

**Additional Information
Submitted by Appellant**

CIVIL SERVICE COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

SUBJECT: RESPONSE TO THE SF HUMAN RESOURCES INVESTIGATION
AND APPEAL OF THE SFPUC HR INVESTIGATION

Register No. 0128-17-6: 201

Appealing the Human Resources Director's decision
to administratively close the discrimination complaint
EEO file No. 2309

Register No. 0039-20-6: 2020

Appealing the Human Resources Director's decision
to administratively close the discrimination complaint
EEO file No. 2309

October 27, 2023

CRAIG K. MARTIN

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Honorable Civil Service Commissioners:

Please accept this submission in support of Appellant's appeal of my June 28, 2016 employment termination. Appellant contends that the dismissal of employment at the SFPUC was in violation of the San Francisco City & County's public policy. The SFPUC HR's Rachel Gardunio "requested input" from Masood Ordikhani, (Masood) Ben Poole, (Poole) Todd Kyger (Kyger) and other employees to support the termination. Masood, Poole and Kyger are all lawyers.

Gardunio did not attempt to independently investigate or review Appellant's work performance prior to recommending the Appellant's release from probation. Gardunio's investigation was nothing more than her attempt to "circle the wagons," and not present a true and honest investigation. The biased investigation was conducted to justify the Appellant's dismissal.

The SFPUC HR did not investigate or consult with the Office of Labor Standards to determine whether Masood had violated a City ordinance by ordering the Appellant not to include on his timesheet the approximate 11 hours worked per day while assigned to the Contractor's Assistance Center, or the 13 hours worked on the Appellant's time sheet while providing coverage for the Tuesday night CLARK construction classes. The SFPUC HR did not give any consideration to the Appellant's claim of retaliation or the discriminatory treatment on the part of Masood.

The investigation did not include age discrimination on the part of Masood, related to the Appellant's work assignments. The SFPUC did not investigate the pattern and practice of Masood with respect to racial discrimination.

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The SFPUC HR investigation did not seek to establish the truth, but to provide a pretextual rational for the SFPUC's Gardunio's recommendation that it "would be better to release the Appellant from probation."

The alleged justification for releasing the Appellant was pretextual. The pretextual reason given for my dismissal was "not meeting performance expectations and said goals."

QUERY: What were the expectations that the Appellant failed to meet? What was the legitimate business reason for the Appellant's termination?

The true reason for my dismissal was that I objected to being addressed as "Bro" by my supervisor, Masood. The investigation conducted by the SFPUC HR was not to ascertain the facts, but to marshal the statements of Masood, Poole and Kyger to justify Appellant's termination.

FACTS

On May 11, 2015, Appellant was hired as a PEX 1822, assigned to the Infrastructure Division of the SFPUC, under the supervision of Masood Ordikhani. Masood was not involved in the hiring process of the Appellant. When initially assigned to Masood, Appellant did not disclose Appellant's education or professional experience. Masood would introduce Appellant as Craig Martin, to community stakeholders in the SFPUC infrastructure and community.

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Once Masood learned of Appellant's educational background, Masood would preface the introduction with, "did you know that Craig Martin went to Stanford and graduated from UCLA Law?" Masood's attitude suddenly became rather dismissive and indifferent.

According to the investigative file, Masood alleges that he "only saw the Appellant 1 or 2 times as we did not work in the same location."

My initial duties consisted of assisting in the drafting of the San Francisco Public Utilities Commission's Project Labor Agreement for the \$15 billion Sewer System Improvement Program (SSIP). I also authored a section of the San Francisco Public Utilities Commission's Quarterly Report for the Water System Improvement Project-Project Labor Agreement (WSIP). Masood intentionally contributed my work product in the SFPUC Commission's Quarterly WSIP Report to Scott Kaplan, another employee on the team.

Appellant attended pre-bid meetings scheduled by the SFPUC Infrastructure Division, at the Burlingame facility, Moccasin pump station and the Calaveras Dam. Masood's team would answer questions related to the labor requirements of the Project Labor Agreement.

My duties were split between the headquarters located at 525 Golden Gate Avenue and the Contractor's Assistance Center, (CAC) located at Executive Park. (Candlestick Point). Appellant's duties were consistent with the CAC Mission Statement to assist local Small Business Enterprises.

Masood held a weekly staff meeting every Friday while Appellant worked under Masood. During the weekly staff meetings, Masood often used slang language and would on occasion address certain staff as "Bro." Appellant continued to attend the weekly staff meetings after being assigned to the CAC. According to Kyger, "Masood wanted the Appellant to succeed and perform well."

