

Hilo, Hawaii
Tuesday, March 18, 2003

The regular meeting of the Civil Service Commission, County of Hawaii, was held in the conference room of the Department of Civil Service, 101 Pauahi Street, Suite 2, Hilo, Hawaii, on Tuesday, March 18, 2003.

Present:

Ms. Jeanne E. Yagi, Chairperson
Ms. Diana Kahler, Vice Chairperson
Mr. Clarence Souza, Member
Ms. Kaliko Chun, Member
Mr. Clifford Kaminaka, Member
Mr. Michael R. Ben, Director of Personnel
Ms. Velma Y. Menezes, Secretary-Reporter

Chairperson Yagi called the meeting to order at 9:30 a.m.

MINUTES OF FEBRUARY 18, 2003

MOTION: Mr. Souza moved that the minutes of February 18, 2003 be approved as circulated. The motion was seconded by Ms. Kahler and unanimously carried.

COMMUNICATIONS

A) **Communication No. 03-06**, dated February 14, 2003, copy of memorandum to Mayor, from County Clerk, regarding the appointments of Clifford N. Kaminaka and Kaliko Chun to the County of Hawaii Civil Service Commission.

MOTION: Ms. Kahler moved that Communication No. 03-06 be received and filed. The motion was seconded by Mr. Souza and unanimously carried.

B) Communication No. 03-07, petition of appeal, received February 21, 2003, from Robert J. Crudele, Esq., and Brian J. De Lima, Esq., on behalf of Dyson R. Arakaki, appealing Mr. Arakaki's termination from the Hawaii County Fire Department.

MOTION: Ms. Kahler moved that Communication No. 03-07 be received and filed. The motion was seconded by Mr. Souza and unanimously carried.

C) Communication No. 03-08, petition of appeal, received February 24, 2003, from Stephanie Cabaniss, on behalf of Billy M. Laxton, appealing Mr. Laxton's failure to meet the minimum qualification requirements for the Solid Waste Supervisor I recruitment.

MOTION: Ms. Kahler moved that Communication No. 03-08 be received and filed. The motion was seconded by Mr. Souza and unanimously carried.

D) Communication No. 03-09, dated February 27, 2003, from Lester J. Ishado, Deputy Corporation Counsel, transmitting the Hawaii County Cost of Government Commission Report.

MOTION: Mr. Souza moved that Communication No. 03-09 be received and filed. The motion was seconded by Ms. Kahler and unanimously carried.

E) Communication No. 03-10, dated March 3, 2003, to Lincoln S.T. Ashida, Corporation Counsel, from Michael R. Ben,

Director of Personnel, requesting a legal opinion on closed meetings or hearings.

MOTION: Mr. Souza moved that Communication No. 03-10 be received and filed. The motion was seconded by Ms. Kahler and unanimously carried.

SCHEDULE NEXT MEETING DATE

The Commission scheduled its next meeting for April 22, 2003, at 9:30 a.m.

Upon discussion of scheduling Mr. Arakaki's appeal hearing, Mr. Akama requested a bifurcated hearing during which only the issue of jurisdiction be heard on April 22. If the Commission decides it does have jurisdiction over the matter, then it can proceed to hear the merits of the case.

The Commission scheduled Mr. Arakaki's hearing for April 22, 2003, at 10:30 a.m., followed by Mr. Laxton's appeal hearing at 11:00 a.m.

DIRECTOR'S REPORT

Mr. Ben reported the following:

1) Maui's Deputy Personnel Director, Mr. Ken Taira, is taking an executive assistant position in the Maui Mayor's Office. Mr. Lance Hiromoto is being promoted to the Deputy Personnel Director position effective April 1.

2) Mr. Ben appeared before the Council for the budget review. The Council expressed an interest in the County's drug testing procedures and EAP program. The Council also expressed a concern on whether Mr. Ben had enough travel monies in his

budget, realizing that he is required to do a lot of traveling for negotiations.

NEW BUSINESS

A) Presentation by Division Heads of the Department of Civil Service

Mr. Ben gave a brief overview of the department's history and areas of knowledge, followed by presentations by division heads: Ms. Jane Larkin, Personnel and Organizational Development; Ms. Gabriella Cabanas, Recruitment and Examination; Ms. Joney Nitahara, Classification and Pay; Ms. Charlotte Masaki, Employee Relations; and Ms. Charmaine Kamaka, Health and Safety. Mr. Ben gave a presentation on the functions of the Labor Relations division.

The meeting recessed at 10:29 p.m.

