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## UNIFIED PERSONNEL BOARD AGENDA

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Date: October 6, 2022

Time: 6:30 p.m.

Location: BCC Assembly Room, Fifth Floor, Pinellas County Courthouse  
315 Court Street, Clearwater, Florida

- I. Citizens to be Heard\*
- II. Employees' Advisory Council (EAC) Representative
- III. Consent Agenda
  1. Request Approval of the Minutes of the Special Personnel Board Meeting held August 24, 2022  
*Approved*
  2. Request Approval of the Minutes of the Regular Personnel Board Meeting held September 1, 2022  
*Approved*
- IV. New Business
  1. Proposed Changes to Rules 6 and 7  
*Tabled for clarification of Scrivener's error regarding a citation*
  2. Brian Adkison Appeal: Appellee's Motion for Reconsideration  
*Tabled*
- V. Informational Items
  1. Kimberly's HR Update
  2. Action Taken Under Authority Delegated by the Personnel Board

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\* Persons with disabilities who need reasonable accommodations to effectively participate in this meeting are asked to contact Pinellas County's Office of Human Rights by emailing requests to [accommodations@pinellascounty.org](mailto:accommodations@pinellascounty.org) at least three (3) business days in advance of the need for reasonable accommodation. You may also call (727) 464-4882. More information about the ADA, and requests for reasonable accommodation, may be found at [www.pinellascounty.org/humanrights/ada](http://www.pinellascounty.org/humanrights/ada).

Persons are advised that, if they decide to appeal any decision made at this meeting/hearing, they will need a verbatim record of the proceedings, and, for such purposes, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based.

Unified Personnel Board  
Pinellas County  
August 24, 2022 Meeting Minutes

The Unified Personnel Board (UPB) met in a special session at 3:19 PM on this date in the County Commission Assembly Room at the Pinellas County Courthouse, 315 Court Street, Clearwater, Florida

Present

Joan M. Vecchioli, Chair  
Ricardo Davis, Vice-Chair  
Kenneth Peluso  
Ralph Reid  
William A. Schulz II

Not Present

Jeffery Kronschnabl  
Peggy O'Shea

Others Present

Kimberly Crum, Director of Human Resources (HR)  
Jennifer Monroe Moore, Ogletree, Deakins, et. al., P.C., Board Counsel  
Sarah Rathke, Board Reporter, Deputy Clerk  
Other interested individuals

*All documents provided to the Clerk's Office have been made a part of the record.*

**CALL TO ORDER**

Chair Vecchioli called the meeting to order at 3:19 PM.

**TERMINATION APPEAL**

Chair Vecchioli indicated that the meeting is a continuation of the August 4 hearing; whereupon, testimony, cross-examination, and questioning of the parties and witnesses proceeded before the Board.

*During testimony, the meeting was recessed at 5:05 PM, and reconvened at 5:16 PM.*

Attorney Moore indicated that the Board would need to decide whether or not to accept a deposition in lieu of live testimony, which both parties have agreed to accept. During

discussion, Mr. Peluso made a motion to not accept the deposition; whereupon, the motion was seconded by Schulz. Chair Vecchioli related that she would not support the motion since the deposition may include relevant material, and Mr. Davis concurred; whereupon, Mr. Schulz withdrew his second and Mr. Peluso withdrew his motion. Chair Vecchioli suggested that if the Board decides to accept the deposition, that they take a recess to review the document.

A motion was made by Mr. Peluso to accept the deposition. The motion was seconded by Mr. Reid and carried unanimously. With consensus from the Board, Chair Vecchioli related that closing statements, not to exceed 15 minutes, would be permitted after the recess.

*The meeting was recessed at 7:24 PM and was reconvened at 8:08 PM.*

Following closing arguments, Attorney Moore provided an overview of what matters qualify as evidence and indicated that the Board deliberation process might be different than usual as the appellant was terminated due to Rule D24; and that the questions before the Board are as follows:

- #1) Does the Board find that the appellant committed the activities for which he was terminated?
- #2) Does the Board find that cause existed for the disciplinary action in that the activities found to be committed by the appellant violated the Personnel Rules cited by the appellee Appointing Authority?
- #3) Does the Board find that the action taken by the Appointing Authority was appropriate?

Chair Vecchioli remarked that the questions are more entwined and less bifurcated; that the specific rule, Personnel Rule D24, includes the concept of “reasonable accommodation”; and that she would invite open discussion before addressing each question directly.

Mr. Peluso related that he feels reasonable accommodations were made; whereupon, he made a motion to uphold the County’s decision and discussion ensued.

Mr. Reid indicated that the question comes down to the reason Mr. Adkison was terminated; that he repeatedly heard that Mr. Adkison was unfit for duty; and that the Board must rely on the presented evidence related to the accommodations made by the Appointing Authority, noting that the Board is not tasked with determining what may be appropriate or not.

Mr. Davis stated that the evidence does not prove Mr. Adkison violated Rule D24, and provided his perspective regarding certain reports in evidence. He indicated that he believes Mr. Adkison is not considered to be a danger to others; and that the County has the available resources to further accommodate his situation, and discussion ensued.

Chair Vecchioli discussed the actions of management and stated that she believes there was good faith in trying to address Mr. Adkison's own admissions of inappropriate behavior. She noted that she is struggling with the reasonable accommodation, citing her reasons; and that she is inclined to not support the motion as presented.

Chair Vecchioli asked for a second to Mr. Peluso's motion to uphold the County's decision and the motion failed for lack of a second.

Mr. Davis made a motion that the Board find that the appellant did not commit activities that violated Rule D24, which was seconded by Mr. Schulz. Upon call for the vote, the motion carried 3 to 2, with Messrs. Peluso and Reid dissenting. In response to a query by Chair Vecchioli, Attorney Moore stated that the termination is overruled.

## **ADJOURNMENT**

Chair Vecchioli adjourned the meeting at 8:52 PM.

Unified Personnel Board  
Pinellas County  
September 1, 2022

The Unified Personnel Board (UPB) met in regular session at 6:30 PM on this date in the County Commission Assembly Room at the Pinellas County Courthouse, 315 Court Street, Clearwater, Florida.

Present

Joan Vecchioli, Chair  
Jeff Kronschnabl  
Peggy O'Shea  
Kenneth Peluso  
Ralph Reid  
Bill Schulz

Not Present

Ricardo Davis

Others Present

Kimberly Crum, Director of Human Resources  
Jennifer Monroe Moore, Ogletree, Deakins, et. al., P.C., Board Counsel  
Sitara Coyle, Board Reporter, Deputy Clerk  
Other interested individuals

**CALL TO ORDER**

Chair Vecchioli called the meeting to order at 6:30 PM; whereupon, she led the Pledge of Allegiance.

**CITIZENS TO BE HEARD**

None.

**EMPLOYEES' ADVISORY COUNCIL (EAC) REPRESENTATIVE**

Chair Vecchioli indicated that Employees' Advisory Council President Lisa Arispe does not have a general update but would like to address the Board during the Personnel Rule 3 amendment discussion.

## **CONSENT AGENDA**

Mr. Peluso moved that the minutes of the August 4, 2022 regular meeting be approved; whereupon, the motion was seconded by Mr. Schulz and carried unanimously.

## **OLD BUSINESS**

### Personnel Rule 3 – General Increase Continued from August 4, 2022

Chair Vecchioli introduced the proposed revisions to Personnel Rule 3 and invited Ms. Arispe to speak. In response to Ms. Arispe's concern regarding the general increase eligibility of recently demoted employees, Chair Vecchioli noted that the revision makes it clear that the Appointing Authority would have discretion to defer or deny the granting of the increase where an employee is *involuntarily* demoted within 90 days prior; and that this would not include those employees accepting a voluntary demotion, and Ms. Arispe indicated that she had no objection.

In response to other concerns, Ms. Crum related that the disciplinary form and corrective action will be documented in Opus; and that the employee will be informed at the time of being disciplined when there is a possibility that a general increase may be withheld, and discussion ensued.

Ms. Arispe noted that further discussion may be warranted regarding the implications of the Rule 3 (Compensation) revisions on Personnel Rule 6 (Discipline), and Attorney Moore clarified that a general increase is automatically given as a lump sum if an employee has reached the maximum rate of their paygrade.

Ms. Crum provided an overview of a document titled *Disciplinary Notice: Documentation of Verbal Warning*. Responding to queries by the members, she indicated that the notice will remain active in the personnel file for at least six months; that while it is active, it may be considered by hiring supervisors when making promotional decisions; and that behavior addressed in the notice will be addressed in the employee's next performance review and may affect pay adjustments.

Ms. Crum noted that the Appointing Authority, upon determining the issues have been corrected and other factors, may request that the discipline action be inactivated; that the Authority may elect to defer the general increase until such time as all discipline action is made inactive; and that upon inactivation of all discipline, the employee would then be granted the general increase in the same rate and amount provided to all eligible employees in the associated pay grade during that fiscal year; whereupon, she provided information regarding the grievance process.

During continued discussion, Attorney Sanzeri clarified that any form of discipline can be grieved, however, there is a limit as to which types of discipline can go beyond the informal grievance panel, as outlined in Personnel Rule 6, and Attorney Moore recommended that the Board amend the revised language found in Section E, *General Increase*, Subsection iii, *Determining Amount and Form of General Increase*, as follows:

- Insert the words, “in the employee’s associated pay grade” in the first paragraph so that it reads, “...for all eligible employees in the employee’s associated pay grade within the Appointing Authority...”

Upon the Chair’s call for a motion, Mr. Peluso made a motion to approve the revisions to Personnel Rule 3 and as amended by Attorney Moore. The motion was seconded by Ms. O’Shea and carried unanimously.

#### Agenda for Workshop with Appointing Authorities

Referring to a draft of the *Unified Personnel Board/Appointing Authorities Workshop Agenda* located in the agenda packet, Chair Vecchioli summarized the items for discussion and invited Ms. Crum to highlight the performance management program; whereupon, Ms. Crum related that Human Resources (HR) has been working with the Appointing Authorities regarding which points are most important to include within the performance review in the new Oracle system. She suggested that the department provide the Board with a demonstration of the Oracle Performance Management module at the upcoming workshop.

Mr. Reid moved to approve the *Unified Personnel Board/Appointing Authorities Workshop Agenda*. The motion was seconded by Mr. Schulz and carried unanimously.

### **NEW BUSINESS**

#### Request Approval of the Fiscal Year (FY) 2023 Pay Plan Adjustments

Referring to a document included in the agenda packet, Ms. Crum indicated that the Appointing Authorities moved to increase the minimum, midpoint, and maximum of each classified pay grade by 3%; that it includes an additional flat-sum increase of 58 cents per hour; and that increasing the minimum pay rate will help the departments remain competitive in efforts to recruit new employees.

Mr. Peluso made a motion to approve the FY2023 Pay Plan Adjustments. The motion was seconded by Ms. O’Shea.

In response to a query by Mr. Kronschnabl, HR Officer Jack Loring stated that there are several ways to track certifications, including using Oracle as well as the Learning Management modules to track the completion of courses; and that there are various County departments that also track certifications for their employees to ensure that they are recertified when necessary, and discussion ensued; whereupon, Chair Vecchioli called for the vote and the motion carried unanimously.

## **INFORMATIONAL ITEMS**

### HR Update

Referring to a document included in the agenda packet, Ms. Crum discussed the following topics:

- Internal HR recruitments and new hires
- Bootcamp Leadership Essentials kickoff
- HR SharePoint site
- New HR Alternative Flexible Schedule and Parking policies
- Implementation for phase two of the 132 Board of County Commission position audit
- Organization and Talent Development learning courses
- Tuition reimbursement
- County new hires and pre-onboarding appointments
- County turnover rate
- Trades Career Fair

Responding to queries and concerns by the members, Ms. Crum indicated that HR does not have complete information regarding why individuals are leaving County employment; that strides are being made to figure out why individuals are leaving; that HR has first-year turnover rates for each Appointing Authority; and that some portion of the rates are being driven by remote work.

### Action Taken Under Authority Delegated by the Personnel Board

Ms. Crum referred to a report in the agenda packet and related that one title has been deleted as a result of claims being outsourced, and another title has changed from *Employee Relations & Workforce Director* to *Workforce Relations Director*.

## **ADJOURNMENT**

Chair Vecchioli adjourned the meeting at 7:23 PM.





## Rule 6. Discipline

### A. Applicability and Purpose

**This rule applies to employees in the Classified Service.**

The purposes of this rule are to establish procedures for administering discipline and to recommend standard ranges of penalties to promote reasonable consistency in discipline. The level of discipline should be dependent on the facts and circumstances surrounding the behavior or performance issue. The impact of the behavior or performance, the totality of the employee's work record, and any mitigating or aggravating circumstances are relevant in determining the level of discipline administered.

### B. Authority to Effect Discipline

1. Subject to the grievance and appeal procedures herein, the Appointing Authority or designee shall have sole authority to administer discipline.
2. Any Classified Service employee may be disciplined for just cause. The types of performance and behavior identified in the attached chart are deemed to constitute just cause. Other causes not specifically listed which in the sole determination of the Appointing Authority negatively impact the efficiency, morale, good order, and discipline of the workplace, or the performance of a department, office, or agency may also constitute just cause.

### C. Disciplinary Actions

Discipline should be progressive in nature. Progressive means that more severe discipline is warranted if an employee continues to exhibit performance and behavior problems, whether similar in nature or not. Additionally, there are circumstances where a transgression is egregious enough to warrant termination with no prior discipline.

#### 1. Types of Disciplinary Action, in increasing order of severity:

- a. Verbal Warning
- b. Written Warning
- c. Suspension\*
- d. Pay Reduction\*
- e. Demotion\*
- f. Dismissal

\*considered the same level of discipline

#### 2. Procedure

The following procedure should be used when administering discipline.

##### a. Verbal Warnings and Written Warnings

Verbal Warnings and Written Warnings are levels of formal discipline that do not require a pre-disciplinary hearing. However, Warnings should be issued at a meeting with the employee. The meeting is the time to inform the employee of the factual basis for the discipline, explain expected corrective action and deliver the documentation of Warning. The employee shall be allowed to make comments

during the meeting.

Verbal Warnings and Written Warnings will be memorialized in a written document, the Warning, which should be given to the employee at the meeting. The document should include the factual basis for the discipline and the expected corrective action. The document should also inform the employee that additional performance deficiencies or behavior problems, whether similar or not, could result in additional discipline. The employee shall be required to acknowledge receipt of the Verbal or Written Warning by signing the document.

**b. Suspension**

Suspension is a period of time off work without pay. Suspensions require a pre-disciplinary hearing. Written notice of suspension shall be given to the employee. The notice shall include the factual basis for the suspension, the length and details of the suspension, and the expected corrective action. The notice shall also inform the employee that additional performance deficiencies or behavior problems, whether similar or not, could result in additional discipline.