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In September 2015, the CLARK Construction evening classes began at the Contractor's Assistance Center, located in the Executive Park, San Francisco.

November 2015, Appellant was assigned full-time to the CAC. Masood informed the Appellant that Appellant could make use of a City vehicle from the Civic Center Garage. However, Appellant would not be able to include the transportation time to and from the CAC on Appellant's weekly time sheet.

When Appellant was assigned to the CAC on a full-time basis, Appellant was given a vague assignment of "providing assistance" to the SF LBE's pursuing SFPUC contracts and other City departments. Appellant understood the assignment and was left with developing a plan to achieve the desired results. Masood did not discuss what deliverables he wanted the Appellant to accomplish, nor how the Appellant was to "provide assistance." Appellant was not provided with any specific direction related to the goals for the position.

Appellant was not given any specific instructions when assigned to the CAC. Masood instructed the Appellant that he would be reporting to Ben Poole, (Poole) and that Appellant was to assist the Minority Business Enterprises, (MBEs) Local Business Enterprises (LBEs) and the Women Business Enterprises, (WBEs) with contracting opportunities with the City and County of San Francisco, with specific focus on contracting with the SFPUC.

The Appellant would also be assigned to travel to the Moccasin facility to present pre-bid instructions to the local LBEs seeking to bid on SFPUC construction contracts. Appellant would travel to the Calaveras Dam project to confirm that the administration of the pre-screening drug testing was conducted in conformity with the Project Labor Agreement. Stephanie Bettis was awarded the SF PUC contract for drug screening.

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February 5, 2016, Masood instructed Appellant to email him for the requested vacation time for the year. Having discussed the vacation time request with Masood orally between February 5th and 28th, with no response. Appellant spoke to him again and he responded on February 29, 2016. Masood denies that Appellant requested vacation time for the year.

Poole initiated a sign-in sheet for the Appellant at the CAC. No other employee at the CAC was required to sign in and out of the office. Prince Hallowell, (Hallowell) another employee, would on occasion miss his connection from the Glen Park Bart Station, with the shuttle bus provided by the Executive Park. Poole would direct me to drive to the Bart station to provide Hallowell with transportation. I was assigned to open the CAC office at 8:30 am.

Kyger reported to Poole, however Kyger worked at 525 Golden Gate Avenue not at the CAC. Kyger did not work with the Appellant on a daily basis once the Appellant was assigned to the CAC full time in November 2015. Kyger was to assess the Appellant's performance, including how Appellant was completing assignments, what training and support the SFPUC provided and feedback from employees. Masood relied on Poole and Kyger to interact with Appellant.

March 26, 2016, Appellant is promoted to PCS 1822.

In April of 2016, after Appellant had assisted Yolanda Jones, owner of Y-CAT, a Bayview-Hunter's Point WBE, in obtaining a "City" contract, she sends a complimentary email to General Manager Harlan Kelly. Masood did not view the emails favorably. Masood informed the Appellant that he did not want anymore "f*cking emails" from the LBE firms that Appellant had been assisting.

Subsequently, Appellant was having a general discussion with Poole about how the small firms in

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the Bayview/Hunter's Point area should "team up" and form joint ventures with general contractors to list them as SF LBE businesses to compete on upcoming SFPUC projects. Appellant mentioned that Y-CAT, in particular had a good reputation and was well known in the Bayview/Hunter's Point community for hiring local residents. It was Appellant's opinion that said firms would be receptive to joint-ventures with SF LBE's.

Poole, in furtherance of the hostile work environment lied to Masood, alleging that the Appellant had instructed the LBE firms that they "*must*" joint venture with Y-CAT if they wanted to obtain any PUC contracts.

Following the email to Harlan Kelly, Appellant was given specific instructions from Masood and Poole. Masood's instructions to Appellant were that he did not want any more emails from Yolanda Jones. Poole's instructions to Appellant were that "we're not doing their F-ing work. Be sure that they are doing the heavy lifting." Poole further stated that the "problems with the people in Bayview-Hunter's Point, is that they have a poverty mentality."

It was Appellant's understanding that the CAC was formed to assist small businesses with pursuing contracts with the City and the SFPUC. However, the Appellant's success at assisting community small businesses seemed to irritate Masood and Poole.

On April 29, 2016, Masood emailed to schedule a meeting once Hallowell returned from leave, to discuss Appellant's schedule. Despite assigning Appellant to the CAC to assist LBEs and provide coverage for the CLARK classes, Masood alleges that he was unaware of Appellant's specific roles, responsibilities and deliverables while the Appellant was assigned to the CAC.

