



APPROVED

10/14/08 CSC/asp

**PIERCE COUNTY CIVIL SERVICE COMMISSION
MINUTES OF MEETING
Tuesday, September 9, 2008**

AGENDA ITEM I: Call to Order

The regular meeting of the Pierce County Civil Service Commission (PCCSC) for Sheriff's Employees was called to order at 5:07 p.m. on Tuesday, September 9, 2008. The meeting was held in the Sheriff's Department Conference Room, 930 Tacoma Avenue South, Tacoma, Washington.

COMMISSIONERS PRESENT: Commissioner Richard Sokolowski, Chair; Commissioner Michael Branchini; Commissioner Gail Merritt-Smith

STAFF PRESENT: Sandy Pietz, Chief Examiner; Phil Prettyman, Deputy Prosecuting Attorney

AGENDA ITEM II: Approval of Minutes – July 8, 2008

It was moved by Commissioner Branchini to approve the minutes of the regular meeting of July 8, 2008. The motion was seconded and carried.

AGENDA ITEM III: Disciplinary Appeal – Schedule Hearing Date (1)

Chair Sokolowski stated this item is to schedule a hearing date in regard to a disciplinary action of separation regarding Bryan Cline. Mr. Cline's attorney, Brett Purtzer, has requested a date be scheduled for later in the year. Following discussion of available dates, the Commission directed that the Chief Examiner work with the parties to schedule a hearing date.

AGENDA ITEM IV: Separation Appeal – Schedule Hearing Date (2)

Following discussion of available dates, Commissioner Merritt-Smith moved and Commissioner Branchini seconded that the hearing for an appeal of separation by Kim Klemme be scheduled for October 22, 2008 beginning at 5:00 p.m. The motion carried.

AGENDA ITEM V: Request for Leave Without Pay – Kim (Frazier) Klemme

Commissioner Sokolowski stated that this item is a request for leave without pay for one year by Kim Klemme and that it is his understanding that the County has not approved this leave. He invited the County to explain their position first.

Craig Adams, Deputy Prosecuting Attorney assigned to the Sheriff's Department, stated that Ms. Klemme was separated from employment under the ADA due to the inability to perform the essential functions of the job, and that the action was not a disciplinary action. He stated the Department's opinion that it is premature to consider Ms. Klemme's leave of absence request prior to an appeal hearing regarding the separation action, and that the Sheriff does not join in the request.

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**CIVIL SERVICE COMMISSION
MINUTES OF REGULAR MEETING**

September 9, 2008

Page 2

Martha Keogh, EEO/ADA Coordinator for Pierce County, stated that the County's past practice for accommodation is to allow employees to be on medical leave of absence, paid or unpaid, for up to one year, or light duty up to one year, or a combination of both, for any type of those circumstances, including on-the-job injury. She advised that the County's Administrative Guidelines, Section 3.80.040, provides that on-the-job injury leave is an unpaid leave. She stated the County's position that Ms. Klemme has already been allowed a one-year leave of absence.

Ms. Keogh advised that Ms. Klemme's physician indicated in a letter dated July 2008 that it would be an additional six to eight months before Ms. Klemme could return to work, and that is an estimate not a guarantee that she could return to work at that time. She stated her opinion that allowing additional leave for Ms. Klemme is not consistent with the County's established process for ADA accommodation. Ms. Keogh explained that the County will continue to work with Ms. Klemme for a year following the date of separation to find her work in a position with the county if she is medically released to work. If she is released to full duty to her Deputy Sheriff job within one year of separation, and if there is a vacant position available, Ms. Klemme would be reinstated to the position of Deputy Sheriff.

Chair Sokolowski asked for clarification of the reinstatement process. Chief Examiner Sandy Pietz explained that the reinstatement process provided in Civil Service Rules allows an employee to be reinstated to their former position without competition for a period of two years following separation, subject to the approval of the Sheriff. She explained that the provision of return to work during a one year period referred to by Ms. Keogh is part of the ADA process.

Mr. Adams stated there was no further comment from the Department.

Mr. Michael Davis, counsel for Ms. Klemme, stated his opinion that the leave without pay request should be considered prior to the separation hearing, which is opposite of the department's position. He referred to Civil Service Rule 9.12 which provides the Commission approves a leave of absence of over 30 days. He stated that Ms. Klemme had not requested a leave of absence through the Commission and a one-year leave of absence has not been approved by the Commission.