**c. Pay Reduction**

Pay Reduction is a reduction in an employee's pay rate. A deferred or denied general increase under Rule 3(E) is not a Pay Reduction under this Rule. Pay Reductions require a pre-disciplinary hearing. Pay reductions shall be limited to a maximum of five percent. Written notice of Pay Reduction shall be given to the employee. The notice shall include the factual basis for the Pay Reduction, the amount and effective date of the Pay Reduction, and the expected corrective action. The notice shall also inform the employee that additional performance deficiencies or behavior problems, whether similar or not, could result in additional discipline.

**d. Demotion**

Demotion is a change to a position in pay grade for which the maximum pay rate is lower than that of the employee's current pay grade. Demotions require a pre-disciplinary hearing. Written notice of Demotion shall be given to the employee. The notice shall include the factual basis for the demotion, identify the pay grade and pay rate of the position into which the employee is demoted, the effective date of the demotion, and the expected corrective action. The notice shall also inform the employee that future additional performance deficiencies or behavior problems, whether similar or not, could result in additional disciplinary action. Upon such demotion a probationary employee shall serve the balance of his/her probationary period and a regular status employee shall not be required to serve another probationary period.

**e. Dismissal**

Dismissal is separation from employment. Dismissals require a pre-disciplinary hearing. Written notice of Dismissal shall be given to the employee.

**3. Pre-Disciplinary Hearings**

Before issuing a Suspension, Pay Reduction, Demotion or Dismissal, the Appointing Authority shall provide written notice of his or her intent to administer discipline and offer the employee the opportunity to discuss the situation at a pre-disciplinary hearing. Such hearing shall be held by the employee's Department Director or that Director's designee. The notice shall include the factual basis for the discipline being considered and the just cause for the discipline and advise the employee of the date and time of the pre-

disciplinary hearing.

The pre-disciplinary hearing is the employee's opportunity to be heard on issues related to the proposed discipline. Employees may be represented by a person of their choice at their pre-disciplinary hearing.

Pre-Disciplinary hearings may be conducted in the manner determined appropriate by the respective Appointing Authority.

#### **D. Retention of Disciplinary Documentation**

Discipline actions shall remain active for at least the minimum time specified below:

<b>Type of Action</b>	<b>Minimum Time Active</b>
Verbal Warning	6 months
Written Warning	9 months
Suspension, Pay Reduction, or Demotion	12 months

If the Appointing Authority has determined the problem necessitating the discipline has been corrected by the employee and additional performance or behavior problems have not occurred during the designated time frame, the Appointing Authority may request that discipline actions be inactivated. Even if inactive, all documentation will be retained as a part of the personnel file and available in accordance with Chapter 119, Florida Statutes. The determination of the Appointing Authority regarding inactivation is final.

#### **E. Grievance of Discipline Actions & Appeals of Dismissal**

##### **1. Grievances**

An employee may grieve disciplinary action, except dismissal, by filing a written grievance in accordance with the grievance procedure specified in Rule 7.

##### **2. Appeals of Dismissal**

Except as provided herein, a regular status employee may appeal a dismissal directly to the Unified Personnel Board by filing a written notice of appeal with the Director of Human Resources within 15 calendar days from the notice of the dismissal. An employee serving the initial one year probationary period may not appeal a dismissal.

Human Resources staff may advise the employees and the Appointing Authority of all rights and responsibilities in the appeal procedure but shall not act as a representative or advocate for either.

Conference for Probationary Employees: When incidental to the dismissal of a probationary employee, the Department places in the employee's personnel file any information concerning the employee which might be considered stigmatizing to future employers, i.e., termination for misconduct; and if the employee contends that the information is false, the employee may, in writing, demand a name clearing conference. If such demand is made, the Department shall provide the employee an opportunity to demonstrate the falsity of the information, and the burden of proof shall be on the employee. The sole issue to be determined shall be the truth or falsity of the information alleged by the employee to be false, and the decision shall not necessarily affect the dismissal.

##### **3. Representation**

The employee may, if desired, be represented by counsel or lay person during hearings conducted under the provisions of this Rule.

#### **4. Unified Personnel Board Appeal of Dismissal Hearings**

Employees appealing their dismissal under this Rule shall be provided a fact-finding hearing before the Unified Personnel Board at which both parties shall have the opportunity to be heard in person, to be represented by lay person or by counsel, and to introduce testimony and evidence. Board Hearings shall be conducted in accordance with the Unified Personnel Board's appeal procedures.

#### **F. Suspensions Pending Judicial Review**

When an employee has been indicted or has had an information filed against him or her for a felony, a misdemeanor involving moral turpitude, or any offense in which a conviction would adversely affect the efficiency or morale of the County Service, the Appointing Authority may, in his or her sole discretion, suspend that employee with or without pay until any such charge has been prosecuted to its conclusion. Written notice of suspension shall be provided to the employee.

In the event the suspension is without pay, the employee will be given an opportunity, either orally or in writing to present to the Appointing Authority reasons why the suspension without pay would be inappropriate.

At the conclusion of the charge, if the employee has been found guilty, has pled guilty whether adjudication is withheld or not, or entered a pre-trial intervention or similar program, the Appointing Authority may proceed with termination, in accordance with the procedure in Section 2.

In the event the employee has been tried and acquitted or the information or indictment is quashed or dismissed, the employee may present appropriate documentation to the Appointing Authority and request reinstatement in writing within 15 calendar days of the acquittal or other disposition of the case. This request must be made by delivering the request and documentation to the Appointing Authority. Failure of an employee to request reinstatement from the Appointing Authority within 15 calendar days of the acquittal or other disposition of the case shall be deemed a voluntary resignation of employment. Upon verification that such documentation is genuine and accurate, the Appointing Authority may reinstate the employee with or without back pay.

If the Appointing Authority does not reinstate the employee, the employee may, within 15 calendar days of denial of reinstatement, petition the Unified Personnel Board for reinstatement by delivering a written request for reinstatement to the Director of Human Resources. Failure of an employee to timely file such written request with the Director of Human Resources shall be deemed a voluntary waiver of the employee's right to seek reinstatement from the Unified Personnel Board and will be considered a voluntary resignation. Such resignations shall not be appealable.

Back pay is limited to wages and benefits lost during the suspension period, less sums from all other sources including wages or salary earned and monies received from any and all public assistance and unemployment compensation for the suspension period. The Personnel Board has no authority to grant pay. Only the Appointing Authority may grant back pay.

### Disciplinary Guidelines and Disciplinary Action Ranges

Number	Infraction	First Level	Second Level	Third Level	Fourth Level
D1	Substandard quality or quantity of work.	Verbal Warning to Written Warning	Written Warning to 3 Day Suspension	3 Day Suspension to Dismissal	Dismissal
D2	Sleeping on the job.	Written Warning to 3 Day Suspension	3 Day Suspension to Dismissal	Dismissal	
D3	Failure to perform assigned duties.	Verbal Warning to 3 Day Suspension	Written Warning to 5 Day Suspension	Dismissal	
D4	The employee refused to answer questions from a superior or investigative agency relating specifically and directly and narrowly to the employee's official duties, after the employee had been warned that refusal to answer such questions could lead to disciplinary action and that statements made by employees under such circumstances were inadmissible as evidence in a criminal prosecution.	3 Day Suspension to Dismissal	Dismissal		
D5	Insubordination.	Verbal Warning to Dismissal	Written Warning to Dismissal	Dismissal	
D6	Excessive tardiness or absenteeism.	Verbal Warning to Written Warning	Written Warning to <u>Pay Reduction in Pay</u>	<u>Pay Reduction in Pay</u> to Dismissal	Dismissal
D7	Leaving work station without authorization.	Verbal Warning to 3 Day Suspension	3 Day Suspension to Dismissal	Dismissal	

Number	Infraction	First Level	Second Level	Third Level	Fourth Level
D8	Absence without authorized leave. <i>Note: Unauthorized absences from work for a period of three consecutive working days may be considered as the employee's voluntary resignation by the Appointing Authority and as such may not be grieved.</i>	Written Warning	3 Day Suspension	Dismissal	
D9	Intentional falsification of records.	3 Day Suspension to Dismissal	Dismissal		
D10	Misuse or destruction of property or equipment.	Verbal Warning to Dismissal	3 Day Suspension to Dismissal	5 Day Suspension to Dismissal	Dismissal
D11	Unauthorized use of County equipment or property.	Verbal Warning to Dismissal	3 Day Suspension to Dismissal	Dismissal	
D12	Violation of written rules, regulations, policies or statutes.	Verbal Warning to Dismissal	Written Warning to Dismissal	3 Day Suspension to Dismissal	Dismissal
D13	Negligence resulting in minor consequences.	Verbal Warning to Written Warning	Written Warning to 3 Day Suspension	Dismissal	
D14	Negligence resulting in serious consequences.	3 Day Suspension to Dismissal	Dismissal		
D15	Unauthorized distribution, solicitation, or sales.	Verbal Warning to Written Warning	Written Warning to 3 Day Suspension	Dismissal	

Number	Infraction	First Level	Second Level	Third Level	Fourth Level
D16	The employee engaged in a physical fight while on duty.	3 Day Suspension to Dismissal	Dismissal		
D17	<p>The employee is in possession of a deadly weapon on County owned or leased property or in a County owned or leased vehicle at any time, or in a personal vehicle while being used for County business except:</p> <ul style="list-style-type: none"> <li>a. if specifically authorized in advance by the employee's Appointing Authority, or</li> <li>b. With regard to a firearm, is otherwise specifically allowed under Florida Statute §790.251.</li> </ul> <p>Deadly weapon means any instrument which will cause great bodily harm or death when used in its ordinary and usual manner. For this infraction, deadly weapons include, but are not limited to: firearms, clubs, knives (other than a common pocket knife with a folding blade or an eating utensil), stun guns, brass knuckles, nunchucks, throwing stars, and other martial arts weapons.</p>	3 Day Suspension to Dismissal	Dismissal		
D18	The misappropriation of County funds, appropriation of County property for personal use, or illegal disposition of County property.	3 Day Suspension to Dismissal	Dismissal		
D19	Violation of County Alcohol and Controlled Substance Testing Policy for Commercial Motor Vehicle Drivers.	Dismissal			
D20	The employee has engaged in conduct unbecoming an employee of the County.	Written Warning to Dismissal	Dismissal		

Number	Infraction	First Level	Second Level	Third Level	Fourth Level
D21	Finding of guilty or plea of guilty or <i>nolo contendere</i> to an employment-related first degree misdemeanor, or felony whether adjudication of guilt is withheld or not.	3 Day Suspension to Dismissal	Dismissal		
D22	Finding of guilty or plea of guilty or <i>nolo contendere</i> to a misdemeanor or felony involving moral turpitude, whether adjudication of guilt is withheld or not and whether related to employment or not.	Written Warning to Dismissal	Dismissal		
D23	Finding of a violation of Pinellas County Anti-Harassment Policy after an investigation by the Office of Human Rights or an investigation done at its direction.	Written Warning to Dismissal	Dismissal		
D24	With a reasonable accommodation, the employee is incapable of performing the essential functions of the job position because of a mental or physical disability.	Demotion or Dismissal			
D25	Attempt to use political influence in personnel matters.	Written Warning to Dismissal	Dismissal		
D26	The employee has intentionally falsified a time record or made a false claim for leave, or failed to report absence from duty to supervisors.	3 Day Suspension to Dismissal	Dismissal		
D27	The employee, after employment, is found to have made a false statement in his application for employment.	Written Warning to Dismissal			
D28	The employee's conduct is offensive or antagonistic toward superiors, fellow employees or the public. The actions include but are not limited to verbal abuse, intimidation or the use of profane or obscene language	Verbal Warning to Dismissal	Written Warning to Dismissal	Dismissal	



<b>Number</b>	<b>Infraction</b>	<b>First Level</b>	<b>Second Level</b>	<b>Third Level</b>	<b>Fourth Level</b>
D29	The employee's conduct interferes with the proper cooperation of coworkers or impairs the efficiency, morale, good order or discipline of the workplace.	Verbal Warning to Dismissal	Written Warning to Dismissal	Dismissal	
D30	The employee required to maintain an active driver's license has had his or her driver's license suspended or revoked; or has failed to report a suspension or revocation to his supervisor by the next scheduled work day immediately following notification of the suspension or revocation; or has driven a county owned or leased vehicle or his or her own vehicle on county business after such revocation or suspension.	Demotion or Dismissal	Dismissal		
D31	The employee whose position requires the operation of a motor vehicle in the performance of their duties, fails to immediately advise of a conviction for violation of any motor vehicle law or ordinance for which more than three points are assessed pursuant to Section 322.27, Florida Statutes, or any conviction under Sections 316.193 or 316.1931, Florida Statutes (driving under the influence).	Verbal Warning to Written Warning	Written Warning to 3 Day Suspension	3 Day Suspension to Dismissal	Dismissal
D32	The employee has failed to obtain or maintain the required certification for their job position.	Demotion or Dismissal			
D33	The employee, whether on or off the duty, has engaged in employment or other activity which is inconsistent or incompatible with his or her assigned duties, functions, or responsibilities, or one that is in legal, moral, or technical conflict with such duties.	3 Day Suspension to Dismissal	Dismissal		

Number	Infraction	First Level	Second Level	Third Level	Fourth Level
D34	That the employee has violated Section 447.505, Florida Statutes, or any subsequent amendments thereto or any other related, applicable Florida Statute, or has induced or attempted to induce, or aided or abetted any employee of Pinellas County to engage in any strike or walk-out against Pinellas County or any organizational department or unit thereof.	Dismissal			
D35	Violation of Pinellas County Statement of Ethics	Verbal Warning to Dismissal	Dismissal		
D36	Failure to perform a reasonable amount of emergency work outside normal working hours when directed to so do by proper authority.	3 Day Suspension to Dismissal	Dismissal		
D37	During employment the employee fails to report to management that he or she was arrested by the first scheduled work day immediately following the arrest.	Verbal Warning to Dismissal	Written Warning to Dismissal	Dismissal	



## Rule 6. Discipline

### A. Applicability and Purpose

**This rule applies to employees in the Classified Service.**

The purposes of this rule are to establish procedures for administering discipline and to recommend standard ranges of penalties to promote reasonable consistency in discipline. The level of discipline should be dependent on the facts and circumstances surrounding the behavior or performance issue. The impact of the behavior or performance, the totality of the employee's work record, and any mitigating or aggravating circumstances are relevant in determining the level of discipline administered.

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1. Subject to the grievance and appeal procedures herein, the Appointing Authority or designee shall have sole authority to administer discipline.
2. Any Classified Service employee may be disciplined for just cause. The types of performance and behavior identified in the attached chart are deemed to constitute just cause. Other causes not specifically listed which in the sole determination of the Appointing Authority negatively impact the efficiency, morale, good order, and discipline of the workplace, or the performance of a department, office, or agency may also constitute just cause.