In May of 2016, during a telephone conversation with Masood related to the "deliverables," Masood repeatedly addressed Appellant as "BRO." Appellant requested

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that Masood stop addressing Appellant as “BRO.” In response, Masood sarcastically addressed the Appellant as “Mr. Martin.” Appellant has witnesses who were employed by the SFPUC, and would be willing to testify to Masood’s use of the slang term “BRO.” Gardunio never contacted the Appellant during her investigation to obtain any follow up information or interview any additional witnesses.

This was the first time ever during Appellant’s assignment to Masood’s team that Masood had mentioned “deliverables” to Appellant. During the years of working under Masood, Appellant is not aware of any other employees undergoing a performance evaluation review or being asked for deliverables. While working under the supervision of Masood, Appellant never heard Masood used the term “deliverables” during the weekly staff meetings.

Following the May 2016 “BRO” telephone conversation with Masood, Poole and Kyger, launched a conspiratorial campaign to concoct a false narrative of Appellant’s work performance. Their “unsolicited Employee Logs and Status Updates,” were pure fabrications.

QUERY: Why are there no notes of counseling, training and other issues related to Appellant’s work performance prior to the “BRO” telephone conversation between Masood and the Appellant?

According to the witness statements, “Appellant did not have basic computer skills, including how to turn on a computer.” It was never conveyed to the Appellant that computer skills were an issue. Nor was the Appellant ever offered computer training. Appellant contends that the issue of computer proficiency was a red herring.

Masood makes an inquiry to Appellant as to why Appellant was not in the office until

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5 pm every day. Appellant opened the CAC every day at 8:30 am and left at 5:30 pm. On occasions, Appellant would be at 525 Golden Gate Avenue in the afternoon, completing the quarterly reports. On average, the Appellant worked 10 hours daily when assigned to the CAC. The Appellant worked 13 hours on the day the CLARK Construction classes were held.

Masood stated that he wanted to “chat about this in person and discuss the protocols for request/approval yet again.” He also didn’t “want/need/anticipate unnecessary email responses...”, related to Appellant’s vacation request. Masood did not want to document his conversations with Appellant, nor did Masood want a written record of what would be discussed with the Appellant, even though he stated to have only interacted with the Appellant one or two times, during the years of working under his supervision.

DELIVERABLES

May 20-23, 2016,

Yolanda Jones of Y-CAT was a client of the CAC. Kent Lim (LIM) and the Appellant worked with YCAT at the CAC to assist the firm in organizing their financial books and responding to Request For Proposals. The initial meetings were held in the mornings at the CAC. Y-CAT requested that LIM and the Appellant come to Y-CAT’s office, as it was too time consuming to have their staff to pack up their books and staff to come into the CAC. Poole initially did not object to LIM and the Appellant spending time at Y-CAT’s office.

Once the May 2016 emails from the LBEs acknowledging the Appellant’s “*Deliverables*” were received, Poole put a stop to LIM and the Appellant visiting Y-CAT’s office. Poole insisted that Y-CAT’s staff must come into the CAC, if they wanted to continue to use the services of LIM and the Appellant.

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Arash Firouzjaei, president of Achievement Engineering Corp., was of the opinion that the Appellant was his “go to” person at the SF-PUC for any upcoming projects. Appellant helped small businesses achieve their goals.

Tre’Sean Gray, Administrative Assistant, Arktos Incorporated was of the opinion that the Appellant identified and assisted in submitting a proposal opportunity with the Sewer Systems Improvement Project.

Stephanie Bettis, was of the opinion that the Appellant has, “looked out for us.” The Appellant assisted us in making many connections that will blossom in the near future. “We are very grateful.”

Raymond Horne, R & I Glassworks, was of the opinion that Kent Lim and the Appellant were helpful in helping to establish his LBE business in the Bayview. The Appellant has been instrumental in providing counsel and guidance in navigating thru the construction world and opportunities with the SF PUC.

Karwana Dyson, Big Mouth Productions, was of the opinion that the Appellant has “taken the time help me understand bid opportunities and scope of work.” Appellant was helpful in Big Mouth Productions landing their first PUC contract.

If the expectations of the position were to assist LBEs in business opportunities with the SF PUC, it would appear from the above-mentioned emails, that the Appellant had in fact met expectations.

Masood was dismissive of the letters of support. Appellant makes an inquiry to SFPUC HR, about having complimentary notes from the public to be included in Appellant’s personnel file.

On May 23, 2016, following Yolanda Jones’ email to Harlan Kelly, Poole issued instructions to

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the Appellant to no longer visit the offices of LBE firms. Poole further stated, “be sure they do the “heavy f*cking” lifting.” Appellant conveyed Poole’s instructions to Yolanda Jones on May 23, 2016. Masood, Poole and Kyger’s attitude towards the Appellant suddenly change from cordial to cold and distant.