Mr. Davis explained that Ms. Klemme had experienced two on-the-job injuries since November 2006, requiring multiple surgeries on her shoulder and surgery on her foot. The use of crutches as a result of her foot injury aggravated the shoulder injury. In a letter dated July 2008, her surgeon advised that Ms. Klemme could return to light duty in mid-September 2008 and that she could return to full duty six to eight months from the date of the letter. He advised the Commission that after receipt of the physician's letter, the Sheriff's Department initiated a move to separate Ms. Klemme from employment due to her inability to perform the essential functions of her job. He stated that Ms. Klemme requested the leave of absence 16 days before the Sheriff's Department decided to terminate her and that it is unfair for the Department to terminate her prior to the time the Commission rules on her request. He asked that the Commission approve the leave without pay request.

Mr. Adams advised the Commission that at the pre-termination hearing Ms. Klemme requested a 30-day leave of absence without pay. The Sheriff determined that Ms. Klemme had already been out on leave of absence for a period of a year, and that the Department needed to fill the Deputy Sheriff position, so he did not grant the request.

**CIVIL SERVICE COMMISSION
MINUTES OF REGULAR MEETING**

September 9, 2008

Page 3

Ms. Keogh advised the Commission that Ms. Klemme was placed on family medical leave per Federal law, which was exhausted in January of 2008. The county continued her on medical leave of absence for her on-the-job injury. She stated this leave is unpaid leave.

Chair Sokolowski stated that apparently a leave of absence for Ms. Klemme was not approved by the Commission and asked what the paper trail is. Mr. Adams responded that it would be a defacto leave, explaining that when a person cannot do the job they are either on light duty or without pay status, and there is nothing in writing.

Ms. Keogh explained that the county is required to place employees on family medical leave per federal law and there is associated paperwork with this leave. She stated that Ms. Klemme exhausted the family medical leave in January 2008 and that she remained on leave. The county has completed its accommodation review process, and Ms. Klemme's physician indicated that she could not perform her duties at this time and it could take six to eight additional months to recover and possibly return to her job. Ms. Keogh reiterated her concern that the accommodation review process be consistent.

Mr. Davis noted that Ms. Keogh referred to a full return to duty and that Ms. Klemme's physician stated she could return in mid-September and so she could potentially return to light duty in a period of weeks.

Chair Sokolowski stated the light duty would require that Ms. Klemme not lift over 2 lbs. and was recommended to be a clerical function, and asked if this had been considered in terms of an accommodation for that type of light duty assignment.

Mr. Adams stated that the Sheriff's Department can extend light duty for up to one year. Ms. Keogh clarified for the record that the practice of the county for accommodation is to allow medical leave, light duty or a combination of both up to one year.

Commissioner Branchini stated concern about the paper trail, that maybe there are two different systems or procedures, and that it seems that something in writing should have occurred in September 2007. Ms. Keogh responded that the family leave form was completed in September 2007.

Commissioner Merritt-Smith stated it appears the information as far as the FMLA and Rule 9.12, Leave of Absence Without Pay, are in conflict, as the rule does not address an exception for FMLA. She noted that FMLA allows leave up to 12 weeks, and the rule provides that the Commission approve all leaves that extend beyond 30 days.

Ms. Pietz concurred that the procedures are in conflict and called the Commission's attention to previous discussions regarding the fitness for duty rule. At that time, the Commission said that the fitness for duty rule shall be applied with all of the ADA requirements of the county, which is what has happened in the case of Ms. Klemme. She stated this is a fitness for duty, it meets the requirements of the ADA and the ADA process has been followed. She stated there was discussion at that time that the fitness for duty process and the ADA process are not separate.

There was further discussion of the paper trail and process for approving family leave and the county's process for on-the-job injury.

