any communication of the appropriate course of action Mr. Familiar should take although Mr. Cohen's not certain that probationary employees even have the right to file internal complaints. However, Mr. Cohen stated that he will affirm the decision that was made at the last hearing.

Mr. Kaminaka agreed that Mr. Familiar is not entitled to certain rights as a full-time, permanent employee. At the time Mr. Familiar filed this appeal, he was not a full-time, permanent employee. He was on probation. However, it is apparent that the procedures that were followed didn't work. Although Mr. Familiar was given a packet and acknowledged receipt of it, there should have been somebody that he could go to for help. There should have been someone to walk him through this procedure or at least point him in the right direction. Mr. Kaminaka believes Mr. Familiar was not properly informed and reaffirms his prior decision in his favor.

Chair Robinson stated that he shares that view as well. Mr. Familiar should have been better informed of what the internal process was. As the Board has previously extended his probationary period for three months, Mr. Familiar should avail himself to that.

Chair Robinson asked Mr. Familiar whether he had returned to work with the County, to which Mr. Familiar responded that he had not, but intends to if possible.

Mr. Udovic stated that after the written findings and an order is served, he will be appealing the case in Circuit Court. If necessary, he may also go to the Labor Board regarding the jurisdictional issue. Mr. Familiar is not entitled to the internal complaints procedure as a probationary employee. The law's very clear on that.

The hearing adjourned at 11:03 a.m.

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APPEAL HEARING – RANDOLPH T. KAI SR. – WHETHER OR NOT THERE WERE VIOLATIONS OF ANY CIVIL SERVICE LAWS, RULES, OR REGULATIONS IN THE ONE YEAR OF WORK EXPERIENCE IN THE OPERATION OF EQUIPMENT APPLICABLE TO THE POSITIONS IN CLASS OF EQUIPMENT OPERATOR III.

Present:

Mr. G. Rick Robinson, Chair
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. Suellen Tanoue, Clerk III
Ms. Velma Y. Menezes, Secretary-Reporter

Others Present:

Mr. Michael J. Udovic, Deputy Corporation Counsel
Mr. Randolph T. Kai Sr., Appellant
Ms. Gabriella Cabanas, Personnel Program Specialist

The following was sworn in and testified:

Mr. Randolph T. Kai Sr., Appellant

The hearing was called to order at 11:30 a.m. with the Board convening into a closed session.

MOTION: Mr. Kaminaka moved that the Board defer action on Mr. Kai's appeal pending the outcome of the EEOC appeal. The motion was seconded by Mr. Cohen and unanimously carried.

Mr. Kaminaka recommended to Mr. Kai that he pursue a response from Mr. McClure.

The hearing adjourned at 12:08 p.m.

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**APPEAL HEARING – CHAD TAMANAHA – WHETHER OR NOT
THERE WERE VIOLATIONS OF ANY CIVIL SERVICE LAWS,
RULES, OR REGULATIONS IN THE UNCLEAR INSTRUCTIONS
REGARDING TESTS ON THE APPLICATION FORM.**

Present:

**Mr. G. Rick Robinson, Chair
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 II
Ms. Velma Y. Menezes, Secretary-Reporter**

Others Present:

**Mr. Michael J. Udovic, Deputy Corporation Counsel
Ms. Gabriella Cabanas, Personnel Program Specialist**

Chair Robinson called the hearing to order at 1:30 p.m. and noted the absence of the Appellant.

Mr. Udovic noted that the burden is on the Appellant to present evidence to show that there's been a violation of the civil service rules. On the face of his appeal to the Merit Appeals Board, his statements do not support a violation of civil service rules.

The Board recessed for five minutes to allow time for the Appellant to make an appearance.

MOTION: Mr. Kaminaka moved to dismiss Mr. Tamanaha's appeal based on the fact Mr. Tamanaha was not

present to support his appeal. The motion was seconded by Ms. Chun.

Discussion:

Mr. Cohen stated that there was not adequate information available to be able to make any decision on the appeal.

The motion was voted on and carried unanimously.

The hearing adjourned at 1:50 p.m.

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APPEAL HEARING – JAMES A. VASCONCELLOS – WHETHER OR NOT THERE WERE VIOLATIONS OF ANY CIVIL SERVICE LAWS, RULES, OR REGULATIONS BECAUSE APPELLANT’S NAME WASN’T CERTIFIED ON AN ELIGIBLE LIST FOR A POSITION WITH THE DEPARTMENT OF PARKS AND RECREATION.

Present:

Mr. G. Rick Robinson, Chair
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 II
Ms. Velma Y. Menezes, Secretary-Reporter

Others Present:

Mr. Michael J. Udovic, Deputy Corporation Counsel
Mr. James A. Vasconcellos, Appellant
Ms. Gabriella Cabanas, Personnel Program Specialist

The following were sworn in and provided testimony:

Mr. James A. Vasconcellos, Appellant
Ms. Gabriella Cabanas, Personnel Program Specialist

The following exhibit was entered into the record:

Appellant’s Exhibit A – Letter from HGEA

Chair Robinson called the meeting to order at 3:30 p.m.

The Appellant requested an open hearing.

In presenting his case, Mr. Vasconcellos stated that following:

His concern involves a Superintendent of Parks Maintenance position with Parks and Recreation. He filled out an application and submitted his application to Civil Service. Prior to sending it in, he called Civil Service to see if the position was still available and was told that it was. After awhile, he received a letter from Civil Service saying that he was qualified for the position and he would be put one year waiting list. He had not been called for an interview and feels that his equal opportunity was denied. Refer to tape recording for further testimony. Mr. Vasconcellos was cross-examined by Mr. Udovic and questioned by the Board.

Mr. Udovic moved to dismiss the appeal as there was nothing to show a violation of any civil service rules or laws, just a scenario of what occurred.

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

Upon reconvening, Chair Robinson informed Mr. Udovic that the Board is denying his motion to dismiss.

Mr. White explained that the Board is not totally clear on the procedures and would appreciate being informed of certain aspects of the continuous recruitment process.

Mr. Udovic called upon Ms. Cabanas who testified on the continuous recruitment process for the Superintendent of Parks Maintenance. Ms. Cabanas was cross-examined by Mr. Vasconcellos and questioned by the Board.

Mr. Vasconcellos stated the following in his closing statement:

He would like to thank Ms. Cabanas for explaining the process, which answered a lot of his questions. Everyone now

understands exactly what happened. His application was submitted at the tail end of the whole ordeal and wasn't considered by Parks and Recreation. The time frame did not work out.

Mr. Udovic waived making any closing statements.

Deliberations:

Mr. Cohen stated that he doesn't see any violations of the rules and law. He does very much appreciate the way this has all been presented and the communication that has taken place.

Mr. White noted that Ms. Cabanas enabled the Board to make an informed decision.

MOTION: Mr. Kaminaka moved to dismiss Mr. Vasconcellos' appeal as there were no violations of civil service laws. The motion was seconded by Mr. Cohen.

Discussion:

Ms. Chun commented that she appreciates Mr. Vasconcellos coming before the Board. She hopes that he will keep his application in, as anything can happen, and if he applies for other recruitments in the future he will remember this procedure and will assist others who may also have inquiries about the application process.

The motion was voted on and carried unanimously.

The hearing adjourned at 4:10 p.m.

Respectfully submitted,

Secretary, Civil Service Commission

APPROVED:

**G. Rick Robinson
Chair**

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