Poole and Hallowell (African) would occasionally get into disagreements on how to post SFPUC and other City contracts on the CAC website. In one such incident of a hostile work environment, Poole and Hallowell got into a very heated discussion, wherein Poole told Hallowell to “Shut the F*ck up.”

Poole alleges that the entry and emails dated March 14, 2016 and April 29, 2016, are correct. *Poole thinks he wrote the emails because the SFPUC HR requested input when they were considering releasing the Appellant from Probation.*

Poole “does not have a distinct memory regarding all of the entries he wrote in the email to Masood.” The emails are not contemporaneous records, but his recollection of the events between March 14, 2016 and April 29, 2016. Poole admits that the Appellant “could turn on a computer but not proficient in software programs.”

Poole does not state the specific training provided or the software that Appellant was not proficient in. Poole’s training consisted of, “look over my shoulder,” while he entered the approved SFPUC contracts and other City departments on the CAC website.

Poole alleges that he “counseled Appellant on March 14, 2016 and early April 29, 2016. Poole alleges that he does not recall Appellant’s response to counseling.” Poole does not recall Appellant’s response because, the alleged “counseling” never took place. Poole does not produce any written notes or records of his recollection of the alleged counseling, only that he does not recall the Appellant’s response.

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QUERY: What specific training did Masood, Poole, and Kyger or others provide to Appellant during employment? Are there no contemporaneous records evidencing said interactions with the Appellant?

Poole alleges that on April 4, 2015, Appellant only provided Webcor's documents in response to an assignment. Poole "does not have written work product" for a June 29, 2015 assignment. Poole concedes that Appellant did produce the information contained in Webcor's documents.

Poole had been working on a research project for some time. Poole alleges that the Appellant's response to the verbal request to "look up the law" did not contain any substantive comments. Appellant was asked about the requirements for a contracting entity to do business with a government agency. Appellant provided Poole with the changes in California Senate Bill 854.

Kyger notes that he "could not keep eyes on the Appellant or Appellant's day to day activities. Again, Kyger worked at 525 Golden Gate Avenue and did not interact with the Appellant regularly. Kyger thinks he "prepared spreadsheet" to track Appellant's productivity however, he does not think that anyone asked him to prepare the spreadsheet." *According to the investigative file, Masood requested Poole and Kyger to provide information on the Appellant, including, completing assignments, what training support and any feedback from other employees.*

Kyger failed to include in his "Status Update," report that the Appellant interviewed the two Apprentices, including Randy Gatewood, and drafted the article that was included in the WSIP Quarterly Report.

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Kyger knew that Appellant practiced law for many years and expected Appellant to be proficient in software programs. Kyger fails to produce any records indicating one-on-one meetings with the Appellant. According to Kyger, “Appellant’s work performance was not bearing fruit.”

June 15, 2016, the Poole emails re: “Appellant’s Employee Log.” Poole alleges that Appellant was gone without anyone knowing where he was. There is no reference as to dates and times. Poole was to report on the Appellants deliverables.

QUERY: What were the “deliverables” that Masood, Kyger and Poole made references to? When were the “deliverables” conveyed to the Appellant?

Kyger failed to provide the original “Status” report together with “Status Update,” the reason being that Kyger did not prepare an “original” report during the Appellant’s 6-month probationary period. Kyger had been assessing Appellant’s performance, including how Appellant was completing assignments, what training and support the PUC provided and obtained feedback from other employees. Kyger’s suggestion was that Appellant investigate “what options” the Union would pay for training.

QUERY: Kyger provided a “Status” update. What is the date of the original ‘Status’ prepared by Kyger, regarding Appellant’s work performance, and why was it not produced?

June 13, 2016, the Appellant receives the unsolicited letter from the SF EEO, “*How to File a Complaint*” re: *Retaliation*. Appellant contents that the SF EEO became aware of the discriminatory treatment towards the Appellant and sent Appellant the unsolicited letter on, “How to File a Complaint” re: *Retaliation*. After receiving the above

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referenced letter, Appellant filed the complaint that is now before the Civil Service Commission.

June 13, 2016

Paul Briones, SFPUC HR representative, informed the Appellant that “no termination proceeding had been initiated,” in response to Appellant’s inquiry.

Friday, June 24, 2016

At 4:20 pm, Masood, had already made the decision to terminate my employment. Masood was unaware that Appellant was working outside of Masood’s office with Scott Kaplan, at 525 Golden Gate Avenue, on one of the WSIP Quarterly Reports. Appellant and Scott were responsible for certifying payroll of workers’ hours, under the SFPUC Project Labor Agreement.