### C. Disciplinary Actions

Discipline should be progressive in nature. Progressive means that more severe discipline is warranted if an employee continues to exhibit performance and behavior problems, whether similar in nature or not. Additionally, there are circumstances where a transgression is egregious enough to warrant termination with no prior discipline.

#### 1. Types of Disciplinary Action, in increasing order of severity:

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- b. Written Warning
- c. Suspension\*
- d. Pay Reduction\*
- e. Demotion\*
- f. Dismissal

\*considered the same level of discipline

#### 2. Procedure

The following procedure should be used when administering discipline.

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Verbal Warnings and Written Warnings are levels of formal discipline that do not require a pre-disciplinary hearing. However, Warnings should be issued at a meeting with the employee. The meeting is the time to inform the employee of the factual basis for the discipline, explain expected corrective action and deliver the documentation of Warning. The employee shall be allowed to make comments

during the meeting.

Verbal Warnings and Written Warnings will be memorialized in a written document, the Warning, which should be given to the employee at the meeting. The document should include the factual basis for the discipline and the expected corrective action. The document should also inform the employee that additional performance deficiencies or behavior problems, whether similar or not, could result in additional discipline. The employee shall be required to acknowledge receipt of the Verbal or Written Warning by signing the document.

**b. Suspension**

Suspension is a period of time off work without pay. Suspensions require a pre-disciplinary hearing. Written notice of suspension shall be given to the employee. The notice shall include the factual basis for the suspension, the length and details of the suspension, and the expected corrective action. The notice shall also inform the employee that additional performance deficiencies or behavior problems, whether similar or not, could result in additional discipline.

**c. Pay Reduction**

Pay Reduction is a reduction in an employee's pay rate. A deferred or denied general increase under Rule 3(E) is not a Pay Reduction under this Rule. Pay Reductions require a pre-disciplinary hearing. Pay reductions shall be limited to a maximum of five percent. Written notice of Pay Reduction shall be given to the employee. The notice shall include the factual basis for the Pay Reduction, the amount and effective date of the Pay Reduction, and the expected corrective action. The notice shall also inform the employee that additional performance deficiencies or behavior problems, whether similar or not, could result in additional discipline.

**d. Demotion**

Demotion is a change to a position in pay grade for which the maximum pay rate is lower than that of the employee's current pay grade. Demotions require a pre-disciplinary hearing. Written notice of Demotion shall be given to the employee. The notice shall include the factual basis for the demotion, identify the pay grade and pay rate of the position into which the employee is demoted, the effective date of the demotion, and the expected corrective action. The notice shall also inform the employee that future additional performance deficiencies or behavior problems, whether similar or not, could result in additional disciplinary action. Upon such demotion a probationary employee shall serve the balance of his/her probationary period and a regular status employee shall not be required to serve another probationary period.

**e. Dismissal**

Dismissal is separation from employment. Dismissals require a pre-disciplinary hearing. Written notice of Dismissal shall be given to the employee.

**3. Pre-Disciplinary Hearings**

Before issuing a Suspension, Pay Reduction, Demotion or Dismissal, the Appointing Authority shall provide written notice of his or her intent to administer discipline and offer the employee the opportunity to discuss the situation at a pre-disciplinary hearing. Such hearing shall be held by the employee's Department Director or that Director's designee. The notice shall include the factual basis for the discipline being considered and the just cause for the discipline and advise the employee of the date and time of the pre-

disciplinary hearing.

The pre-disciplinary hearing is the employee's opportunity to be heard on issues related to the proposed discipline. Employees may be represented by a person of their choice at their pre-disciplinary hearing.

Pre-Disciplinary hearings may be conducted in the manner determined appropriate by the respective Appointing Authority.

#### **D. Retention of Disciplinary Documentation**

Discipline actions shall remain active for at least the minimum time specified below:

<b>Type of Action</b>	<b>Minimum Time Active</b>
Verbal Warning	6 months
Written Warning	9 months
Suspension, Pay Reduction, or Demotion	12 months

If the Appointing Authority has determined the problem necessitating the discipline has been corrected by the employee and additional performance or behavior problems have not occurred during the designated time frame, the Appointing Authority may request that discipline actions be inactivated. Even if inactive, all documentation will be retained as a part of the personnel file and available in accordance with Chapter 119, Florida Statutes. The determination of the Appointing Authority regarding inactivation is final.

#### **E. Grievance of Discipline Actions & Appeals of Dismissal**

##### **1. Grievances**

An employee may grieve disciplinary action, except dismissal, by filing a written grievance in accordance with the grievance procedure specified in Rule 7.

##### **2. Appeals of Dismissal**

Except as provided herein, a regular status employee may appeal a dismissal directly to the Unified Personnel Board by filing a written notice of appeal with the Director of Human Resources within 15 calendar days from the notice of the dismissal. An employee serving the initial one year probationary period may not appeal a dismissal.

Human Resources staff may advise the employees and the Appointing Authority of all rights and responsibilities in the appeal procedure but shall not act as a representative or advocate for either.

Conference for Probationary Employees: When incidental to the dismissal of a probationary employee, the Department places in the employee's personnel file any information concerning the employee which might be considered stigmatizing to future employers, i.e., termination for misconduct; and if the employee contends that the information is false, the employee may, in writing, demand a name clearing conference. If such demand is made, the Department shall provide the employee an opportunity to demonstrate the falsity of the information, and the burden of proof shall be on the employee. The sole issue to be determined shall be the truth or falsity of the information alleged by the employee to be false, and the decision shall not necessarily affect the dismissal.

##### **3. Representation**

The employee may, if desired, be represented by counsel or lay person during hearings conducted under the provisions of this Rule.

#### **4. Unified Personnel Board Appeal of Dismissal Hearings**

Employees appealing their dismissal under this Rule shall be provided a fact-finding hearing before the Unified Personnel Board at which both parties shall have the opportunity to be heard in person, to be represented by lay person or by counsel, and to introduce testimony and evidence. Board Hearings shall be conducted in accordance with the Unified Personnel Board's appeal procedures.

#### **F. Suspensions Pending Judicial Review**

When an employee has been indicted or has had an information filed against him or her for a felony, a misdemeanor involving moral turpitude, or any offense in which a conviction would adversely affect the efficiency or morale of the County Service, the Appointing Authority may, in his or her sole discretion, suspend that employee with or without pay until any such charge has been prosecuted to its conclusion. Written notice of suspension shall be provided to the employee.

In the event the suspension is without pay, the employee will be given an opportunity, either orally or in writing to present to the Appointing Authority reasons why the suspension without pay would be inappropriate.

At the conclusion of the charge, if the employee has been found guilty, has pled guilty whether adjudication is withheld or not, or entered a pre-trial intervention or similar program, the Appointing Authority may proceed with termination, in accordance with the procedure in Section 2.

In the event the employee has been tried and acquitted or the information or indictment is quashed or dismissed, the employee may present appropriate documentation to the Appointing Authority and request reinstatement in writing within 15 calendar days of the acquittal or other disposition of the case. This request must be made by delivering the request and documentation to the Appointing Authority. Failure of an employee to request reinstatement from the Appointing Authority within 15 calendar days of the acquittal or other disposition of the case shall be deemed a voluntary resignation of employment. Upon verification that such documentation is genuine and accurate, the Appointing Authority may reinstate the employee with or without back pay.

If the Appointing Authority does not reinstate the employee, the employee may, within 15 calendar days of denial of reinstatement, petition the Unified Personnel Board for reinstatement by delivering a written request for reinstatement to the Director of Human Resources. Failure of an employee to timely file such written request with the Director of Human Resources shall be deemed a voluntary waiver of the employee's right to seek reinstatement from the Unified Personnel Board and will be considered a voluntary resignation. Such resignations shall not be appealable.

Back pay is limited to wages and benefits lost during the suspension period, less sums from all other sources including wages or salary earned and monies received from any and all public assistance and unemployment compensation for the suspension period. The Personnel Board has no authority to grant pay. Only the Appointing Authority may grant back pay.

### Disciplinary Guidelines and Disciplinary Action Ranges

Number	Infraction	First Level	Second Level	Third Level	Fourth Level
D1	Substandard quality or quantity of work.	Verbal Warning to Written Warning	Written Warning to 3 Day Suspension	3 Day Suspension to Dismissal	Dismissal
D2	Sleeping on the job.	Written Warning to 3 Day Suspension	3 Day Suspension to Dismissal	Dismissal	
D3	Failure to perform assigned duties.	Verbal Warning to 3 Day Suspension	Written Warning to 5 Day Suspension	Dismissal	
D4	The employee refused to answer questions from a superior or investigative agency relating specifically and directly and narrowly to the employee's official duties, after the employee had been warned that refusal to answer such questions could lead to disciplinary action and that statements made by employees under such circumstances were inadmissible as evidence in a criminal prosecution.	3 Day Suspension to Dismissal	Dismissal		
D5	Insubordination.	Verbal Warning to Dismissal	Written Warning to Dismissal	Dismissal	
D6	Excessive tardiness or absenteeism.	Verbal Warning to Written Warning	Written Warning to Pay Reduction	Pay Reduction to Dismissal	Dismissal
D7	Leaving work station without authorization.	Verbal Warning to 3 Day Suspension	3 Day Suspension to Dismissal	Dismissal	

Number	Infraction	First Level	Second Level	Third Level	Fourth Level
D8	Absence without authorized leave. <i>Note: Unauthorized absences from work for a period of three consecutive working days may be considered as the employee's voluntary resignation by the Appointing Authority and as such may not be grieved.</i>	Written Warning	3 Day Suspension	Dismissal	
D9	Intentional falsification of records.	3 Day Suspension to Dismissal	Dismissal		
D10	Misuse or destruction of property or equipment.	Verbal Warning to Dismissal	3 Day Suspension to Dismissal	5 Day Suspension to Dismissal	Dismissal
D11	Unauthorized use of County equipment or property.	Verbal Warning to Dismissal	3 Day Suspension to Dismissal	Dismissal	
D12	Violation of written rules, regulations, policies or statutes.	Verbal Warning to Dismissal	Written Warning to Dismissal	3 Day Suspension to Dismissal	Dismissal
D13	Negligence resulting in minor consequences.	Verbal Warning to Written Warning	Written Warning to 3 Day Suspension	Dismissal	
D14	Negligence resulting in serious consequences.	3 Day Suspension to Dismissal	Dismissal		
D15	Unauthorized distribution, solicitation, or sales.	Verbal Warning to Written Warning	Written Warning to 3 Day Suspension	Dismissal	



Number	Infraction	First Level	Second Level	Third Level	Fourth Level
D16	The employee engaged in a physical fight while on duty.	3 Day Suspension to Dismissal	Dismissal		
D17	<p>The employee is in possession of a deadly weapon on County owned or leased property or in a County owned or leased vehicle at any time, or in a personal vehicle while being used for County business except:</p> <ul style="list-style-type: none"> <li>a. if specifically authorized in advance by the employee's Appointing Authority, or</li> <li>b. With regard to a firearm, is otherwise specifically allowed under Florida Statute §790.251.</li> </ul> <p>Deadly weapon means any instrument which will cause great bodily harm or death when used in its ordinary and usual manner. For this infraction, deadly weapons include, but are not limited to: firearms, clubs, knives (other than a common pocket knife with a folding blade or an eating utensil), stun guns, brass knuckles, nunchucks, throwing stars, and other martial arts weapons.</p>	3 Day Suspension to Dismissal	Dismissal		
D18	The misappropriation of County funds, appropriation of County property for personal use, or illegal disposition of County property.	3 Day Suspension to Dismissal	Dismissal		
D19	Violation of County Alcohol and Controlled Substance Testing Policy for Commercial Motor Vehicle Drivers.	Dismissal			
D20	The employee has engaged in conduct unbecoming an employee of the County.	Written Warning to Dismissal	Dismissal		

Number	Infraction	First Level	Second Level	Third Level	Fourth Level
D21	Finding of guilty or plea of guilty or <i>nolo contendere</i> to an employment-related first degree misdemeanor, or felony whether adjudication of guilt is withheld or not.	3 Day Suspension to Dismissal	Dismissal		
D22	Finding of guilty or plea of guilty or <i>nolo contendere</i> to a misdemeanor or felony involving moral turpitude, whether adjudication of guilt is withheld or not and whether related to employment or not.	Written Warning to Dismissal	Dismissal		
D23	Finding of a violation of Pinellas County Anti-Harassment Policy after an investigation by the Office of Human Rights or an investigation done at its direction.	Written Warning to Dismissal	Dismissal		
D24	With a reasonable accommodation, the employee is incapable of performing the essential functions of the job position because of a mental or physical disability.	Demotion or Dismissal			
D25	Attempt to use political influence in personnel matters.	Written Warning to Dismissal	Dismissal		
D26	The employee has intentionally falsified a time record or made a false claim for leave, or failed to report absence from duty to supervisors.	3 Day Suspension to Dismissal	Dismissal		
D27	The employee, after employment, is found to have made a false statement in his application for employment.	Written Warning to Dismissal			
D28	The employee's conduct is offensive or antagonistic toward superiors, fellow employees or the public. The actions include but are not limited to verbal abuse, intimidation or the use of profane or obscene language	Verbal Warning to Dismissal	Written Warning to Dismissal	Dismissal	

<b>Number</b>	<b>Infraction</b>	<b>First Level</b>	<b>Second Level</b>	<b>Third Level</b>	<b>Fourth Level</b>
D29	The employee's conduct interferes with the proper cooperation of coworkers or impairs the efficiency, morale, good order or discipline of the workplace.	Verbal Warning to Dismissal	Written Warning to Dismissal	Dismissal	
D30	The employee required to maintain an active driver's license has had his or her driver's license suspended or revoked; or has failed to report a suspension or revocation to his supervisor by the next scheduled work day immediately following notification of the suspension or revocation; or has driven a county owned or leased vehicle or his or her own vehicle on county business after such revocation or suspension.	Demotion or Dismissal	Dismissal		
D31	The employee whose position requires the operation of a motor vehicle in the performance of their duties, fails to immediately advise of a conviction for violation of any motor vehicle law or ordinance for which more than three points are assessed pursuant to Section 322.27, Florida Statutes, or any conviction under Sections 316.193 or 316.1931, Florida Statutes (driving under the influence).	Verbal Warning to Written Warning	Written Warning to 3 Day Suspension	3 Day Suspension to Dismissal	Dismissal
D32	The employee has failed to obtain or maintain the required certification for their job position.	Demotion or Dismissal			
D33	The employee, whether on or off the duty, has engaged in employment or other activity which is inconsistent or incompatible with his or her assigned duties, functions, or responsibilities, or one that is in legal, moral, or technical conflict with such duties.	3 Day Suspension to Dismissal	Dismissal		

<b>Number</b>	<b>Infraction</b>	<b>First Level</b>	<b>Second Level</b>	<b>Third Level</b>	<b>Fourth Level</b>
D34	That the employee has violated Section 447.505, Florida Statutes, or any subsequent amendments thereto or any other related, applicable Florida Statute, or has induced or attempted to induce, or aided or abetted any employee of Pinellas County to engage in any strike or walk-out against Pinellas County or any organizational department or unit thereof.	Dismissal			
D35	Violation of Pinellas County Statement of Ethics	Verbal Warning to Dismissal	Dismissal		
D36	Failure to perform a reasonable amount of emergency work outside normal working hours when directed to so do by proper authority.	3 Day Suspension to Dismissal	Dismissal		
D37	During employment the employee fails to report to management that he or she was arrested by the first scheduled work day immediately following the arrest.	Verbal Warning to Dismissal	Written Warning to Dismissal	Dismissal	



## Rule 7. Employee Grievances

### A. Applicability and Purpose

1. This rule applies to employees in the Classified Service.
2. The purpose of this rule is to establish a process through which an employee may seek redress for covered issues relating to his or her employment and to improve employee-management relations through a fair method of resolving problems.
3. When appeal, complaint, or grievance procedures are otherwise established for a particular issue or subject, those procedures shall apply.