**CIVIL SERVICE COMMISSION
MINUTES OF REGULAR MEETING**

September 9, 2008

Page 4

Chair Sokolowski stated the question is whether there are layered leaves and do they run concurrent or not. Ms. Keogh opined they run concurrently. Chair Sokolowski stated that under the Civil Service Rules they could not be running concurrently because it was never approved. He stated that if the leaves were to run concurrent, it should have come to the Commission to approve a one-year leave of absence at the time the family medical leave was approved. There was discussion of the process used for employee's to request family medical leave and whether the employee would submit a request in writing for family medical leave. Ms. Keogh stated they have the option of that but they don't need to for family medical leave due to the county's obligation to place them on FMLA.

There was discussion that the Civil Service Rules and the county leave policies are not in alliance. In response to a question from Commissioner Branchini, Ms. Keogh explained that employees receive written notice at their homes as well as Human Resources staff working with employees to provide information regarding the various leaves.

Chair Sokolowski asked if the county had responded to Ms. Klemme's request for leave without pay per the Civil Service Rules, and whether there was a request to the Sheriff by Ms. Klemme to take a leave without pay. Mr. Davis responded there was a request on August 13, 2008, to the Sheriff. Chair Sokolowski asked if there was a reply to that request. Ms. Klemme responded there was no response other than she was terminated.

Ms. Pietz explained that an employee first gets a notice of intent to separate and have a hearing with the Sheriff prior to separation. Ms. Klemme received notice of intent to separate on August 7th, submitted her request to the Civil Service Commission on August 13th, attended the meeting with the Sheriff on August 15th, and after consideration of the issues, the Sheriff issued a letter of separation on August 29th.

Chair Sokolowski stated that normally a leave without pay request is accompanied by something from the Department stating they agree or do not agree with the request but that information is not available to the Commission for this request. He stated he would ask the Sheriff if the leave of absence request was considered and if so, why it was denied when the physician stated she may be eligible to return to work on light duty in September.

In response to a question, Ms. Pietz stated that Rule 9.12 was adopted in April 2007 when the Rules were revised. The section on permissible uses was added as a way to make the Rule on leave without pay consistent with the Administrative Guidelines of the county. She stated at no time was it intended to be an additional year of leave without pay, and that Rule 7.15 states that fitness for duty, including leave, comply with the county's Administrative Guidelines. She clarified that Ms. Klemme had submitted a request for a 30-day leave without pay to the Sheriff, not a one-year leave without pay.

Mr. Davis stated that the department is saying that the one-year time limit has run and pointed out that Ms. Klemme was separated from employment on August 29th when the one-year time limit would not have ended until September 27th. He stated the department did not tell Ms. Klemme that she was on leave and that there was a one-year time limit and these are the dates it ran. He stated Ms. Klemme should be able to rely on what is written in the Rules and that she should not be held responsible for knowing what the practice of the county is.

**CIVIL SERVICE COMMISSION
MINUTES OF REGULAR MEETING**

September 9, 2008

Page 5

Ms. Keogh advised the Commission that she has had numerous conversations with Ms. Klemme regarding medical leave and the county's practice, and that Ms. Klemme was aware that there was a one-year limit on the leave.

Ms. Klemme stated that she looked at the Civil Service Rules, and talked with Ms. Keogh and Ms. Pietz, and was told that she could apply for this one-year leave of absence. She said her physician has told her there is no reason why she should not be able to return to full duty in six to eight months.

Chair Sokolowski clarified that the county's position is that Ms. Klemme has already used up a one-year leave of absence and asked why she was terminated in August instead of September. Ms. Keogh advised that if the county receives notification that the employee cannot return to work during the one-year period allowed for leave, and there is a permanent restriction, the county may act to separate an employee prior to the completion of one year of medical leave.

Chair Sokolowski asked when Ms. Klemme was advised of the one-year period and when it started. Ms. Keogh responded that Ms. Klemme received notice in a letter dated June 2, 2008, requesting accommodation review and that there had been discussions prior to that letter. Commissioner Merritt-Smith clarified that there is no process at the beginning that tells an employee when the one-year leave period begins and that there may or may not be separation from employment if accommodation cannot be made. Ms. Keogh stated the duration of the 12-week family leave is stated on the family leave form, and the Administrative Guidelines discuss the other types of leave available. In response to a question from Commissioner Merritt-Smith, Ms. Keogh responded that there is not a notice given to an employee that one year is the limit of leave, but that it is stated in the Administrative Guidelines.

