

CITY OF ATLANTA
CIVIL SERVICE BOARD
FINDINGS OF FACT AND ORDER

APPEAL NO. 2019-045AP
APPELLANT: **Barsolino LeConte**

Effective Date: December 20, 2019
Hearing Date: March 10, 2020

City of Atlanta (“City”)
Atlanta Police Department (“APD”)

ACTION:

3-day Suspension

HEARING OFFICER/BOARD:

Sterling P. Eaves, Chair

APPEARANCES

City of Atlanta’s Representatives:

Joshua Foster, Esq., Asst. City Attorney
Jessica Johnson, City Attorney’s Office

City Witnesses:

Lt. Clint Myers, APD
Lt. Scott Jimenez, APD

Appellant’s Counsel/Representatives:

Donald C. English, Esq., Southern States Police Benevolent Assn.

Appellant Witnesses:

Ofc. Barsolino LeConte, APD, Appellant
Ofc. Andrew Sherman, APD
Ofc. Ebens Alexis, APD

Observers:

None

STATEMENT OF AUTHORITY

Under the authority and provisions of Chapter 114, Article VI, Division 3, §114-546 through 556 of the Atlanta City Code (“Code”), a hearing in the above-referenced case was held before the above-named hearing officer(s) of the Atlanta Civil Service Board (“Board”) on the date set forth above in Conference Room 2174 of the City Hall Tower located at 68 Mitchell Street, Atlanta, Georgia 30303.

EXHIBITS

City of Atlanta:

- C-1. Atlanta Police Department, Notice of Proposed Adverse Action (“NPAA”), employee Barsolino LeConte, issue date December 5, 2019, 2 pages
- C-2. Atlanta Police Department, Notice of Final Adverse Action (“NFAA”), employee Barsolino LeConte, effective date December 20, 2019, 2 pages
- C-3. APD Policy Manual APD.SOP.2010 Work Rules, §4.2.29-APD.SOP.3133 Body Worn Cameras, (“BWC Policy”), 13 pages
- C-4. Atlanta Police Department, OPS Complaint File Closeout Report, OPS Control Number 19-I-0276-SOP, 53 pages

Appellant:

- A-1. APD Policy Manual APD.SOP.2010 Work Rules, §4.2.52, redacted 1 page

VIOLATION

“You are charged with violating Rule 4.2.33 of the Employee Work Rules of this Department. Said Rule states:

Conformance to Directives Employees are required to familiarize themselves with, and conform to, the rules, regulations, directives, and standard operating procedures of the Department.

SPECIFICALLY: On May 26, 2019, you did not activate your BWC [“Body Worn Camera”] when you arrived on a call for service at 682 Boulevard.

Your actions described above are in violation of said listed work rule 4.2.33 (APD.SOP.3133/4.3.4 Body Worn Camera) when you failed to meet §4.3.4. Sworn employees shall place their BWC into event recording mode for the following

circumstances listed to include, but not limited to #1-#15.”

STIPULATIONS

1. The Appellant agrees that APD has a body worn camera/BWC Policy.
2. The Appellant agrees that APD.SOP. 2010 is an applicable policy in this case.

FINDINGS OF FACT

1. The Appellant is employed by APD as a Police Officer in Zone 6, beat 603, on day watch.
2. At the time of the appeal hearing in this case, the Appellant has been employed as a Police Officer by APD for thirteen (13) years.
3. On May 26, 2019, because four officers were not at work on the day watch that day, the Appellant was very busy on a beat and in a zone that is not usually busy. The Appellant was dispatched and responded to a total of ten calls during his shift. Off. Ebens Alexis from Zone 2 was working overtime, helping back-up the Appellant.
4. In a fifty-seven (57) minute timeframe or between 10:40AM and 11:37AM, four calls were dispatched to the Appellant. Of those, two calls were audible burglar alarm calls and one was a missing child call, all of which were high priority calls.
5. The last of the four calls was a lower priority call, a criminal trespass call at the Dunkin Donuts at 682 Boulevard at Ponce de Leon Avenue (“CT Call”).
6. Because the second audible alarm call came in and was dispatched to the Appellant after he was in route to the CT Call, the Appellant was redirected to the higher priority second audible alarm call. When he finished there, he was finally able to respond to the CT Call.
7. The Appellant’s BWC was activated by him on the way to the CT Call the first time. When he completed the second audible alarm call, he took his BWC out of recording mode and his BWC was not in recording mode at the time of his arrival at the CT Call. Each of the other calls that day were recorded by his BWC.

DISCUSSION

As the result of an APD-wide audit of the use, misuse or non-use by sworn personnel of their BWC’s, the Appellant’s BWC recordings were randomly audited. The CT Call did not have a BWC recording and an Office of Professional Standards (“OPS”) investigation ensued.