**Tuesday, March 18, 2003
Hilo, Hawaii**

HEARING – REED D. BECKER – WHETHER OR NOT THERE WERE VIOLATIONS OF ANY CIVIL SERVICE LAWS, RULES, OR REGULATIONS IN THE REMOVAL OF THE APPELLANT’S NAME FROM THE FIRE FIGHTER RECRUIT ELIGIBLE LIST.

Present:

**Ms. Jeanne E. Yagi, Chair
Ms. Diana Kahler, Vice Chair
Mr. Clarence Souza, Member
Ms. Kaliko Chun, Member
Mr. Clifford Kaminaka, Member
Ms. Sarah Hirakami, Deputy Attorney General
Ms. Lori M. Nagao, Clerk III
Ms. Velma Y. Menezes, Secretary-Reporter**

Also Present:

**Mr. Reed D. Becker, Appellant
Mr. Dudley Akama, Deputy Corporation Counsel
Mr. Michael R. Ben, Director of Personnel
Mr. Darryl J. Oliveira, Fire Chief**

The following exhibits were entered into the record:

Employer’s Exhibit 1 - Letter dated May 2, 2002 to Michael R. Ben, Director of Personnel, from Fire Chief Darryl Oliveira

Employer’s Exhibit 2 - Hawai`i County Fire Department’s Suitability Guidelines for Fire Fighter Recruit

**Employer's Exhibit 3 - Hawai`i County Fire Department
Application for Employment for Reed
D. Becker**

**Employer's Exhibit 4 - Public Access Rap Sheet for Reed D.
Becker**

**Employer's Exhibit 5 - Letter dated December 12, 2002 to
Michael R. Ben, Director of Personnel,
from Fire Chief Darryl Oliveira**

**Employer's Exhibit 6 - Letter dated December 19, 2002 to
Reed D. Becker from Michael R. Ben,
Director of Personnel**

The following witnesses were sworn in and testified:

**Mr. Reed D. Becker, Appellant
Mr. Darryl J. Oliveira, Fire Chief
Mr. Michael R. Ben, Director of Personnel**

Chairperson Yagi called the hearing to order at 10:38 a.m.

**Chairperson Yagi informed Mr. Becker of his option to have
a closed hearing. Mr. Becker opted for an open hearing.**

**Chairperson Yagi stated that the issue in this case is whether
or not there were any violations of any civil service laws, rules,
or regulations in the removal of the Appellant's name from the
Fire Fighter Recruit eligible list.**

Mr. Becker stated the following in his opening statement:

**He is here not so much to appeal the issue at hand in that he
doesn't feel any rules or regulations have been violated. His
appeal is based on logic and reason, and he hopes that there
might be exceptions found to the Fire Department's guidelines.**

If an exception is found, Mr. Becker hopes that he may be reinstated on the eligible list; and the Fire Chief can decide if he's capable of serving as a Fire Fighter Recruit for the County of Hawaii.

Mr. Akama stated the following in his opening statement:

The County's position is based on the removal of Mr. Becker's name from the eligible list based on suitability guidelines which were implemented prior to Mr. Becker's consideration for Fire Fighter Recruit.

There were two application stages in this case. Mr. Becker first applied to the Department of Civil Service, his application was screened, and he was placed on the eligible list.

The Fire Department, prior to considering the candidates on this list, implemented suitability guidelines on or about May of last year. The Fire Department sent packets to those who were on the eligible list which included an application form, the guidelines, an explanation of the guidelines, and a release form which authorized the department to do background checks.

These guidelines only pertain to background check procedures and were implemented and employed by the Fire Department, not the Department of Civil Service. Mr. Akama wants that to be distinguished. It was not something that the Department of Civil Service utilized in making a determination on which candidates would be on the eligible list.

The Fire Department uses their guidelines to determine which candidates will be interviewed from the eligible list. The guidelines establishes certain criteria which the department believes are valid criteria being that Fire Fighters are in a public service position and are exposed to personal contact and have access to people's homes. The rationale for these guidelines will be explained further by Chief Oliveira.

It was based on the application of these guidelines that Chief Oliveira requested the removal of Mr. Becker from the eligible list. Chief Oliveira wrote to the Department of Civil Service, specifically Mr. Ben, who concurred with his recommendation for removal and removed Mr. Becker from the list.

The County's contention is that these guidelines were implemented for valid reasons and therefore the application of these guidelines justify the removal of Mr. Becker from the eligible list.

In presenting his case, Mr. Becker stated the following:

Mr. Becker believes that maybe his understanding of the guidelines is not right. His understanding had been that the guidelines were created by the Civil Service board, so that might be a misconception of his from the beginning.

He understands that this is the first time the Fire Department has used the guidelines in the recruit process.