Ms. Pietz clarified that typically an employee does not apply for leave for an on-the-job injury as in the case of a different reason such as sabbatical leave and that in practice leave without pay due to on-the-job injury has never been approved by the Commission.

There was further discussion of the county's practice regarding the length of time an employee is on leave and when the county determines that no accommodation can be made and the employee should be separated. Commissioner Sokolowski clarified that the physician stated Ms. Klemme could return to full duty maybe sometime in February of 2009. Ms. Pietz confirmed up to eight months, which would be December 2008 to February 2009. Mr. Davis questioned the amount of time the county is considering the one-year leave of absence period, and noted that the physician said Ms. Klemme could return to light duty work in mid-September. Ms. Keogh reiterated that light duty work and unpaid leave are combined when determining the length of the one-year leave.

Chair Sokolowski asked what the negative impact would be on the department if Ms. Klemme was placed on leave of absence for "x" amount of time. Ms. Keogh stated she could not speak for the department but that her understanding is that for the position of Deputy a temporary appointment could not be made due to the nature of the work and more than likely other employees would have to carry the work. Ms. Pietz stated the department needs to use overtime to fill in for an employee on leave.

In response to questions from Chair Sokolowski, it was clarified that the Sheriff did not respond to Ms. Klemme's request for a 30-day leave of absence and that Ms. Klemme did not submit a request for one-year of leave of absence to the Sheriff but had submitted her request directly to the Commission.

**CIVIL SERVICE COMMISSION
MINUTES OF REGULAR MEETING**

September 9, 2008

Page 6

At 6:45 p.m., Chair Sokolowski called a 10-minute break. The meeting reconvened at 6:55 p.m.

Ms. Keogh stated that the county has determined that to go beyond one year of leave is not a reasonable accommodation.

Chair Sokolowski stated the issue here goes beyond the question of reasonable accommodation and is whether the leave policies intersect each other or compound each other.

It was moved by Commissioner Merritt-Smith to approve leave without pay for one year for Ms. Kim Klemme. She stated that there should be an effort made to align the related rules as much as possible because as a layman looking at the Civil Service Rule, she would think that a leave of absence without pay for one year was in addition to the leave granted by the county. **Commissioner Branchini seconded the motion and the motion carried.**

Commissioner Merritt-Smith requested and was granted a stipulation to the motion. Commissioner Merritt-Smith noted to Ms. Klemme that her request had been for one year of leave but that she had stated she would return to duty as soon as the doctor released her. **Commissioner Merritt-Smith stipulated that Ms. Klemme return to work as soon as she is released by her physician, as stated in her request, and not extend the leave to a year.**

Chair Sokolowski stated that the decision to grant the one-year leave would take care of the separation appeal unless further information is received from the county or the Sheriff. Ms. Pietz advised the procedure would be to reinstate Ms. Frazier to the payroll and place her on leave. There was discussion of procedural actions to implement the Commission's decision. Mr. Davis stated he did not think the separation hearing should remain scheduled. Ms. Pietz noted that Ms. Klemme has been separated from employment from August 29th to September 9th, so there is still a period of separation that could be appealed.

Commissioner Merritt-Smith moved and Commissioner Branchini seconded to amend the previous motion granting the one-year leave of absence to include the leave is approved retroactive to August 29, 2008. The motion carried.

For clarification, Ms. Pietz asked if the Commission was directing the separation appeal hearing be cancelled. Chair Sokolowski responded that it is unless another separation is issued by the Sheriff.

Chair Sokolowski stated that the Commission's concern is with the leave policies and it is not whether one year is a legitimate or reasonable amount of time for accommodation. The Commission is concerned about making sure that the leave policies are reconciled, and determining whether the leaves run concurrently and the Commission approves leaves over 30 days, or we have a rule change. He stated the policies and rules need to be reviewed. Staff agreed to review the applicable rules and policies.

**CIVIL SERVICE COMMISSION
MINUTES OF REGULAR MEETING**

September 9, 2008

Page 7

ADJOURN:

There being no further business to come before the Commission, Chair Sokolowski adjourned the meeting at 7:12 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sandra L. Pietz". The signature is fluid and cursive, with a large loop at the end.

Sandra L. Pietz
Chief Examiner