

**CITY OF ATLANTA CIVIL SERVICE BOARD
ORDER**

APPEAL NO. 2020-012AP

APPELLANT: Ivory Streeter
APD

Effective Date: June 1, 2020

Hearing Date: January 7, 2021

ACTION:

Dismissal

HEARING OFFICERS/PANEL

Sterling P. Eaves, Chair

Plemon El-Amin, DWB

Mary Ann Phyll

APPEARANCES

City of Atlanta Representatives:

Allegra J. Lawrence-Hardy, Atty.
Kareemah Lewis, Atty.

City Witnesses:

Former Chief Erica Shields, APD
Ivory Streeter

Appellant Representative:

Lance LoRusso, Atty.
Kim Ralich

Appellant's Witnesses:

SPO Norman Merritt
Off. Tabatha White
Capt. Brian Schiffbauer
Lt. Robert Peterson
Sgt. William Dean
Carlos Smith
James Borden
Ivory Streeter

STATEMENT OF AUTHORITY

Under the authority and provisions of Chapter 114, Article VI, Division 3, Sections 114-546 through 556 of the Atlanta City Code ("Code"), a hearing in the

above-referenced case was held virtually via Zoom Webinar, facilitated by the City, pursuant to Mayor Keisha Lance Bottoms Executive Order regarding COVID-19, and before the above-named hearing officers of the Atlanta Civil Service Board (“Board”) on the date set forth above.

EXHIBITS

City of Atlanta: see list in the official records.

Appellant: see list in the official records.

CHARGES

DISMISSAL- for violation of the Atlanta Police Department Work Rule:
4.2.50 Maltreatment or Unnecessary Force.

INFRACTION

See City of Atlanta Notice of Final Adverse Action (NFAA).

FINDINGS OF FACT

1. Appellant has worked for APD for 17 years with a clean record and up-to-date training that included among other skills, proper taser use and de-escalation options for gaining compliance.
2. Appellant was, at the effective date of his termination on June 1, 2020, a regular, non-probationary employee of the City of Atlanta Police Department.
3. On May 30, 2020, Mayor Keisha Lance-Bottoms ordered a curfew in the City of Atlanta to begin at 9pm through sunrise on May 31, 2020.
4. The Appellant was on duty before and during that curfew period as part of the arrest team deployed in the downtown area.
5. While engaged in his duties, after the start of the curfew, the Appellant deployed his taser in the arrest of two occupants of a vehicle.
6. Prior to this incident, the Appellant was aware of APD Work Rule 4.2.50.

7. On May 31, 2020, the Appellant was served with a Notice of Proposed Adverse Action (NPAA) indicating dismissal effective on June 1, 2020, citing a violation of Work Rule 4.2.50, regarding Maltreatment or Unnecessary Force.
8. Fifteen (15) to twenty (20) minutes later, Chief Erika Shields served the Appellant a Notice of Final Adverse Action (NFAA), indicating immediate dismissal effective June 1, 2020.

DISCUSSION

Due to Mayor Keisha Lance Bottoms' Executive Order and COVID-19 pandemic guidelines, the appeal of Ivory Streeter was called virtually at 10am, January 7, 2021 via the Zoom Internet platform.

After hearing arguments from both sides and reviewing all evidence, the Panel's initial and persisting concern was whether or not the Appellant was afforded due process relating to proper notification of the adverse action and the meaningful opportunity to respond, as required by City Code. The procedural requirements set forth in section 114-530 state: "an employee against whom an adverse action is to be taken shall be given a written notice of proposed adverse action, signed by the appointing authority or designee, at least 10 working days prior to the effective date of the proposed adverse action."

In the Appellant's case, the effective date was June 1, 2020, and both the NPAA and the NFAA were presented to him 15-20 minutes apart on May 31, 2020, thereby not meeting the required 10 day period. Section 114:530 continues: "However, in an emergency situation, the adverse action may become effective immediately following the employee's response, if any. During the period of notice, the employee is expected to perform usual duties without disrupting the activities of other employees or operations of the city department. Any action of the employee to the contrary shall be considered an emergency situation as defined in section 114-532."

Both the Appellant and the City agreed that upon being presented the NPAA, the Appellant informed the Chief that he needed 20 minutes for his union representative to arrive before his response could be given. Instead, the

Appellant was given the NFAA 15-20 minutes later without his response and without his representative being present. The Panel finds this problematic as the Appellant was not given any opportunity to respond to the NPAA charges as required by Code.

As to the City's position that this was an emergency situation that allows immediate adverse action, thereby bypassing the ten (10) day notice and response requirements, the Panel references 114:532, which states: "The appointing authority or designee may immediately suspend an employee with pay...". But the Appellant was, in fact, not suspended with pay, rather he was dismissed without pay instead, thereby disregarding not only alternative available actions but not comporting with Code requirements.

Further, under this same Notice of Emergency Action section of 114:532, it is also stated: "The notice of emergency action shall include a statement of the emergency situation that caused the action to be taken. Should the action be an adverse action, the notice shall meet the requirements of section 114:530." This required APD to follow not only the requirements of 114:532 but also 114:530, which it did not do.

The Panel understands the difficult environment in which the incident occurred, and accepts that the surrounding circumstances may have created a citywide emergency situation. However, the City also failed, in our opinion, to give a sufficient written description of why these circumstances had risen to meet the emergency criteria as stated in the Code. Also of note is that on the NPAA, the emergency box was checked with the alleged infractions restated, while on the NFAA the emergency box was not checked. Regardless, the Panel is convinced that 114-532 obligated the City to give the Appellant in writing an explanation of why his actions created an emergency as required by Code but the City did not sufficiently do so.

ORDER

Therefore, based upon the serious concerns of insufficient adherence to City code and procedures which culminated into a lack of due process, the Board upholds the Appeal of Ivory Streeter and revokes the City's dismissal of him from APD employment.

This the 1st day of February 2021.

Sterling P. Eaves

Sterling P. Eaves, Chair

Plemon El-Amin

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