On December 19, 2002, Mr. Becker was sent a letter notifying him that his name was being removed for a class B felony conviction of February 9, 1993. He doesn't dispute the offense in any way and there was full disclosure throughout his application process. Mr. Becker's understanding of the guidelines concerning felony convictions is that there shall be no felony convictions within the last 10 years. In doing the math, at the time of the letter, it turns out to be nine years and ten months. Further investigation with the criminal record that was provided with his application shows that the conviction stemmed from an arrest of May 1987. He realizes that the conviction date is the critical point, but the point he wants to make is that this is for an event committed nearly 16 years ago.

Mr. Becker read a letter which he had submitted earlier to the Civil Service Commission. He feels that this letter sums up his case.

Mr. Becker was questioned by the Commission. Refer to tape recording for testimony.

In presenting his case, Mr. Akama called upon Chief Oliveira who testified on how the Fire Department's fire fighter recruit guidelines were established. Refer to tape recording for testimony.

Chief Oliveira was cross-examined by Mr. Becker and questioned by the Commission. Refer to tape recording for further testimony.

Mr. Akama called upon Mr. Michael Ben, Director of Personnel, who testified on his department's involvement in the establishment of the fire fighter recruit guidelines and his decision to remove the Appellant from the eligible list. Refer to tape recording for further testimony.

Mr. Ben was cross-examined by Mr. Becker. Refer to tape recording for further testimony.

Chief Oliveira and Mr. Becker were both questioned by the Commission. Refer to tape recording for further testimony.

Mr. Becker stated the following in closing:

His understanding is that all of this evolved from a recommendation from Chief Oliveira to the Director of Personnel who made the decision to remove his name from the eligible list. However, it's unclear to him as to who made the actual decision. His only appeal at this point is that someone has the capability to reverse the decision, and he is making a personal plea that the decision be reversed. If the decision is reversed, all it would do is place him back on the eligible list. It would not make him a fire fighter/paramedic for the County of Hawaii.

He has been up front about his past and present life and presented how changes have taken place. People do make changes. What he's asking for is a reversal so that the Chief,

having heard all the evidence, can make a decision as to whether or not he is suited to be a fire fighter for the County of Hawaii.

His life now is now based on service to the community. He has proven that through the application process, recommendations, references, and things he has presented to the Commission.

Mr. Akama stated the following in closing:

He is impressed with Mr. Becker's turnaround and his commitment to the community, being a foster parent and a volunteer fire fighter. He wants Mr. Becker to understand that this is not a personal matter by any means.

While it is true that when the initial application was made there were no guidelines, what happened was there was a budget shortfall and a change in administration. Chief Oliveira, being a veteran fire fighter committed to excellence and wanting to reform and reorganize the department, came with a vision - to raise the bar as far as fire fighters were concerned.

One of the first things Chief Oliveira initiated was having a background check procedure. As with other guidelines/standards, there are cut off points. As Chief Oliveira stated, he would not have excluded Mr. Becker had this conviction been more than 10 years. The exclusion was not to exclude applicants from being hired as a fire fighter, but rather from being given a chance to be interviewed.

Chief Oliveira formulated another application which asks questions and includes the guidelines, an explanation of the guidelines, and a consent form which releases those providing the information from liability. As a result of this screening, there was also another candidate that was screened out because of the background check. This does not mean that these candidates cannot apply again, that they're forever disqualified. It just means that for the 01-72 recruitment, they were no longer screened.

Mr. Becker gave his rebuttal. Refer to tape recording.

MOTION: Mr. Kaminaka requested a short recess. The motion was seconded by Mr. Souza and unanimously carried.

The hearing recessed at 11:59 a.m. and reconvened at 12:04 p.m.

MOTION: Ms. Kahler moved to deny the appeal. The motion was seconded by Ms. Chun.

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

The Commission convened into an executive session at 12:22 p.m. and reconvened at 12:26 p. m.

Ms. Kahler withdrew her motion to deny the appeal, and Ms. Chun withdrew her second to the motion.

Chairperson Yagi reopened testimony. Mr. Ben was called to testify further on the removal of Mr. Becker's name from the eligible list. Refer to tape recording for testimony.

MOTION: Mr. Souza moved to deny Mr. Becker's appeal, noting that Mr. Becker has the right to apply for future fire fighter recruitments. The motion was seconded by Ms. Kahler and unanimously carried.

ADJOURNMENT

The meeting adjourned at 12:31 p.m.

Submitted by,

Secretary, Civil Service Commission

APPROVED:

**Jeanne E. Yagi
Chairperson**

lmn/vym