### B. Non-Retaliation

Employees shall not be subjected to retaliation for using or participating in the grievance process.

### C. Time for Grievance

The Appointing Authority shall allow the aggrieved employee reasonable time to consult with the Human Resources Department and participate in the grievance process. However, the Appointing Authority is not required to provide the grievant unlimited work time to prepare or participate in the process. Time approved by an Appointing Authority during normal duty hours shall not be charged against the employee. Except for time at an informal grievance panel hearing, time spent by a grievant outside of the employee's normal duty hours shall not be counted as hours worked.

### D. Guidance

Human Resources staff may advise the employees and Appointing Authorities regarding the grievance and appeal process but shall not act as a representative or advocate for either.

### E. Covered issues and Level of Appeal Available

A Classified Service employee may grieve:

1. Discipline (verbal warning, written warning, suspension, demotion, pay reduction ~~in pay~~);
2. A misapplication of a Personnel Rule or Unified Personnel Board Policy, as applied to the grievant;
3. A misapplication of an established departmental policy, procedure, or rule if that policy, procedure, or rule was approved by the Unified Personnel Board, as applied to the grievant;
4. Formally documented records of performance as determined under the County's prescribed performance management system;
5. Discretionary pay increase decisions.

## Level of Appeal Available

Grievance Issue	Informal Resolution	Step 1: Department Head	Step 2: Informal Grievance Committee	Step 3: Unified Personnel Board
Discipline: verbal & written warnings	Yes	Yes	Yes	No
Discipline: suspensions, demotions, <u>pay</u> reductions <u>in pay</u>	Yes	Yes	Yes	Yes
Misapplication of Personnel Rule or Unified Personnel Board Policy	Yes	Yes	Yes	Yes
Misapplication of department policy, procedure, or rule (if approved by the Unified Personnel Board)	Yes	Yes	Yes	Yes
Formally documented record of performance	Yes	Yes	No	No
Discretionary pay increase decision	Yes	Yes	No	No

### F. Exceptions

- Dismissals are not subject to grievance. Dismissals of regular status employees may be appealed directly to the Unified Personnel Board pursuant to Rule 6.
- Demotions for inability of regular status employees during the first six months after a promotion are not subject to grievance.
- Layoffs and displacements under Rule 5 are not subject to grievance.
- Deferred or denied pay increased under Rule 3€ are not pay reductions under this Rule.

### G. Procedure for Grievance

Unless appeal, complaint, or grievance procedures are otherwise established for the particular issue or subject, the following procedure applies.

- Filing:** Grievances starting with Step 1 must be filed in writing on the forms provided by the Human Resources Department.
- Timing:** All steps in the grievance process must be taken within the time frames specified.
  - A grievance must be initiated as described within 15 calendar days from when the employee first becomes aware of the aggrieved situation.

- b. Failure of an employee to timely file a grievance or timely initiate any step in the process will result in rejection of the grievance without further action. Such rejection is final.

### **3. Process:**

If the end date falls on a weekend or County holiday, the due date shall be the next weekday.

#### **a. Informal Resolution**

An employee is encouraged to attempt resolution for his or her issue with the immediate supervisor or other appropriate level of management in his or her Department before proceeding to a formal grievance. In cases where the issue is not resolved, an employee may, within 15 calendar days of when the employee first becomes aware of the aggrieved situation, start the process at Step 1.

#### **b. Step 1: Department Head**

- i. Grievant submits written grievance on the established Human Resources form to the Department Head.
- ii. The Department Head should consider the grievance and discuss it with the employee and other management, if necessary, to reach a decision. The Department Head's decision must be delivered in writing to the employee on a copy of the grievance form submitted by the employee.
- iii. The Department Head's response must be delivered within seven calendar days from the date the employee submits the form.
- iv. If the employee is dissatisfied with management's response, or does not receive a response within seven calendar days of the date the employee submitted his grievance form to the Department Head, the employee may proceed to Step 2 (unless the subject matter is limited to resolution at Step 1).

#### **c. Step 2: Informal Grievance Committee**

- i. Grievant files a written request within 15 calendar days on the established Human Resources Department form to appeal the Department Head's decision to the Director of Human Resources. The request must include a copy of the Department Head's response from Step 1. If no response was received, the Grievant must state so in the written request and must attach the form from Step 1.
- ii. Upon receipt of a proper and timely request to appeal, the Director of Human Resources shall convene an Informal Grievance Committee in accordance with established Unified Personnel Board policy.
- iii. The Informal Grievance Committee hearing shall be scheduled by the Director of Human Resources within 30 calendar days from the date grievant files the request to appeal the Department Head's response. Continuances for good cause shown may be granted by the Director of Human Resources.
- iv. The complete hearing shall be conducted in the Sunshine, in accordance with Florida Statute Chapter 286.
- v. The hearing shall be a fact-finding hearing at which both parties have the opportunity to be heard in person, to be represented by lay person or counsel, and to introduce testimony and evidence. Informal Grievance Committee

hearings shall be conducted in accordance with Unified Personnel Board procedures.

- vi. The result of the hearing shall be announced at the conclusion of the hearing.
- vii. The written decision of the Informal Grievance Committee shall be provided to the parties within 10 calendar days from the conclusion of the hearing.
- viii. An employee dissatisfied with the Informal Grievance Committee decision may proceed to Step 3 (unless the subject matter is limited to resolution at Step 2).

**d. Step 3: Unified Personnel Board Appeal of Grievance Hearing**

- i. Except as provided herein, either party may appeal the decision of the Informal Grievance Committee to the Unified Personnel Board by filing a written notice of appeal with the Director of Human Resources within 15 calendar days of the date of the written decision of the Informal Grievance Committee.
- ii. Failure to appeal within 15 calendar days shall be deemed voluntary waiver of a party's appeal right.
- iii. Unified Personnel Board appeals from Informal Grievance Committee decisions shall be conducted in accordance with the Unified Personnel Board's appeal procedures.





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3. When appeal, complaint, or grievance procedures are otherwise established for a particular issue or subject, those procedures shall apply.

### B. Non-Retaliation

Employees shall not be subjected to retaliation for using or participating in the grievance process.

### C. Time for Grievance

The Appointing Authority shall allow the aggrieved employee reasonable time to consult with the Human Resources Department and participate in the grievance process. However, the Appointing Authority is not required to provide the grievant unlimited work time to prepare or participate in the process. Time approved by an Appointing Authority during normal duty hours shall not be charged against the employee. Except for time at an informal grievance panel hearing, time spent by a grievant outside of the employee's normal duty hours shall not be counted as hours worked.

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Human Resources staff may advise the employees and Appointing Authorities regarding the grievance and appeal process but shall not act as a representative or advocate for either.

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3. A misapplication of an established departmental policy, procedure, or rule if that policy, procedure, or rule was approved by the Unified Personnel Board, as applied to the grievant;
4. Formally documented records of performance as determined under the County's prescribed performance management system;
5. Discretionary pay increase decisions.

## Level of Appeal Available

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Discipline: verbal & written warnings	Yes	Yes	Yes	No
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Formally documented record of performance	Yes	Yes	No	No
Discretionary pay increase decision	Yes	Yes	No	No

### F. Exceptions

1. Dismissals are not subject to grievance. Dismissals of regular status employees may be appealed directly to the Unified Personnel Board pursuant to Rule 6.
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4. Deferred or denied pay increased under Rule 3€ are not pay reductions under this Rule.

### G. Procedure for Grievance

Unless appeal, complaint, or grievance procedures are otherwise established for the particular issue or subject, the following procedure applies.

1. **Filing:** Grievances starting with Step 1 must be filed in writing on the forms provided by the Human Resources Department.
2. **Timing:** All steps in the grievance process must be taken within the time frames specified.
  - a. A grievance must be initiated as described within 15 calendar days from when the employee first becomes aware of the aggrieved situation.

- b. Failure of an employee to timely file a grievance or timely initiate any step in the process will result in rejection of the grievance without further action. Such rejection is final.

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If the end date falls on a weekend or County holiday, the due date shall be the next weekday.

#### **a. Informal Resolution**

An employee is encouraged to attempt resolution for his or her issue with the immediate supervisor or other appropriate level of management in his or her Department before proceeding to a formal grievance. In cases where the issue is not resolved, an employee may, within 15 calendar days of when the employee first becomes aware of the aggrieved situation, start the process at Step 1.

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- ii. Upon receipt of a proper and timely request to appeal, the Director of Human Resources shall convene an Informal Grievance Committee in accordance with established Unified Personnel Board policy.
- iii. The Informal Grievance Committee hearing shall be scheduled by the Director of Human Resources within 30 calendar days from the date grievant files the request to appeal the Department Head's response. Continuances for good cause shown may be granted by the Director of Human Resources.
- iv. The complete hearing shall be conducted in the Sunshine, in accordance with Florida Statute Chapter 286.
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- i. Except as provided herein, either party may appeal the decision of the Informal Grievance Committee to the Unified Personnel Board by filing a written notice of appeal with the Director of Human Resources within 15 calendar days of the date of the written decision of the Informal Grievance Committee.
- ii. Failure to appeal within 15 calendar days shall be deemed voluntary waiver of a party's appeal right.
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THE PINELLAS COUNTY  
UNIFIED PERSONNEL SYSTEM BOARD

IN RE:

Appeal of Termination

Brian Adkison,

Appellant,

v.

Appeal No. 22-3

Pinellas County Department of Safety &  
Emergency Services,

Appellee.

\_\_\_\_\_ /

**MOTION FOR RECONSIDERATION**

Appellee PINELLAS COUNTY DEPARTMENT OF SAFETY AND EMERGENCY SERVICES, pursuant to Section 11-1 of the Appeal Procedures of the Pinellas County Unified Personnel Board (“Appeal Procedures”), requests the Unified Personnel Board (“UPB” or “the Board”) reconsider its decision rendered at the termination appeal hearing which concluded on August 24, 2022, in this matter. A computer-generated transcript of the Board’s deliberations, provided by Board Records, has been attached hereto.

**I. Authority for Reconsideration**

The Appeal Procedures provide that a Motion for reconsideration, modification, or amendment “will be granted” if:

- a. The proposed modification or amendment is based upon evidence previously presented or is based upon newly discovered evidence which, by due diligence, could not have been discovered prior to the appeal hearing; and
- b. A showing is made that the Board’s decision was made through or based upon fraud, collusion, deceit, or mistake of fact or law.

*Appeal Procedures 11-1*

The Appeal Procedures additionally provide “[s]ome examples of appropriate cases for reconsideration” which are:

- a. The Board has overlooked or misinterpreted points of law or fact;
- b. There was a misrepresentation or misconduct at the appeal hearing by the Opposing Party; or
- c. There is a showing that false testimony or evidence was submitted.

*Appeal Procedures 11-1*

In the instant case, Appellee requests reconsideration of the Board’s Findings and Decision because the Board overlooked or misinterpreted points of law or fact. The Findings and Decision issued by the Board on August 26, 2022, found that the Appellee did not establish its burden of proof of violation by Appellant of Rule D24, which states “With a reasonable accommodation, the employee is incapable of performing the essential functions of the job position because of a mental or physical disability.” Appellee argues that this finding is contrary to the evidence presented before the Board as there was no reasonable accommodation before the Appellee to consider to accommodate Appellant’s lack of fitness for duty, and evidence to support that Appellant could not perform the essential functions of his job.

## **II. Grounds for Reconsideration**

The issues before the Board to consider in Appellant’s termination appeal were:

1. Whether the Appellant committed the activities for which he was terminated.
2. Whether the Appellant violated the following Personnel Rules:
  - a. D24: With a reasonable accommodation, the employee is incapable of performing the essential functions of the job position because of a mental or physical disability.
3. Whether termination was appropriate.

Deliberations of the Board focused on what reasonable accommodations exist for the Appellant. After Appellant’s fitness for duty examination with clinical psychologist Dr. Melissa Bailey, she determined that “Based on his clinical interview and **psychological testing**, it is the opinion of this examiner that Mr. Adkison is not fit for duty at this time.” (Stipulated Exhibit #14,

p. 287) (emphasis added). Dr. Bailey further recommends Appellant be “placed on leave from his employment for a **minimum of three months**” (emphasis added) and that after he receives “adequate therapy” he be re-evaluated prior to returning to work. Id. The leave of absence that Dr. Bailey recommends has never been requested as a form of accommodation by Appellant to the Appellee. Notwithstanding that a reasonable accommodation does not require an employer to wait indefinitely for an employee’s medical condition to improve (see Sweeting v. Hill, 2021 U.S. Dist. LEXIS 147485, \*11 (N. D. Ga. 2021)), the Appellant nonetheless never sought *any* accommodation from Appellee to regain fitness for duty. An employee does not trigger a duty on behalf of the employer to provide a reasonable accommodation unless he makes a specific demand for one. Palmer v. McDonald, 824 Fed. Appx. 967, 979 (11<sup>th</sup> Cir. 2020). Based on Dr. Bailey’s finding that Appellant is unfit for duty based on psychological testing, Appellee is without knowledge as to what reasonable accommodation will allow Appellant to regain fitness. Moreover, nothing in either Dr. Bailey or Dr. Lee’s reports indicates that Appellant will be fit for duty if Appellant is placed back on the night shift. All information provided to the Appellee regarding Appellant’s lack of fitness for duty indicates the lack of fitness is psychological, as opposed to unfitness due to a sleep disorder or sleep deprivation. The only contemplated accommodation is Dr. Bailey’s recommendation for an indefinite leave of absence, which is not reasonable.

