



COUNTY OF VENTURA

# civil service commission

BOARD OF REVIEW AND APPEALS

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**MINUTES**  
**REGULAR BUSINESS MEETING**  
**THURSDAY, JANUARY 24, 2013**  
**9:30 a.m.**  
**County of Ventura Government Center**  
**LOWER PLAZA ASSEMBLY ROOM**

- I. **CALL TO ORDER** – Chair Merricks called the meeting to order at 9:30 a.m.
- II. **ROLL CALL** - Commissioners present: Chair Merricks, Vice-Chair Becker and Commissioners Vandenberg and Lazar. Staff present: Cheryl Shaw, Commission Assistant, Robert Orellana, Law Advisor, and Jim Dembowski (IR.)
- III. **PLEDGE OF ALLEGIANCE**
- IV. **MINUTES FOR APPROVAL** – The Regular Business Meeting of November 15, 2012, were approved on motion of Vice-Chair Becker, seconded by Commissioner Lazar.
- V. **PUBLIC COMMENTS** – None.
- VI. **OLD BUSINESS** – None.
- VII. **NEW BUSINESS** – None.
- VIII. **REQUEST FOR HEARING** – Lynn Border, Ventura County Behavioral Health (Case No. 13-010-02-03), Revocation of Promotion.

The Petitioner, Lynn Border, was present and represented herself. Jim Dembowski and John Kaneski appeared for the Hiring Authority, the Ventura County Behavioral Health Department.

Mr. Dembowski stated that the Commission lacked jurisdiction over Ms. Border's appeal request which is related to a promotion that was revoked after a screening process error was discovered. He argued that Ms. Border has admitted in her appeal request documents that she did not meet the minimum qualifications for the promotional position for which she applied.

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Ms. Border addressed the Commission and stated that she was encouraged to apply for the promotion and felt that after reviewing the posting she met the qualifications. She indicated she passed the initial screening and both the written test and panel interviews, and was then offered the job in writing with the position to be effective immediately. It was not until several weeks later that her manager told her that she did not meet the minimum qualifications. Ms. Border stated that she has met with her union representative and an attorney who advised her to seek a continuance so that he could review the matter in more detail.

In response to Commissioner Vandenberg, Mr. Dembowski stated that a promoted employee does not have to sign a formal document to make the promotion final for the increase in pay, and that Ms. Border was offered, and did accept, the promotion. However, due to the error made she should not have been invited to the examination. Ms. Border stated that it was her understanding that she did function in the promoted position as the position was open at the time and that the pay increase was to be effective in early February. In response to Commissioner Becker, Ms. Border also stated she did not perform any new duties associated with the position as she was scheduled for vacation during that time.

Mr. Kaneski indicated the error was brought to the attention of County Human Resources and that he had conducted the initial screening of the applicants. He further stated that the recruitment covered all 4 levels of the classification and it would have been correct to invite Ms. Border to the level 3 examination. Ms. Border indicated that it would make no sense to invite her to an examination process for level 3 as she currently works at a level 3 classification.

Mr. Orellana stated that under section 1352.3 of the County Ordinance the Commission's initial inquiry is whether the petition is sufficient.

In response to Commissioner Lazar's question about waivers, Mr. Dembowski stated there are no waivers for this classification, although there have been situations and classifications where waivers are considered. Ms. Border stated she is aware that waivers are considered in other County departments. She further stated that she is a long term employee and based on her work experience she is qualified to perform the job in the higher classification. Mr. Dembowski indicated that a waiver request would have to be brought before Kelly Shirk in Human Resources. Ms. Border stated that in this situation she feels that Ms. Shirk has a conflict of interest as she is related to another employee who applied for the same promotion as Ms. Border. Mr. Dembowski objected to Ms. Border's statement and indicated that the classification for which Ms. Border applied requires 4 years of experience post-licensure and that Ms. Border only has 3 years experience.

Mr. Orellana clarified for the Commission that the Ordinance required Ms. Border's timely appeal request be calendared for today's agenda, but that there have been instances



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where the Commission has granted continuances for matters in order for counsel to appear. The Ordinance also provides the Petitioner with time to amend a petition should the Commission dismiss her petition as insufficient.

Mr. Dembowski closed his arguments by stating that, although there was a formal job offer made and accepted, there was no detrimental reliance as the petitioner had lost no income. He argued that even if the petitioner had been properly appointed to the position, she would have been placed on probationary status. Thus she would have had no right of appeal to the Commission had her new appointment been revoked, instead of withdrawn as made in error. Ms. Border stated that while she understands the requirements of the classification for the position directly above the 4<sup>th</sup> level classification has no such post licensure requirements and only requires one year cumulative of education and work experience.

Vice-Chair Becker commented that this is a very unfortunate circumstance given Ms. Border's qualifications and that the rules were applied in a sloppy manner. He stated that his inclination was, nevertheless, to deny the petition. Commissioner Vandenberg concurred with Vice-Chair Becker stating that this situation does not appear to meet the threshold requirement to grant a hearing. Commissioner Lazar concurred.

Vice-Chair Becker made a motion, seconded by Commissioner Vandenberg, to deny the petition. Vice-Chair Becker further clarified that his motion was to deny based on lack of sufficiency of the petition. The Commission voted unanimously in favor of the motion. Ms. Shaw stated that a minute order would issue regarding the Commission's decision and be served on the parties.

**IX. REQUEST FOR INVESTIGATION – None.**

**X. INFORMATIONAL – None.**

**XI. COMMISSION/STAFF COMMENTS –**

- A.** Presentation of quarterly report to Board of Supervisors regarding Commission's activities for second fiscal quarter.

Commissioner Lazar thanked Ms. Shaw for the new reporting format which provides more information to the Board. The Commission voted on motion by Commissioner Lazar, seconded by Commissioner Vandenberg, to direct the Chair to sign the letter to the Board of Supervisors.

Mr. Orellana informed the Commission that the case permitting Pitchess motions to be presented to Civil Service Commissions, which was discussed at a prior meeting, has been de-published because the California Supreme Court has granted review.

**XII. CLOSED SESSION – PUBLIC EMPLOYMENT (Govt. Code § 54954.5(e))**  
Title: Conflict Law Advisor

The Commissioner went into closed session at 10:05 a.m. to interview conflict legal advisor candidates. The Commission reconvened in open session at 11:05 a.m.

**XIII. ANNOUNCEMENT –** Decision regarding applicant chosen for conflict law advisor position and discussion relating to contract terms.

Chair Merricks announced that the Commission had decided to execute a contract with retired Judge Lee Cooper. Judge Cooper accepted the Commission's offer at the \$160 hourly rate stated in the draft contract. Ms. Shaw indicated that she would be in touch with him regarding the rest of the paperwork to be completed for his retention.

**XIV. ADJOURNMENT –** The meeting was adjourned at 11:10 a.m.