The OPS investigation revealed that a total of three (3) on-duty APD officers were at the

location around the time of the CT Call. The first was Officer Andrew Sherman, who was not dispatched to the scene but who happened to be at the location purchasing a donut. When he approached the cashier to place his order and he was asked by her if he was there to respond to the CT Call. He replied that he was not there for that purpose, the cashier reported to him that the incident was over as the alleged perpetrator had already left the scene. The second officer, the Appellant, was dispatched to respond to the call. As the Appellant drove into the parking lot, Officer Sherman was walking out of the business and he approached the Appellant, who remained in his car, and told him the incident was already over and that the alleged perpetrator had left the scene. Concurrently, Off. Ebens Alexis, responded to the dispatched call as back-up to the Appellant. Without getting out of his car, Off. Alexis saw the Appellant speaking with Off. Sherman, heard the Appellant tell dispatch that no investigation was necessary and to close the call, and Off. Alexis and then the Appellant left the scene. By APD procedures, no report was required to be produced by either dispatched officer.

None of the three officers activated their respective BWC's. Since Off. Sherman had not been dispatched to the CT Call and because the cashier did not ask for his help, he was not required to have activated his BWC and was cleared by OPS. The Appellant and Off. Alexis, however, were dispatched and the OPS investigation resulted in each being disciplined for not activating their BWC's and each received a three (3) day suspension. Off. Alexis, with the help of his union representative, negotiated his discipline down to one (1) day, thereby resolving his OPS case. The Appellant, however, filed this appeal.

The Appellant believes that he was not required to activate his BWC in recording mode at the CT Call because there was no citizen-police encounter as required by the BWC Policy. He states that the purpose of the BWC policy is to document citizen-police encounters and he likes the fact that he has the device and he believes in its purpose. Routinely, when he is dispatched to a call, it is his usual practice to arrive at the location and to activate his BWC upon citizen contact. Even after the end of a call, if a citizen re-approaches him, he will reactivate his BWC he states.

But the Appellant also points out that while he has been issued a newer second generation BWC device, the BWC does not have unlimited recording capacity and all officers are warned to be mindful of that fact as they go about their work. It is not possible for a BWC device to be turned on into the recording mode at the beginning of a shift, record all shift long for at least eight (8) hours and then be deactivated and recharged at shift's end. Accordingly, all sworn personnel have to conserve the approximately four-hour event recording mode battery life so that the BWC can record when the situation requires it. It is also pointed out by the Appellant that there was no complaint filed by the public on the CT Call and that his discipline was not in concert with progressive discipline.

The BWC Policy at §4.4.1 state: "The purpose of the BWC is to be used during law enforcement interactions with the public." But in §4.3.4, sworn employees are required to put their BWC's in event recording mode, including but not limited to, fifteen listed circumstances. Circumstance number one requires activation "...at the moment they are dispatched to a call." There was no contrary evidence to the fact that the Appellant met this requirement because he began recording on his first approach to Dunkin Donuts and immediately after he was dispatched. Because of the higher priority call, the first few seconds of the recording before the

higher priority dispatched call became part of the second call/case's event record. The next twelve and the fifteenth/the last circumstances are not applicable to this appeal and the parties hereto so agreed.

The City argues that circumstance numbered 14 does apply as it requires device activation "while interacting with the public in a law enforcement capacity." The Appellant and the City agree to this fact. But the City's position in the NFAA that the Appellant had contact with the public, which is required by the BWC Policy, is unsupported by the evidence. Simply stated, there was no citizen-police encounter in the Appellant's response to the CT Call.

In conclusion, looking at all the evidence from the hearing, it is clear that the Appellant was, on the shift in question, performing under higher than usual call volume. He had four calls stacked in his dispatched queue all at once, three of which were high priority calls in the busiest fifty-seven-minute window during that shift. The Appellant answered all calls to which he was dispatched and did so without incident or complaint. The City did not present evidence that there was in fact citizen-police interaction at the CT Call and the Board finds therefore, that no violation of the BWC Policy occurred on the CT Call by the Appellant. The Appellant's remaining issue that APD did not follow the City's progressive discipline guidelines is unnecessary to address here.

By City Code §114-553(b), the Board is only allowed to sustain or revoke the discipline imposed by APD on cases of discipline below dismissal of a Police Officer. Consequently, and since discipline modification is not possible, the Board revokes the discipline in this case.

ORDER

This Board **GRANTS THE APPEAL** and reverses the three (3) day suspension.

This the 20th day of March 2020.

Signed:

Sterling P. Eaves

Sterling P. Eaves, Chair