Another focus of the Board’s deliberations is what specific essential functions Appellant cannot perform due to his disability. There was testimony that Appellant was performing his job duties satisfactorily, however, “an ‘employee’s ability to handle reasonably necessary stress and work reasonably well with others are essential functions of any position.’” Owusu-Ansah v. Coca-Cola Co., 715 F.3d 1306, 1311 (11<sup>th</sup> Cir. 2013) (quoting Williams v. Motorola, Inc., 303 F.3d 1284 (11<sup>th</sup> Cir. 2002)). In Williams v. Motorola, Inc. the court further noted that “an employer could

have lawfully required medical examination for employee who was hostile, made threats, and was insubordinate.” Williams, 303 F.3d at 1290-91. Based on the fitness for duty evaluation determining that Appellant is not fit for duty for psychological reasons, in addition to the various circumstances leading up to the request for the fitness for duty (including intimidation of a supervisor, vulgar and violent statements to a female colleague, and statements fearing harm to himself or others), Appellee based its employment decisions on the premise that Appellant does not meet the requisite mental requirements as an essential function of any position, similar to those referenced by the Owusu-Ansah court. Moreover, “[i]t would seem that a requirement that employees not pose a significant safety threat in the workplace would obviously be consistent with business necessity: a safe workplace is a paradigmatic necessity of operating a business.” Fitzpatrick v. City of Atlanta, 2 F.3d 1112, 1119 (11th Cir. 1993).

Termination of Appellant is the only appropriate result. Appellant has been determined to be unfit for duty by a clinical psychologist who recommends an indefinite amount of time for Appellant to regain fitness, in addition to Dr. Lee’s concurring opinion of lack of duty for fitness. Dr. Bailey’s recommendation of indefinite leave for *at least* three months, concurrent with psychological treatment, and a subsequent re-evaluation to determine if Appellant has regained fitness for duty, is unreasonable. Based on Appellant’s statement that he was concerned for the safety of himself and others, coupled with his lack of fitness for duty, Appellee continues to have legitimate ongoing concerns for the safety of Appellant, Appellee’s other employees, the workplace as a whole, and the members of the public who utilize the Regional 911 operations. Absent any accommodation request from Appellant that would address his lack of fitness for duty, Appellee had no other recourse but to terminate Appellant.



## CONCLUSION

It is appropriate for the Unified Personnel Board to reconsider its decision if there is a showing that the Board's decision was made upon mistake of fact or law. In the instant case, no reasonable accommodation was proposed for the Appellee to consider, and Appellant was deemed incapable of performing the essential functions of his job. Accordingly, termination was the only appropriate result under Personnel Rule D24. For these reasons, Appellee respectfully requests the Board reconsider its Findings and Decision in this matter.

## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that the foregoing has been furnished via electronic delivery to **Kimberly Crum, SHRM-SCP, Human Resources Director**, at [kcrum@pinellascounty.org](mailto:kcrum@pinellascounty.org), **Jennifer Moore, Esq.**, counsel for the Unified Personnel Board, at [Jennifer.moore@ogletree.com](mailto:Jennifer.moore@ogletree.com), **Brian Adkison, Appellant**, at [marineleo1012@gmail.com](mailto:marineleo1012@gmail.com), and **Kate Lilley, Advocate for Appellant**, at [kallegaldoc@gmail.com](mailto:kallegaldoc@gmail.com), this 8th day of September, 2022.

*/s/ Ashley N. Donnell, Esq.*

Ashley N. Donnell, Esq.

Florida Bar No. 100535

Senior Assistant County Attorney

Pinellas County Attorney's Office

315 Court Street, Sixth Floor

Clearwater, FL 33756

Phone: (727) 464-3354

Fax: (727) 464-4147

E-Mail address: [adonnell@pinellascounty.org](mailto:adonnell@pinellascounty.org)

Counsel for Pinellas County Department of Safety  
and Emergency Services

PCAO Doc. No. 397858

THE PINELLAS COUNTY  
UNIFIED PERSONNEL SYSTEM BOARD

IN RE:

Appeal of Termination

Brian Adkison,

Appellant,

V.

Appeal No. 22-3

Pinellas County Department of  
Safety & Emergency Services,

Appellee.

\_\_\_\_\_ /

**RESPONSE TO MOTION FOR RECONSIDERATION**

Appellant, Brian Adkison, asserts that the Unified Personnel Board (“UPB” or “the Board”) has properly found that the Appellee did not establish its burden of proof of violation by Appellant of Rule D24 and requests that the motion of Appellee to reconsider its decision rendered at the termination appeal hearing in this matter be **Denied**.

A copy of relevant excerpts of testimony and previously submitted evidence is attached hereto.

## I. Authority for Reconsideration

The Appeal Procedures provide that a Motion for reconsideration, modification, or amendment will ONLY be granted if:

- a. The Board has overlooked or misinterpreted points of law or fact;
- b. There was a misrepresentation or misconduct at the appeal hearing by the Opposing Party; or
- c. There is a showing that false testimony or evidence was submitted.

*Appeal Procedures 11-1*

The Findings and Decision issued by the Board on August 26, 2022, found that the Appellee **did** **not** establish its burden of proof of violation by Appellant of Rule D24, which states, “With a reasonable accommodation, the employee is incapable of performing the essential functions of the job position because of a mental or physical disability.” The Board carefully and properly weighed and considered all facts, laws, and evidence presented before them. The finding by the board is completely consistent with all the evidence and testimony presented before the Board. There were numerous reasonable accommodations available for the Appellee to Consider, and there was absolutely NO evidence presented to support the notion that Appellant was ever unable to perform any of the essential functions of his job.

## II. Grounds for Denial of Reconsideration

Appellee indicated that there were numerous potential accommodations available that they themselves agreed were reasonable, and provided a two page memo to Appellant on January 26, 2022 detailing these possible accommodations. (*Attached*) Furthermore, as part of the fitness for duty exam, Dr. Bailey, confirmed that she concurred with the reasonable accommodations recommended by Appellant’s treating Physician and also recommended other possible alternate/ additional accommodations. Prior to this, the Appellant spent almost 8

(eight) months requesting any accommodation for his disability and Director James Fogarty acknowledged in his testimony before the Board that throughout this entire time period he never proposed, suggested, or offered **any** alternate accommodations prior to his January 26<sup>th</sup>, 2022 memo to the Appellant. The Appellee's protracted failure to accommodate is certainly neither the fault, nor responsibility, of the Appellant.

The Appellee has cited in their own motion, "*An employee does not trigger a duty on behalf of the employer to provide a reasonable accommodation unless he makes a specific demand for one. Palmer v. McDonald, 824 Fed. Appx. 967, 979 (11th Cir. 2020).*" The Appellant made **numerous and repeated** demands for accommodation and provided an abundance of supporting evidence from his treating Physician explaining why the accommodation was necessary and what the effect would be if no accommodation was provided. Evidence of all of this correspondence was submitted to the Board. **By Appellee's own argument and provided case law, a legal duty has been triggered requiring them to provide Appellant with an accommodation.** Appellee clearly failed to meet this duty, and they have provided no testimony or evidence to the contrary.

Even after the January 26<sup>th</sup>, 2022 email/ memo, Appellee made absolutely no effort to implement, or even further discuss, their own proposed accommodations and terminated Appellant instead. Appellee also made no effort to ask Dr. Lee or Dr. Bailey to evaluate **any** of these own specific proposed accommodations, nor did they even tell the evaluating Doctors about the accommodations that were suggested by Appellant's treating Physician.

Appellee has argued that *“nothing in either Dr. Bailey or Dr. Lee’s reports indicates that Appellant will be fit for duty if Appellant is placed back on the night shift.”* Dr. Bailey specifically addressed this issue in her statement presented to the Board. She stated she agrees the accommodations proposed by Appellants treating Physician are reasonable, and they would adequately address the barriers caused by his disability. (Attached). She confirmed that she herself would have suggested these accommodations if given the opportunity to do so.

Dr. Bailey further specifically clarified that Appellant’s lack of fitness for duty is NOT psychological, and that in the psychological testing she found **absolutely no clinically significant symptoms**. Dr. Bailey’s concerns were based on Appellee’s protracted failure to accommodate and on the disruption of Appellant’s circadian rhythm that had caused him to be exhausted and unable to obtain adequate sleep due to his disability being exacerbated. Furthermore, in regards to her recommendation that Appellant be placed on leave for three months to address these concerns, Appellant has now been “on leave” for eight months, (nearly 3 times what was recommended), allowing him time to rest and recover from the sleep deprivation caused by Appellee’s failure to accommodate.

Neither Doctor who was hired by the County ever determined that Appellant was unable to perform any of his job duties. Quite to the contrary, Doctor Bailey specifically stated, **“..I think he can perform his job. I think he needs an accommodation.”** Doctor Lee also stated, **“...I have never said that he was incapable of performing any jobs for the employer.”** Doctor Lee further advised that he did not personally ever find Appellant unfit for duty at all and was just

following the indication of Doctor Bailey who believed she was unable to provide any information about possible accommodations without providing a full report. Doctor Lee also stated in his deposition that he was erroneously under the opinion that the Appellee did not want any information about possible accommodations and as such, he did not make any recommendations. Appellee failed to follow up, or make any additional inquiries on the matter when Doctor Lee omitted any opinion on possible accommodations from his report. Again, the failure of the Appellee to follow through on their legal duty to provide Appellant with accommodations for his disability is neither the fault, nor responsibility, or the Appellant.

Appellant has **never** posed any type of safety threat, and Appellee themselves testified Appellant engaged in no action, made any statements, or anything else that could even lead them to believe otherwise since he repeated a bootcamp quote ELEVEN (11) months ago. Director James Fogarty also testified before the board, and documented via email that was submitted into evidence, that prior to Appellant's return to work in early December 2021, they completed a thorough investigation, (with **three** separate agencies including a specially trained threat assessment unit), determined his only act of misconduct to be an **isolated** incident, (for which he was already disciplined), and also determined that there was **no cause** to question his fitness for duty exam based on this isolated incident. Appellant's two months of continued email requests to be granted an ADA accommodation after that time, while he was continuing to complete all of his job duties, posed absolutely no threat to anyone, and would have been completely unnecessary if Appellee had at any point acted upon their **legal duty** to provide Appellant an accommodation. Furthermore, numerous supervisors and employees testified

before the Board they personally do not find Appellant to be any threat at all and that they have never heard any other employees outside of Management ever express otherwise. This included testimony of numerous co workers who were present when Appellant repeated the quote to another co worker in November and they testified even that statement caused them absolutely no concern about any safety threat as it was part of a conversation shared in a joking manner and not a direct statement made in any violent manner. Appellee's ongoing assertion and unsubstantiated allegations that Appellant is a safety threat are motivated only by the nature of his disability, and are just a continuation of their discriminatory treatment against Appellant in violation of the law. There has been absolutely no evidence presented to show that there was ever any type of legitimate threat or safety risk. *"A person with a disability must not be excluded, or found to be unqualified, based on stereotypes or fear. Nor may a decision be based on speculation about the risk or harm to others. Decisions are not permitted to be based on generalizations about the disability but rather must be based on the facts of an individual case and must consider potential reasonable accommodations."* The law also additionally states, *"If the threat can be "reduced" by a reasonable accommodation so that the person is no longer a significant risk of substantial harm, then there is no direct threat."* 29 C.F.R. § 1630.2(r); *see also* EEOC Interpretive Guidance, *supra* note 20

### **CONCLUSION**

It is appropriate for the Unified Personnel Board to reconsider its decision if there is a showing that the Board's decision was made upon mistake of fact or law. The Board has made no such mistake and has carefully and accurately weighed all of the relevant facts and laws.

In the instant case, numerous reasonable accommodation were available for the Appellee to consider, including those which were proposed by Appellee themselves, but then never implemented. Appellee has **two** separate medical opinions recommending specific reasonable accommodations to them. Additionally, as previously documented by the Board, Appellee **failed to prove** that Appellant has ever been unable to perform any of his job duties and they presented no evidence to support their allegations on this matter.

For these reasons, Appellant respectfully requests the Board **DENY** the Appellee's Motion to reconsider its Findings and Decision in this matter and direct Appellee to **immediately** reinstate Appellant as the Board previously ordered six weeks ago.

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing has been furnished via electronic delivery to Jennifer Moore, Esq., counsel for the Unified Personnel Board, at [Jennifer.moore@ogletree.com](mailto:Jennifer.moore@ogletree.com), and Ashley Donnell, counsel for Appellee, at [adonnell@pinellascounty.org](mailto:adonnell@pinellascounty.org), this 26th day of September, 2022.

Brian Adkison

(Appellant)



DISCLAIMER: This document provides a largely unedited version of a transcript produced using automated voice-recognition software and should not be relied upon for complete accuracy or used as a verbatim transcript, as it will contain additions, deletions, and/or words that did not translate correctly.

## **Unified Personnel Board Special Meeting**

Wednesday, August 24, 2022 • 5 th Floor Assembly Room 315 Court Street, Clearwater

### **(Excerpt of deliberations & voting transcript)**

#### **Ralph Reid**

I'm less hung up on the reasonable accommodation piece and I think you hit the nail on the head. I feel like the county dropped the ball on just asking for a fit for duty, not fit for duty without specifying what a central functions he was not to perform. And that to me is where I'm also struggling is does that ultimately mean that you just terminate someone because, you know, there's some somewhere nebulous idea that they're unfit to perform some certain duties, and I haven't heard articulated what those duties are.

#### **Joan Vecchioli**

right. I think it's a burden of proof to show what the duties are and he was unable and capable of performing. And I just haven't heard any evidence of that.

#### **William Schulz**

More evidence to the contrary, actually. He did a fine job.

***Excerpts from the deposition of Dr. Lee previously provided in its entirety to the board and accepted in lieu of live testimony.***

(EXCERPT 1)

Q. Did you personally conduct any type of physical or medical examination of Mr. Adkison or did you only have just that short five-minute and 49 seconds with him as your evaluation?

A. No, we just had a brief conversation about the situation. And I told him that I understood the situation and understood what was at stake, and I wanted to, you know, get him to an evaluation so that he could, you know, have a -- have that specialist render, you know, the testing and give us an opinion on his neuropsychological condition.

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(EXCERPT 2)

Q. Does the job description for Mr. Adkison's job list a minimum IQ score on it, a minimum level of hand-eye coordination --

A. No, it doesn't. For those questions you would have to ask Dr. Bailey, because that is part of her -you know, that is part of her evaluation for neuropsych. I do not have any training in the neuropsych, and those tests, you know, I -- it is outside out of my scope.

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(EXCERPT 3)

Q. So when you conducted your evaluation, what did you determine about when his disability suddenly caused him to become unable to perform his job duty, since he was in fact actually performing them all the way up until management removed him on February 1st, two-thirds of the way through his shift?

A. I mean, I knew he was performing his job duties until he sent that email that management determined was of a concern, where he cited his sleeplessness and drowsiness.

Q. So when you completed your opinion -- I have another copy right here. When you completed this opinion that you faxed over immediately after the evaluation, what did you conclude about when he suddenly became unfit for duty and was unable to perform his job duties?

A. Whenever he sent the email.

*Excerpts from the deposition of Dr. Lee previously provided in its entirety to the board and accepted in lieu of live testimony.*

Q. So when he hit "send" on that email button? Prior to that he was fit for duty and capable of performing his job functions, but after the email went through the computer, he was no longer capable?