Appellant was scheduled to become a permanent employee of the City & County of San Francisco on June 29, 2016. I was terminated on June 28, 2016. Had Appellant’s termination been one day later, Masood would have been forced to produce a written record of Appellant’s work performance deficiencies, as opposed to the vague unrecorded recollections of Masood, Poole and Kyger to rely on in the SFPUC HR investigation. Appellant would have had the rights of a permanent employee, had the dismissal been one day later.

Kathy How (HOW) relied on Rachel Gardunio and staff at the SFPUC HR. HOW spoke with Ivy Fine one time re: Probation. HOW does not recall any details with Masood. Gardunio provided updates to HOW. It was Gardunio’s opinion that the Release “was not clean or clear cut.” *It was Gardunio’s opinion that “Infrastructure could have done a better job of documenting Appellant’s performance.”*

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QUERY: Was Gardunio investigating to determine the facts or coaching Masood, Poole and Kyger to produce more evidence to justify termination?

Why didn't Gardunio simply ask Masood, Poole and Kyger to produce the Appellant's evaluations conducted during Appellant's 6-month probationary period?

Did the SFPUC HR investigate any prior complaints filed against Masood in relation to discriminatory treatment?

The lack of a performance review in the Appellant's file did not alter the recommendation of Gardunio to HOW, that *"If any doubts, it would be better to release Appellant from probation."* HOW does not remember hearing the reference to "BRO" statements, prior to terminating the Appellant. Gardunio knew at the time she was advising HOW that the Appellant had objected to being addressed as "BRO" by Masood.

Gardunio failed to mentioned the supportive emails received by the SFPUC's General Manager, related to the Appellant's work performance to HOW, or make mention of the emails in her investigation. It appears that Gardunio made the decision to terminate the Appellant.

QUERY: Did Kathy HOW solely rely on Gardunio's recommendation to reach the conclusion that Appellant was "not meeting performance expectations and said goals?"

QUERY: When did the parties become aware that Appellant was scheduled to become a permanent employee the day after being released from Probation?

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Why was the Appellant terminated one day before becoming a permanent City employee?

CONCLUSION

If it had not been for the Civil Service Commission's decision to order the SF HR to allow the Appellant to review the confidential redacted files of the SF PUC HR, the SF HR and the SF EEO, they would continue to allege that the investigation was fair and unbiased. The investigation was in fact bias and a whitewash of the true facts of the Appellant's work performance.

The justification for Appellant's termination "*not meeting performance expectations and said goals,*" was pretextual. Masood had not conducted a performance review of Appellant the entire time that Appellant was under his supervision.

The efforts of Masood, Poole and Kyger to belatedly construct a performance analysis was biased and lacks creditability. Masood, Poole and Kyger never discussed with the Appellant the alleged work performance issues raised in the SFPUC HR investigation conducted by Gardunio.

None of the recollections of Masood, Poole and Kyger's regarding Appellant's negative work performance were recorded contemporaneously with the events alleged. Masood retaliated against Appellant, by concocting false allegations of Appellant's work performance.

Appellant contends that Masood's actions against the Appellant were based on race and age discrimination, forcing the Appellant on unemployment without due process at the age of 67 years.

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The investigation conducted by the SFPUC HR was not objective and does not pass the “*smell test.*”

What is clear from a review of the SFPUC HR investigation, is that Masood, Poole and Kyger were adamant in their statements related to the Appellant’s work deficiencies, although they could not produce any written records to support their assertions.

What is transparent in the SF EOC investigation, is that when Masood, Poole and Kyger were presented with records of Appellant’s work product, suddenly their recollection of facts related to Appellant’s work product became vague memories of the events that they were so adamant about during the SFPUC HR’s investigation.

Appellant has suffered severe hardship as a result of the unreasonable *delay of more than 7 years* in addressing Appellant’s claim of discrimination.

Appellant is requesting reinstatement of employment with back pay, full benefits and interest.

Respectfully submitted,

/s/

Craig K. Martin

To: San Francisco Civil Service Commission

From: BRETT WATSON

I first met Masood Ordikhani when I was working at the San Francisco Southeast Plan. I starting working at San Francisco Public Utilities headquarters at building 525 Golden Gate Avenue beginning in 2013. On occasion, Masood and I would engage in casual conversation. I remember Masood addressing me as Bro when he spoke to me.

Dated October 25, 2023

A handwritten signature in cursive script that reads "Brett Watson". The signature is written in black ink and is positioned above a horizontal line.

Brett Watson

415 760 8979