A. That is correct.

Q. And in looking over the job description, could you tell me what specific jobs duties you found that Mr. Adkison is unable to perform?

A. He said he was too drowsy to perform.

Q. Did he say that?

A. I mean, I am paraphrasing what was in the email

Q. Let's look at that email again, because I am fairly sure that isn't what he said.

A. He said that he was a danger to...

Q. I am sure he didn't say that either.

A. Whatever it says, okay; I do not have a memory of his email verbatim.

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(EXCERPT 4)

Q. So you did not personally find any medical basis for him not being fit for duty at all?

A. I was told he was not fit from a neuropsych standpoint, and, therefore, I did not mark him as fit for duty.

Q. Now, you testified earlier that you were sending him out to Dr. Bailey because you had no expertise in that area. You also testified as to the specifics of the exam that was conducted, that that is not your area of expertise, and you knew nothing about those tests. So how was it, if Dr. Bailey provided you with that report and you have no expertise in that area and no expertise with his disability, that you were going to make more of a determination than Dr. Bailey was?

A. I was going to be able to review the report and sympathize the information on -- I do not know, you know, like, I was not given any -- she could not reveal any specifics of that report, so I did not know why she said he was not fit, and she recommended he go to therapy. And I wasn't even -- I was not even aware of what type of therapy she recommended.

*Excerpts from the deposition of Dr. Lee previously provided in its entirety to the board and accepted in lieu of live testimony.*

Q. So you were just following with her opinion, from what your email said; is that correct?

A. That is correct.

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Q. So if every job description in Pinellas County, including these two, have a requirement of mental acuity and the ability to make rational decisions, was it your opinion at the time that he was unable to perform any job description -- or any job that had that in the description?

A. That was not -- that's also not relevant. **I have never said that he was incapable of performing any jobs for the employer.**

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*Excerpts from the deposition of Dr. Lee previously provided in its entirety to the board and accepted in lieu of live testimony.*

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**From:** Fogarty, Jim <[jfogarty@co.pinellas.fl.us](mailto:jfogarty@co.pinellas.fl.us)>  
**Sent:** Wednesday, January 26, 2022 4:16 PM  
**To:** Adkison, Brian L <[BAdkison@co.pinellas.fl.us](mailto:BAdkison@co.pinellas.fl.us)>  
**Cc:** Weshinsky-Price, Judith <[jweshinsky-price@co.pinellas.fl.us](mailto:jweshinsky-price@co.pinellas.fl.us)>; Peterson, Michelle <[mpeterson@co.pinellas.fl.us](mailto:mpeterson@co.pinellas.fl.us)>; Hare, David <[dhare@co.pinellas.fl.us](mailto:dhare@co.pinellas.fl.us)>; Fogarty, Jim <[jfogarty@co.pinellas.fl.us](mailto:jfogarty@co.pinellas.fl.us)>  
**Subject:** Response to ADA accommodation interactive process

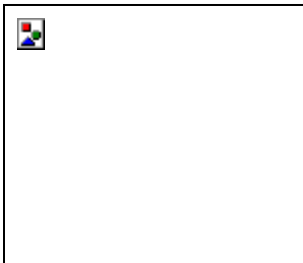
Brian

Sorry for the delay but attached you will find my response to the email you had sent. To assure we reference the correct emails, I have copied the text of your email and included it in the body of the response memo

As always I remain open to hearing of further concerns and which of these suggestions might work

Jim Fogarty

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## Department of Safety & Emergency Services

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### MEMORANDUM

**TO:** *Brian Adkison*

**FROM:** **James Fogarty**

**SUBJECT:** **Interactive process on accommodation request**

**DATE:** **Jan 26<sup>th</sup>, 2022**

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Brian

In response to your email to me sent Friday, January 21<sup>st</sup>, 2022 the text of which is appended to this memo below. I am willing to consider the items listed below as reasonable but cannot agree to lowering your scheduled hours or you're working from home in your current position. As you have been previously advised, it is an essential function of your position to be scheduled for up to 48 hours. The goal of accommodation is to find a way to accommodate an employee to meet the essential functions, not to remove them.

The interactive process contemplates accommodating the individual in their current job, and that is our first focus and remains the reason I have been asking for suggestions from you or your treating provider besides returning you to the night shift which has been denied. I reviewed the items you listed as suggestions and asked if I thought they were reasonable in response to my request for suggestions. Based on the desire to try to accommodate you in your current position and in response to the listed suggestions you made, I have the following responses:

1. I am willing to consider a different daytime schedule, one that has you assigned during high call volume times when we also can have the necessary supervision present. I am willing to consider assigning you a shift that has a start time after 06:00 and end time as late as 22:00, so long as the shifts did not exceed 12 hours. Shift duration in the center is usually 8, 10 or 12 hours but we would consider a different shift duration, although not a shift more than 12 hours if you are interested in that type of shift.
2. I am willing to work with you on a schedule that includes at least one weekday off, to the extent that we can arrange your schedule for up to a total of 48 hours within the times outlined above.
3. I am willing to consider adjustments to the scheduling of breaks without extending the total length of your shift or total hours in a workweek. Our practice, as you know, is to allow breaks as needed for very short periods such as restrooms breaks or stress relief after troubling call, and we schedule lunches. We also allow everyone to sign up for planned break times they choose each shift. We currently provide all telecommunicators the following:
  - On an eight (8) hour shift we provide two paid 15-minute breaks and one unpaid 30-minute lunch.

- On a ten (10) hour shift we provide three paid 15-minute breaks and one unpaid 30- minute lunch.
- On a twelve (12) hour shift we provide three paid 15-minute breaks and one unpaid 30- minute lunch
- Breaks ad hoc after difficult calls or for bathroom use.

I would be willing to consider additional or a different configuration of breaks, or a more formal structured break time arrangement within your approved shift if you think this will help you work your assigned shift. However, I need specifics on what you are seeking in the way of duration and frequency since our priority is to ensure proper coverage in the center. In addition to hearing your specifics on this request, I will need a written opinion from your treating provider that the specific request is needed due to your medical condition.

4. I am not willing to consider allowing you to put your head down on the console and rest or nap in between active calls. When you are on duty, you are required to be alert 100% of the time and ready to answer an emergency call. I am not willing to allow work at home nor reduction in workhours to less than 48 hours which are considered essential. As stated, in previous memos, I am willing to not require anything more than 48 hours (mandatory standby or overtime) as long as you can work the essential 48 hours.

Please advise when you wish to discuss these points or respond in writing to which ones you believe might be beneficial in helping you perform your essential functions.

If we are unable to identify a reasonable accommodation that will let you perform your essential functions, or we try and the accommodations are unsuccessful, I am willing to review any available positions into which a transfer might be made. I can provide you list of vacant positions that could be considered for a transfer and, if you are interested in any of them, would be willing to follow up with the hiring managers to determine whether they are intending to fill those positions. Alternatively, I could provide you a list for those which could be considered and are part of a current recruitment. Of course, the availability of any vacant position is subject to change, but the information would be a starting point.

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## Crum, Kimberly

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**From:** Fogarty, Jim  
**Sent:** Thursday, February 17, 2022 8:51 AM  
**To:** Benedict, Lourdes  
**Cc:** Crum, Kimberly; Hare, David; Mangicaro, David A  
**Subject:** RE: ADM Leave with Pay request

Lourdes

In order to process payroll for Mr. Adkison they need confirmation and approval by County Admin. That can take the form of acknowledgement and ok via response to this email and we will append the email to the timesheets

The evaluation for Mr. Adkison has been scheduled

**From:** Fogarty, Jim  
**Sent:** Wednesday, February 2, 2022 11:40 AM  
**To:** Benedict, Lourdes <lbenedict@co.pinellas.fl.us>  
**Cc:** Fogarty, Jim <jfogarty@co.pinellas.fl.us>; Crum, Kimberly <kcrum@co.pinellas.fl.us>; Hare, David <dhare@co.pinellas.fl.us>; Mangicaro, David A <dmangicaro@co.pinellas.fl.us>  
**Subject:** ADM Leave with Pay request

Lourdes

Once again SES finds it necessary and proper to place one of our day time telecommunicators on administrative leave while HR assists the department with a Fitness for Duty evaluation regarding statements made in email correspondence. We conducted a review of those statements and the entirety of the situation and a unanimous opinion from RISK, LEGAL, HR and SES concluded concern regarding the fitness for duty regarding Brian Adkison in is position as Public Safety Telecommunicator -2 in working upon the 911 lines and radio

We have relieved him of that duty as of February 1<sup>st</sup> 2022 and changed his supervisor from Michael Sloan to Dave Hare to simplify communications with him. I have requested HR expedite their role in arranging for the benefits office to assign a point of contact for arranging the evaluation by a credentialed professional to form the needed opinion for his status

I appreciate this is the second time this employee has been placed upon Adm Leave with pay and that is not to be ignored. At that time of the previous issue, fitness for duty was discussed but the previous event (violation of workplace violence and harassment) seemed limited to that event and the use of the ADA interactive process had hopes of accommodating his identified disability. Based upon the documents that have been sent since the previous events and consultation with those mentioned above, the prudent course of action at this time is remove him from his work assignment based upon his own comments that he has grave concerns about his own safety and the safety of others (His comments to me via email)

I will keep you updated on this situation



***Excerpts from the statement of Dr. Bailey previously provided in its entirety to the board and accepted in lieu of live testimony.***

(EXCERPT 1)

Speaker 1: And on the social- emotional or psychological parts of the testing, you noted on the one test that there were absolutely no clinically significant symptoms. And on the other one, the only thing you noted is that he tends to be somewhat introverted and he was showing some anxiety related symptoms. Is that correct?

Dr. Bailey: That is correct.

Speaker 1: Is there anything about his job description that says people who are introverted or people with any symptoms of anxiety are not qualified for the job?

Dr. Bailey: No.

Speaker 1: Dr. Bailey, do you think facing the potential loss of your job and loss of income would cause anxiety for pretty much anyone and everyone?

Dr. Bailey: Yes, it would. And that's why I offered to fill out his family medical leave act and help him with short term disability.

Speaker 1: Okay. So even outside of any disabilities, it probably would've been more abnormal given the circumstances, if you didn't see symptoms of anxiety, is that correct?

Dr. Bailey: Most likely.

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(EXCERPT 2)

Speaker 1: So medically speaking, someone with this particular disability who already struggles with stress, insomnia, anxiety, if their work schedule was suddenly increased, and then their sleep schedule was disrupted, and their sleep was decreased, you would reasonably anticipate that that would exacerbate their disability?

Dr. Bailey: That's correct.

Speaker 1: So would you think it was reasonable or even medically recommended and preferable for that person to ask and ask for help in addressing these issues before it escalates to a catastrophic situation?

Dr. Bailey: I would hope so.

Speaker 1: And that's exactly what Mr. Adkison and his physician did over, and over again, for months, is that correct?

Dr. Bailey: Correct.

Speaker 1: And those specific types of effects, are exactly what Mr. Adkison's own doctor also tried to caution management could potentially occur. Isn't it?

Dr. Bailey: It looks like it.

Speaker 1: Do you believe based on your education, experience, and professional expertise that these things that Mr. Adkison was asking for, to work only 44 hours a week, to be allowed to have weekdays off that he previously had off for the last five years so he could attend his regular doctor's appointments, and to be allowed to stay on the same shift he had been on for years. Are those all reasonable things that likely would've helped Mr. Adkison's disability so that as his own physician had said, he would be able to safely and effectively perform his job without jeopardizing his own health or risking the wellbeing of others?

Dr. Bailey: Yes. They are

Speaker 1: So when you completed your testing, did you find that Mr. Adkison was so mentally deficient and cognitively impaired that he would be unable to perform any type of job functions at all? And he should just sit at home permanently unemployed for his own safety and the safety of others because he is not mentally capable of completing any work?

Dr. Bailey: That's not what my report says at all

Speaker 1: Right, that's what I'm asking you to clarify.

Dr. Bailey: No, I did not say that.

Speaker 1: And during the fitness for duty exam, were you given the opportunity to review any other positions that Mr. Adkison could have transferred into something like a records type position that potentially would've been a less stressful position for him?

Dr. Bailey: No.

Speaker 1: Would it surprise you that Dr. Lee made that determination for you and told the county that if you said he was unfit for one job he's unfit for any job?

Dr. Bailey: That would not have been my opinion.

*(Excerpts from the statement of Dr. Bailey previously provided in its entirety to the board and accepted in lieu of live testimony.)*

(EXCERPT 3)

Dr. Bailey: No, because he clearly stated that he has a disability that going back to work on a regular schedule would not be effective for him,

Speaker 1: But going back to work with an accommodation would be possible?

Dr. Bailey: Absolutely. And I told that him that during our evaluation.

Speaker 1: So if Pinellas county indicated that they would like to know, Is there an accommodation that would allow him to effectively perform his job duties? You believe that with an accommodation, he can perform his job duties?

Dr. Bailey: Yes. I told him actually I would specifically put that in my report. And if they refused to give him the accommodation that I outlined after they had me do the fitness for duty, then he would definitely have a case against them.

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(EXCERPT 4)

Speaker 1: Did you review or consider any specific accommodations that would make Mr. Adkison fit for duty in his current position, such as returning him to the night shift or granting him the reduced hours that his physician recommended?

Dr. Bailey: I did.

Speaker 1: **And are those specific accommodations things that you believe would make him fit for duty?**

Dr. Bailey: **Yes.**

Speaker 1: After reviewing all of the performance reviews and emails that the county alluded to, but didn't provide you, and in looking over his job description now, can you tell me, **is there any specific job functions that you believe Mr. Adkison is unable to perform? Or is it just a matter of you believe he should be given an accommodation?**

Dr. Bailey: No, I think he can perform his job. I think he needs an accommodation.

Speaker 1: Is there anything you that I didn't cover? Okay. Dr. Bailey, do you swear that all of your testimony has been the truth, the whole truth and nothing but the truth so help you God?

Dr. Bailey: I swear.

*(Excerpts from the statement of Dr. Bailey previously provided in its entirety to the board and accepted in lieu of live testimony.)*

*DISCLAIMER: This document provides a largely unedited version of a transcript produced using automated voice-recognition software and should not be relied upon for complete accuracy or used as a verbatim transcript, as it will contain additions, deletions, and/or words that did not translate correctly.*

# Unified Personnel Board Special Meeting

Wednesday, August 24, 2022 • 5<sup>th</sup> Floor Assembly Room 315 Court Street, Clearwater

**PRESENT:** Joan Vecchioli, Chair; Ricardo Davis, Vice-Chair; Ralph Reid; Ken Peluso; and Bill Schulz

**OTHERS PRESENT:** Jennifer Monrose Moore; Kimberly Crum; Sarah Rathke; and other interested individuals

**CALL TO ORDER:** 3:19 PM

## **Jennifer Monrose Moore**

right and before I provide the issues that are before you for your deliberation, because we've had a lot of different kinds of evidence and a lot of different kinds of testimony. I pulled up the 11th circuit court of appeals, standard jury instruction on what is evidence and what is not evidence, just so you have some guidance for it. You must decide the appeal on only the evidence presented here at the hearing. Evidence comes in many forms. It can be testimony about what someone saw, heard or smelled. It can be an exhibit or a photograph and it can be someone's opinion. Some evidence may prove the fact indirectly. Let's say A witness saw wet grass outside and people walking into the courthouse carrying wet umbrellas. This may be indirect evidence that it rained, even though the witness didn't personally see it rain, indirect evidence like this is also called circumstantial evidence, simply a chain of circumstances that likely proves a fact as far as the laws concerned or the issues that you will be deliberating it makes no difference whether evidence is direct or indirect. And you may choose to believe or disbelieve, either kind. Your job is to give each piece of evidence whatever weight you think it deserves. What is not evidence during the hearing, we've heard certain things that are not evidence and you should not consider them.

## **Jennifer Monrose Moore**

First, the advocate statements and arguments and their questions are not evidence. It's what the witnesses answered and what the documents that you received as exhibits that you should be considering. The opening and closing arguments are also not evidence so if it is a situation where an advocate misquoted what the evidence was,

you're not to take into consideration what their arguments are as evidence. The evidence, again is what the witnesses testified to and what was provided to you in the form of statements that you chose to accept as well as the exhibits that were provided to you. Okay. Just a little reminder from a hardcore litigator. So in rendering your findings in your decisions regarding the term regarding termination appeals the Board shall decide the following issues first, does the board find that the appellant committed the activities for which he was terminated? If you find that the appellant did not commit the activities for which he was terminated, this is the inquiry and the appeal finding is in favor of the appellant. If the answer to the question is yes, and the board would proceed to the next issue.

**Jennifer Monroe Moore**

That issue is does the board find that cause existed for the disciplinary action in that the activities found to be committed by appellant violated the personnel rules cited by the appellee Appointing Authority in this case. It's a little bit different because the rule charged is D 24. With a reasonable accommodation is the employee incapable of performing the essential functions of his job position because of a mental or physical disability? If the board finds that the action committed does not violate any of the personnel rules cited, this is the inquiry and the appeal findings His favor of the appellant if the answer to the question is yes for any of the personnel rules cited then the board proceeds to the next issue. The next issue is if the board finds the action taken was not appropriate than it shall remand the matter to the Appointing Authority for the recommended alternative disciplinary action, which shall be considered by the board before it renders its final decision. Okay. Any questions from the board on what you're deliberating?

**Ken Peluso**

Not a question but a request? What you just read? Can we see that on the screen?  
Please

**Jennifer Monroe Moore**

You actually have this.

**Ken Peluso**

I know we had it. I thought we were going to have access to it on the screen.

**Jennifer Monroe Moore**

Can we put the rule up? I think I think that's really the only thing that you need to have because I because I've written all over what I just read. So no. Can we so so the first issue is do you find the appellant committed the activities for which he was terminated in

this case, because the rule is D 24, it's a slightly different and nuanced deliberation that you have from the normal progression of the rule. So I think that if you focus on the rule, which is D 24. And if we have a copy of that, that we can put up that'd be great.

**Joan Vecchioli**

I think I can take it out of my binder.

**Jennifer Monrose Moore**

That would be fabulous Yeah, that would be great. It's

**Joan Vecchioli**

when we pull it out. And again,

**Jennifer Monrose Moore**

that is with a reasonable accommodation. Is the employee incapable of performing the essential functions of his job position because of a mental or physical disability?

**Joan Vecchioli**

I know I just can't for me to see if I can. It's the it's what's the disciplinary rule here? Here we go. I got it. Uh huh.

**Jennifer Monrose Moore**

There we go. Thank you.

**Jennifer Monrose Moore**

And that is really the ultimate issue that you need to be deciding. So it's second on the bottom

**Joan Vecchioli**

so um, because the first question gets to does, personally, I think these are all so integral, entwined, that I'm not sure if we can do our normal bifurcated step by step analysis. So because the rule includes the concept of a reasonable accommodation there's there's different factors of the rule that we're going to try to break down. But why don't we open it up for discussion first, sure. As we're trying to kick the tires on this, okay.

**Ken Peluso**

I've listened to everything. Read what I could read a few 100 pages prior to the last hearing. I think we have to look at can't just look at the depositions. We can't just look at the job performances, we look at the totality of the entire situation. And I think one thing

that quite frankly, I'm a little disappointed that we didn't hear enough is the effect of all this on the general public because we're talking about the EMS system. Any malfunction in the EMS system affects every Pinellas County resident and that's what what's keeps ringing in my head. Personally, I feel that obviously, the appellant did commit the initial circumstances which brought about the exam which brought about the dismissal. And I think the key thing in rule D 24 is reasonable. The key word is reasonable with a reasonable accommodation. Yes, if the accommodation was that eat Mr. Adkison and simply switching back to a nightshift, but is that reasonable in light of the entire circumstances and rely to the effect in light of the effect it will have on the department and again, subsequently the end result that has on the general and I think all reasonable accommodations were made. So I think that I would vote to withhold the county's decision. Would you say wait, hold up, hold on, sorry. I heard I say withhold. I meant to say uphold. So I apologize. I'll pull the carries decision determination. And I'll put that in the form of a motion.

**Joan Vecchioli**

Okay, well, you can you can make that motion. If somebody wants a second, or we can we can keep our discussion going. If we don't have to second

**William Schulz**

I just have a few concerns I just want to throw out there so how, how you guys feel about it. Is there any way we can put the Dr. Bailey letter back up? Can we still look at that or

**Joan Vecchioli**

the letter or the transport letter letter letter? Right?

**William Schulz**

Well, basically where it states that Okay, first of all, the management wants to hang their hat on the doctors opinions. Right. But in that opinion, at least if I read it correctly from Dr. Bailey, she recommends that he needs three months treatment and then evaluation. Is there a situation where there's long term disability that he could have taken and had this treatment, and then being reevaluated and then the decision be made, if he should be terminated? And then, you know, on the flip side, the fact that Mr. Adkison did not want to testify, bothers me a little bit, and then also the fact that we did not hear from Miss Howard. Other than that, that's, I'm conflicted.

**Ken Peluso**

And can I make another comment? I agree with you regarding feeling conflicted after reading the depos and the correspondence from the physicians. However, again, you

have to look at the totality the entire thing. That's that was the evidence that they use to make the determination. However, the overall determination encompass multiple factors that during Mr. Fogarty, his testimony, he repeated 10 or 15 times.

**Ralph Reid**

I also, two minds a bit conflicted on it, but ultimately, to me, the question comes down to for what reason was Mr. Adkison terminated and what I heard repeatedly from every single person because I asked or actually asked, for what reason was he terminated? Well, he was deemed not fit to perform the job. And to me, then that that does open the possibility is that yes, that's, you know, we're going down that road towards D 24. Because they had medical documentation in this instance from two providers that indicated he was not fit for duty, that the reasonable accommodation piece hangs me up a little bit, because obviously, we've seen the documentation that says, hey, here's some alternative things. But, you know, is that reasonable or not, I don't think is under our birds per our board's purview to make a determination of what courses of action would be reasonable or not reasonable in, you know, whether that we give them three months leave of absence, come back, whatever it may be. And so we have to go with what we're presented, and we're told, We advocated we had a conversation about what was reasonable, and we were unable to to meet his demands. So I'm of the mind that it was probably appropriate to charge with that rule. I just not sure if ultimately, the action that was taken in the termination was where it should have been. I want to hear more from you all.

**Ric Davis**

Yeah, I guess I have to

**Joan Vecchioli**

oh wise one.

**Ric Davis**

Well, as as wise as I can. I don't think there's a question in my mind that that was a challenge the management managing, Mr. Adkison, that goes without saying the real question is whether or not I think they met D24, and I don't believe they did. I don't find that anything that he did, violated D24. And I think that part of the question is Was there an accommodation, that bit of work of and I think there was, management chose not to choose that accommodation, but it is hard for me to understand that it would have been an unreasonable accommodation by Pinellas County government, given the size and the totality of the county government budget to accommodate what Mr. Adkison thought might have been reasonable. So I think that that might have been a missed opportunity.



**Ric Davis**

You know, the fitness of duty. It's probably something for me, because I have experience with a lot of beauty. Trust me when I tell you that I've been an HR almost 40 years and I've done a lot of them. But when it's compounded with a lot of additional information, I think it puts the physicians on the spot I'll read through as quick as I can. The physicians report and I can see that they are having trouble getting their arms around whether or not it is a typical fitness for duty or as a fitness for duty with these additional kind of a consideration about his potential, which there is nothing that has been presented in the two days that I'm missing that supports you know, this belief that somehow we was a danger and I notwithstanding the fact that it's very important job. I don't think there's a question about it. We hope that all of the employees who do this job for the county are fit for duty and discharge the essential function of their job. And I think that from everything that I've listened to, it sounds like this is not a job performance issue. This is not a question about whether or not he could do the essential function of job. It's a question about whether or not Mr. Lee was dangerous. Or present the danger to the county organization and or to the public. And I don't find that notwithstanding the comments that he's made. So I'm not going to support the county's position on this particular issue.

**Joan Vecchioli**

Okay, so I want to make some comments. I think it's a red herring to talk about discrimination and retaliation. I don't I feel the evidence as it was presented supports management decisions that were made up until final termination. I believe that there was good faith. I believe that Mr. Adkison's own admissions support the inappropriate behavior that occurred. I think it was in management's prerogative to try to address that the best way they could. I don't think sending him for fit for duty exam was retaliation or an attempt to try to exit him from the organization. It was based upon his own statement. And it could have raised a legitimate concern to evaluate. Where I'm struggling is the very nature of their solution is what put him in the situation that rendered him incapable of performing the essential functions, at least from everything that I've read in the record. I didn't find anything where the doctors talked about his mental health being a threat or he was going to harm someone. I think from everything we've heard, it was a direct function of sleep deprivation. And anyone who suffers with any of those conditions knows that that is an extreme aggravation of those underlying medical conditions, which I believe meet the definition of a mental or physical disability. And I think that if the essential functions, as the doctor's reports talked about, or mental acuity, and maybe he wasn't as sharp there was a potential for that. But I'm struggling with the reasonable accommodation.

**Joan Vecchioli**

And why I'm struggling is although the county may have felt it wasn't reasonable, I still think they could have accommodated the supervision on the night shift that they were trying to achieve on the day shift when an employee has a specific sleep issue. That to me is when you have to start going to the next level of the interactive process and additionally, if they felt that the doctor I think the fitness for duty is like a game of telephone in this case, you have one professional making an evaluation and recommending it to another professional, who has some blinders on and then that professional is giving it to management, who has even more blinders on, because there's no explanation of what essential functions he couldn't do, or what reasonable accommodations could be made other than Dr. Bailey. Who said, there would be a recommendation of I believe I read a three month leave of absence. And I don't think it's reasonable to say on the one hand, there's an FMLA request, but because that's handled administratively, we're not required to know about that. I mean, you're still your county employee. So even though he's applying for FMLA and he didn't specifically ask you I assume the county was provided with Dr. Bailey's report. And Dr. Bailey's report said a three month leave of absence so was that not a reasonable accommodation that required some level of discussion? And then I go one step further and say even assuming all that's true, was if you look at the offenses demotion or dismissal are two alternatives in this situation. I don't I don't hear anything about demotion. So I don't know I'm struggling with it as well. While I understand management had a difficult situation. I just don't know if this is the right box, that this situation is my opinion, fit squarely within based upon the language of the rule, assuming reasonable accommodation and so therefore, I'm inclined to to not support Ken's motion. Yes.

**Ralph Reid**

I'm less hung up on the reasonable accommodation piece and I think you hit the nail on the head. I feel like the county dropped the ball on just asking for a fit for duty, not fit for duty without specifying what a central functions he was not to perform. And that to me is where I'm also struggling is does that ultimately mean that you just terminate someone because, you know, there's some somewhere nebulous idea that they're unfit to perform some certain duties, and I haven't heard articulated what those duties are

**Joan Vecchioli**

right. I think it's a burden of proof to show what the duties are and he was unable and capable of performing. And I just haven't heard any evidence of that.

**William Schulz**

More evidence to the contrary, actually. He did a fine job.

**Joan Vecchioli**

Again, if you look at a job as a combination of factors, it's not just performing tasks. It's interacting. It's added to its demeanor, so I could accept the fact that there might be some I just haven't heard, which of those were not being done in this situation, other than the couple incidents that were cited, for which you know, he received discipline. So, is there a second to the motion?

**Ralph Reid**

Could you restate your motion?

**Ken Peluso**

What I stated was that I believe that the County was correct in their actions. Without going into specific language. With both their action and the termination.

**Joan Vecchioli**

Okay, so the motion fails for lack of a second Is there an alternative motion?

**Ric Davis**

I would offer a motion that we do not find that the appellant committed activities that violate D24 and I don't want to make it any more complicated than that.

**Joan Vecchioli**

Is there a second into that? [Schulz- I'll second it] Okay. Any further discussion?

**Ralph Reid**

I still I still see the violation itself. Having occurred I'm I'm more stuck on the reasonableness reasonableness of the discipline that occurred no violation you

**Jennifer Monrose Moore**

had to address that because of the scope of the current motion. If the motion carries the next issue for the board will be whether or not the discharge is appropriate

**Ralph Reid**

mean if the motion is motion was didn't occur.

**Joan Vecchioli**

His motion is the appellant.

**Jennifer Monrose Moore**

I'm sorry. You're you're absolutely correct. You're absolutely correct.

**William Schulz**

Two ways to skin a cat I guess. I'll stick with my second.

**Joan Vecchioli**

Okay. Any any further discussion? Okay. All in favor of the motion? Aye. Opposed, [Reid- Nay] [Peluso-no.] Okay, so the motion carries. And I don't know what the next step is.

**Jennifer Monroe Moore**

So the next step is that would end the inquiry and the issues for the board, because you've determined that the rules essentially not violated so at that point, the appeal finding is in favor of the appellant.

**Joan Vecchioli**

Yeah, I think that I think that's the end of our jobs.

**Jennifer Monroe Moore**

The termination is overruled, right.

**Joan Vecchioli**

Okay. All right. Thank you all. We're adjourned.

**ADJOURNED: 8:52 PM**



## Unified Personnel Board – HR Update October 2022 (September 2022 updates)

### Hurricane Ian Response

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- Our Human Resources team was activated in the Emergency Operations Center from Tuesday, September 27 through Thursday, September 29 in various roles including ESF-15 (Volunteers and Donations), Policy Group, Employee Emergency Information Line and Communication Liaison. The team was also able to support the EOC team as needed.
- To help employees prepare, we sent an email with tips on how to best get ready, set up a website and opened the Employee Emergency Information Line. Additionally, we offered information on the Employee Assistance Program, as well as assisted staff at the EOC and 9-1-1 Regional Center by providing counseling service through our onsite EAP representative.
- Determining that we had 59 County employees who lived in Hurricane Ian's impact area, we reached out to each employee ahead of the storm's landfall to ensure their safety and provide EAP resources for them and their families, regardless of their status in our benefit plans. All were very appreciative of the call.

### Internal Recruitments

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- Welcomed new HR Communications Specialist, Breanne O'Leary.
- Natalie Ingham has been promoted into the role of Benefits Analyst and the team is currently recruiting for Benefits Technician.
- Jim Beaty has been promoted into the role of Classification and Compensation Analyst.

### Scorecard (September)

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Based on today's experience, how satisfied are you with HR?

September: 91%

Goal: 92.5%

YTD 2022: 90%

After interaction with HR personnel:

The representative was professional & courteous

September: 100%

Goal: 100%

YTD 2022: 100%

The representative was helpful:

September: 100%

Goal: 100%

YTD 2022: 100%

Receive the requested information in a timely manner:

September 100%

Goal: 95%

YTD 2022: 100%

## Benefits & Wellness

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- The new deadline for completion of biometric screenings and health assessment is December 20, 2022, to allow for processing prior to year-end. Employees may visit our biometric webpage for details, including step-by-step instructions in the Quest Help Guide and the Physician Results Form Help Guide.
  - We mailed out postcard reminders to all eligible employees and held 30-minute information sessions.
- Annual Enrollment for 2023 Benefits begins Nov. 1 through Nov. 15. We are preparing communications now, including new voluntary benefits — Legal Plan and Identity Theft Protection — recently agreed upon by the Benefits Advisory Committee and subsequently by the Appointing Authorities.
- October Wellness activities include:
  - **Financial Wellbeing** focused on *Investing Fundamentals: A Holiday Financial Planning Guide*. The team is also working to reschedule canceled webinars due to Hurricane Ian (*Inflation and Stress, Financial Setbacks and Regroup and Rebuild*).
  - **Vaccine Clinics** held at 5 locations (four were cancelled the last week of September due to Hurricane Ian and the team is working to reschedule).
  - **BayCare Mammography Days** at Susan Cheek Needler and Carillon are being offered for our employees (two in October and two in November).
  - **Employee Assistance Program** webinar geared towards women, *Healthy Life Tips for Women*.
  - **Gardening: Easy Yard Maintenance for the Smart Gardener** webinar and onsite *Plant Your Own Herb Garden* workshop at the Botanical Gardens.
  - **Cooking Demo: Mini Monster Burgers**.

## Classification and Compensation

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- Spreadsheets with proposed general increase data have been provided to each Appointing Authority and we await their return for final processing.
- We've completed the position audit appeals from our recent classification and compensation studies impacting BCC and Tax Collector positions.
- The Classification and Compensation team is growing. We've added a Compensation Analyst position effective with the new fiscal year. As this expertise has been recognized across the organization, we are able to provide more services and look forward to focusing on proactive cyclic classification reviews across the County.

## Communications & Outreach

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- Incredible effort this month regarding communications for the General Increase, Retention Supplement and the Employee Referral Award.
- The Employee Suggestion Awards Committee approved 3 suggestions and awarded the 3 employees (two suggestions came from Utilities and one from Real Estate Management).
  - We also digitized the submission process.
- The team is preparing for the County-wide website launch in October.

## Organizational & Talent Development (OTD)

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- Third cohort of the Discover the Leader in Utilities Explorer program began in August and ends mid-December.
- Business Writing Workshops (virtual) with Train-Up, an external vendor, were cancelled due to Hurricane Ian and are now scheduled for October and November.

Boot Camp: Leadership Essentials pilot was to kick off Tuesday, September 27 through December 19 for selected individuals. This was also cancelled due to Hurricane Ian and will be rescheduled.

## **Planning and Performance**

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- Provided a demonstration of the Oracle Performance Management module at the Unified Personnel Board and Appointing Authorities joint workshop and appreciate all feedback received.

## **Workforce Strategy/HRMS**

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- The team hired 430 new employees to date in 2022 and have conducted 556 pre-onboarding appointments to date.
- The time-to-fill a position for August was 58.6 days. We have established a time-to-fill goal of 70 days for 2022 and this metric continues to improve.
- Annualized turnover through August was 19.4%, down from the high in January of 21.7%. August saw the largest number of hires thus far this year— 84; and the lowest number of exiting employees thus far this year— 32. Each of these is incredibly positive and we are monitoring to determine if this is the beginning of a trend.
- During the month of August, there were 20 resignations and 3 retirements. For the calendar year 2022 through August, there have been 263 resignations (external departures) and 75 retirements.
- The first stage of the Taleo integration has been completed, which includes the flow of position data directly from EBS/OPUS to our applicant tracking system. This has already demonstrated enhanced data accuracy and increased processing efficiency.
- Employee Referral: Our employees are valuable recruiting partners, especially during the current labor market recruiting challenges. Classified and exempt employees may earn a cash incentive of up to \$1,000 when an employee whom they referred is hired to fill a vacant position within the Unified Personnel System (UPS). Our data indicate that new hires who are referred by existing employees stay at a 20% higher rate after one year of employment than those new hires who were not referred by existing employees. This new incentive will be helpful both for attracting candidates and retaining newly hired employees.



## Human Resources Director Action Taken Under Authority Delegated by the Unified Personnel Board

The Human Resources Director, having been granted delegated authority to act on behalf of the Unified Personnel Board, has taken the following actions from **August 14, 2022, through, September 10, 2022.**

### TITLE CHANGE

Spec No.	Old Title	New Title	PG
13051	Departmental Communications Coordinator	Stakeholder Engagement Coordinator	C22

### REVISION

Spec No.	Title	PG
18196	Health Care Administrator	E28

### BCC PRIORITY AUDIT GROUPS 5-12

2	Reinstated
1	Title Change
3	Lateral Reclassification
32	No Change
11	Upward Reclassification
85	Upward Reallocations
134	Total

### REINSTATED

Spec No.	Title	PG
14960	Parks Program Coordinator	C25
13564	Spray Technician Lead	C18

### TITLE CHANGE

Position	Old Title	New Title
BCC/C2805	Extension Specialist	Education & Outreach Specialist

### LATERAL RECLASSIFICATION

Position	Old Title	New Title	PG
BCC/C823	Spray Technician 2	Mosquito Control Technician 2	C17
BCC/C843	Spray Technician 2	Mosquito Control Technician 2	C17
BCC/C3677	Project Management Specialist 1	Parks Program Coordinator	C25



**NO CHANGE**

<b>Position</b>	<b>Classification</b>	<b>PG</b>
BCC/C3966	Accounting Services Coordinator	C25
BCC/C4256	Administrative Support Specialist 1	C19
BCC/C3973	Building Plans Examiner	C26
BCC/C3886	Building Plans Examiner	C26
BCC/C4148	Building Plans Examiner	C26
BCC/C24	Building Plans Examiner	C26
BCC/C3475	Building Plans Examiner	C26
BCC/C4178	Craftworker 1	C18
BCC/C211	Craftworker 1	C18
BCC/C1972	Craftworker 1	C18
BCC/C2724	Craftworker 1	C18
BCC/C3189	Craftworker 1	C18
BCC/C1593	Craftworker 1	C18
BCC/C3157	Craftworker 1	C18
BCC/C2363	Craftworker 1	C18
BCC/C4147	Craftworker 1	C18
BCC/C2200	Craftworker 1	C18
BCC/C282	Craftworker 1	C18
BCC/C2199	Craftworker 1	C18
BCC/C276	Craftworker 1	C18
BCC/C223	Craftworker 1	C18
BCC/C2045	Craftworker 1	C18
BCC/C1970	Craftworker 1	C18
BCC/C2229	Craftworker 1	C18
BCC/C2359	Craftworker 1	C18
BCC/C213	Craftworker 1	C18
BCC/C1788	Craftworker 1	C18
BCC/C1858	Craftworker 2	C20
BCC/C4340	Craftworker 2	C20
BCC/C4281	Craftworker 2	C20
BCC/C3027	Craftworker 2	C20
BCC/C1785	Craftworker 2	C20

**UPWARD RECLASSIFICATIONS**

<b>Position</b>	<b>Old Classification</b>	<b>Old PG</b>	<b>New Classification</b>	<b>New PG</b>
BCC/C4246	Office Specialist 2	C15	Administrative Support Specialist 1	C19
BCC/C3639	Administrative Support Specialist 1	C19	Administrative Support Specialist 2	C22
BCC/C2998	Extension Specialist	C21	Education & Outreach Supervisor	C23
BCC/C3506	Extension Specialist	C21	Education & Outreach Supervisor	C23
BCC/E638	Animal Services Program Coordinator	E14	Accounting Services Coordinator	C25
BCC/C3879	Administrative Support Specialist 2	C22	Accountant 2	C27
BCC/E934	Animal Services Program Coordinator	E14	Animal Services Program Manager	E18

<b>Position</b>	<b>Old Classification</b>	<b>Old PG</b>	<b>New Classification</b>	<b>New PG</b>
BCC/C3779	Automotive Equipment Operator 2	C16	Equipment Operator, Senior	C19
BCC/C849	Spray Technician 2	C17	Mosquito Control Technician, Lead	C18
BCC/C830	Spray Technician 2	C17	Mosquito Control Technician, Lead	C18
BCC/C3022	Spray Technician 2	C17	Spray Technician Lead	C18

#### UPWARD REALLOCATIONS

<b>Position</b>	<b>Classification</b>	<b>Old PG</b>	<b>New PG</b>
BCC/C2474	911 Radio Systems Administrator	C28	C30
BCC/C469	Aquatics Program Supervisor	C21	C23
BCC/C4342	Automotive Equipment Operator 1	C13	C14
BCC/C724	Automotive Equipment Operator 1	C13	C14
BCC/C4418	Automotive Equipment Operator 1	C13	C14
BCC/C734	Automotive Equipment Operator 1	C13	C14
BCC/C702	Automotive Equipment Operator 1	C13	C14
BCC/C2052	Automotive Equipment Operator 1	C13	C14
BCC/C3778	Automotive Equipment Operator 1	C13	C14
BCC/C723	Automotive Equipment Operator 1	C13	C14
BCC/C2297	Automotive Equipment Operator 1	C13	C14
BCC/C744	Automotive Equipment Operator 1	C13	C14
BCC/C3777	Automotive Equipment Operator 1	C13	C14
BCC/C2501	Automotive Equipment Operator 1	C13	C14
BCC/C2441	Automotive Equipment Operator 1	C13	C14
BCC/C745	Automotive Equipment Operator 1	C13	C14
BCC/C4495	Automotive Equipment Operator 1	C13	C14
BCC/C4485	Automotive Equipment Operator 1	C13	C14
BCC/C2440	Automotive Equipment Operator 1	C13	C14
BCC/C2504	Automotive Equipment Operator 1	C13	C14
BCC/C3775	Automotive Equipment Operator 1	C13	C14
BCC/C2439	Automotive Equipment Operator 1	C13	C14
BCC/C4416	Automotive Equipment Operator 1	C13	C14
BCC/C4484	Automotive Equipment Operator 1	C13	C14
BCC/T579	Automotive Equipment Operator 1	C13	C14
BCC/T429	Automotive Equipment Operator 1	C13	C14
BCC/C755	Automotive Equipment Operator 1	C13	C14
BCC/C4341	Automotive Equipment Operator 1	C13	C14
BCC/C3776	Automotive Equipment Operator 1	C13	C14
BCC/C2500	Automotive Equipment Operator 1	C13	C14
BCC/C520	Automotive Equipment Operator 2	C16	C17
BCC/C3996	Automotive Equipment Operator 2	C16	C17
BCC/C2061	Automotive Equipment Operator 2	C16	C17
BCC/C709	Automotive Equipment Operator 2	C16	C17
BCC/C735	Automotive Equipment Operator 2	C16	C17
BCC/C3995	Automotive Equipment Operator 2	C16	C17

<b>Position</b>	<b>Classification</b>	<b>Old PG</b>	<b>New PG</b>
BCC/C713	Automotive Equipment Operator 2	C16	C17
BCC/C3994	Automotive Equipment Operator 2	C16	C17
BCC/C717	Automotive Equipment Operator 2	C16	C17
BCC/C711	Automotive Equipment Operator 2	C16	C17
BCC/C714	Automotive Equipment Operator 2	C16	C17
BCC/C4179	Automotive Equipment Operator 2	C16	C17
BCC/C3993	Automotive Equipment Operator 2	C16	C17
BCC/C460	Automotive Equipment Operator 2	C16	C17
BCC/C464	Automotive Equipment Operator 2	C16	C17
BCC/C718	Automotive Equipment Operator 2	C16	C17
BCC/C690	Automotive Equipment Operator 2	C16	C17
BCC/C4150	Automotive Equipment Operator 2	C16	C17
BCC/C4149	Automotive Equipment Operator 2	C16	C17
BCC/C4269	Equipment Operator, Senior	C18	C19
BCC/C673	Maintenance 1	C10	C12
BCC/C4176	Maintenance 1	C10	C12
BCC/C3722	Maintenance 1	C10	C12
BCC/C2682	Maintenance 1	C10	C12
BCC/C4047	Maintenance 1	C10	C12
BCC/C4499	Maintenance 1	C10	C12
BCC/C3962	Maintenance 1	C10	C12
BCC/C2170	Maintenance 1	C10	C12
BCC/C2055	Maintenance 1	C10	C12
BCC/C788	Maintenance 1	C10	C12
BCC/C4492	Maintenance 1	C10	C12
BCC/C4130	Maintenance 1	C10	C12
BCC/C4493	Maintenance 1	C10	C12
BCC/C809	Maintenance 1	C10	C12
BCC/C1886	Maintenance 1	C10	C12
BCC/C2169	Maintenance 1	C10	C12
BCC/C796	Maintenance 1	C10	C12
BCC/C2683	Maintenance 1	C10	C12
BCC/C684	Maintenance 1	C10	C12
BCC/C2171	Maintenance 1	C10	C12
BCC/C4290	Maintenance 1	C10	C12
BCC/C2054	Maintenance 2	C12	C14
BCC/C4405	Maintenance 2	C12	C14
BCC/C3721	Maintenance 2	C12	C14
BCC/C752	Maintenance 2	C12	C14
BCC/C816	Maintenance 2	C12	C14
BCC/C791	Maintenance 2	C12	C14
BCC/C4498	Maintenance 2	C12	C14
BCC/C756	Maintenance 2	C12	C14
BCC/C3921	Maintenance 2	C12	C14

<b>Position</b>	<b>Classification</b>	<b>Old PG</b>	<b>New PG</b>
BCC/C4345	Maintenance 2	C12	C14
BCC/C1693	Maintenance 2	C12	C14
BCC/C4184	Maintenance 2	C12	C14
BCC/C2545	Maintenance 2	C12	C14
BCC/E767	Regulatory Compliance Manager	E26	E28