

CITY OF ATLANTA CIVIL SERVICE BOARD
ORDER

APPEAL NO. 2019-026AP

Effective Date: July 9, 2019
Hearing Date: December 12, 2019

APPELLANT:
Cheree Herbert

HEARING OFFICERS:
Will Chandler, Chair
Nkoyo-Ene R. Effiong
E. Carl Touchstone, DWB

APPEARANCES

City of Atlanta ("City"):

Counsel/Representative:
Brenda A. Raspberry, Esq.
Shalonda Miller, Esq.

City of Atlanta's Witnesses:
Sgt. LaWanda Giles
Major Carven Tyus

Appellant:
Cheree Herbert

Counsel/Representative:
Stephanie Mutti, Esq.

Appellant's Witnesses:
Cheree Herbert

Observers:
C. Elisia Frazier

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

EXHIBITS

The City's Exhibits

1. Atlanta Police Department Notice of Proposed Adverse Action dated June 12, 2019 (the "NPAA").
2. Atlanta Police Department Notice of Final Adverse Action dated June 20, 2019 (the "NFAA").
3. Atlanta Office of Professional Standards Internal Affairs Unit Report dated June 26, 2018 (the "OPS Investigative Report").
4. Memorandum to Major C. Tyus from Lieutenant H. Zenelaj dated September 3, 2018.
5. Atlanta Police Department Standard Operating Procedure ADP.SOP.2010 Work Rules (the "Work Rules").
- 5a. Atlanta Police Department Standard Operating Procedure APD.SOP.3085 Missing Persons (the "APD.SOP.3085").
6. Atlanta Police Department Employee Discipline Worksheet for Cheree Herbert dated January 14, 2019 (the "Discipline Worksheet").
7. Memorandum to Major C. Tyus from Deputy Chief J. L. Glazier dated June 24, 2019.

Appellant's Exhibits

2. Atlanta Police Department Adult Missing Persons COBRA Report Synopsis completed by Sgt. C. Herbert (the "COBRA Report").
3. Atlanta Police Department Policy Manual, APD.SOP.5010, Criminal Investigations Division (the "SOP.5010").
4. Atlanta Police Department Standard Operating Procedure, APD.SOP.2020, Disciplinary Process (the "SOP.2022").

Stipulations Prepared by the Appellant: Exhibit B-1

1. There is no law in the State of Georgia that requires a 24-hour waiting period before reporting a person missing to law enforcement.
2. Major Carven Tyus was Lieutenant Carven Tyus in the period of February through April 2018.
3. Lt. Tyus was the direct supervisor of Sgt. Cheree Herbert in the period of February through April 2018.
4. Sgt. Herbert was the supervisor of the Atlanta Police Department Missing Persons Unit in the period of February through April 2018.
5. During the period of February through April 2018, the Missing Persons Unit consisted of Sgt. Herbert, Investigator Tia Fantauzzi, and Investigator Joseph Golphin.
6. Ms. Shanequa Sullivan failed to return home from her job at Hartsfield Jackson International Airport on February 4, 2018.
7. The Atlanta Police Department was not notified of Ms. Sullivan's disappearance until February 6th, 2018.
8. The body of Ms. Sullivan was removed from the Yellow River on/or about March 2nd, 2018.
9. The body of Ms. Sullivan was identified on/or about March 9th, 2018.
10. The medical examiner was unable to determine a time of death.
11. The medical examiner opined Ms. Sullivan could have been in the water for 30 days.

VIOLATIONS

City of Atlanta, Atlanta Police Department Work Rule(s):

- 4.2.37 Unsatisfactory Performance
- 4.2.3 Responsibilities of a Supervisor
- 4.2.33 Conformance to Directives (APD.SOP.3085 4.12.8)

FINDINGS OF FACT

1. Appellant is employed by the City of Atlanta (the "City") in the Atlanta Police Department (the "Department"). Her classification is Sergeant, and she is the supervisor of the Adult Missing Persons Department. She has been with the Department for approximately twenty-three (23) years.

2. On June 12, 2019, the City issued Appellant a NPAA that recommended a fifteen (15) day suspension, without pay, for allegedly violating Atlanta Police Department Work Rule(s) 4.2.37; 4.2.2; and 4.2.33. (City's Exhibit 1)
3. On June 17, 2019, Appellant provided a personal response to the NPAA indicating the following: "Felt she handled the situation appropriately given all the circumstances. Chain of command was aware of her actions." (City's Exhibit 2)
4. On June 20, 2019, the City issued to Appellant a NFAA, without modification to the NPAA, after Appellant's personal response. The effective date of the action was July 9, 2019. (City's Exhibit 2)

DISCUSSION

The facts in this appeal involve Appellant's handling of a missing persons case that was reported to the Department on or about February 6, 2018. At all times relevant herein, Appellant was the supervisor of the Adult Missing Persons Unit.

Based on the evidence presented, the missing person was a mentally challenged, 18 year old female. The victim was employed at Hartsfield Jackson International Airport (the "Airport") and had been taking MARTA, to and from work, for approximately eleven (11) months prior to her disappearance. By the time the Department received the missing persons report, the victim had been missing for approximately two (2) days.

The victim's grandmother attempted to make a missing persons report on or about February 4, 2018 to a different agency, unrelated to the City of Atlanta. Said agency incorrectly informed the victim's grandmother that she had to wait 24 hours to make the report. (The evidence identifies the first police department as either Forest Park or East Point. Appellant testified the department was Forest Park. According to the Internal Affairs Report, the department was East Point. See City's Exhibit 3, page 4-8-18)

The missing persons report to the Department was communicated to Appellant on February 6, 2018 by Sgt. Kimbrough, who is the Department supervisor assigned to the Airport. Appellant spoke to the victim's grandmother over the phone, while the grandmother was at the Department's Airport Precinct with Sgt. Kimbrough. Appellant received information concerning the victim's

mental challenges due to autism, work history, and regular use of public transportation. At this time, Appellant made the determination that the victim's circumstances did not meet the criteria for the issuance of a Mattie's Call, based on her understanding of Department rules and the information she gained from the victim's grandmother.

Appellant assigned the case to Lead Investigator Fantauzzi ("Inv. Fantauzzi") on the day it was received. Appellant instructed Inv. Fantauzzi to do a media release, BOLO, and to check with hospitals, jails, and request video from MARTA. Inv. Fantauzzi made a request to MARTA for the video, but the video was not immediately received. On February 13, 2018, Inv. Fantauzzi had a family emergency and did not report to work. Inv. Fantauzzi was out of work on February 13th 2018, worked a half day on February 14th, 2018 and then traveled to Puerto Rico for a funeral. Appellant was out sick on February 13th and 14th, 2018. Appellant was not initially aware of Inv. Fantauzzi's emergency absence. On February 14, 2018, Lieutenant Tyus, Appellant's superior, contacted Appellant concerning Inv. Fantauzzi's absence from work. Appellant then sent an email to Investigator Golphin (Inv. Golphin), the only other remaining investigator in the Missing Persons Unit, that he was now assigned to this case.

Appellant testified that she asked Lt. Tyus for assistance, during this period, but the same was never granted. Inv. Fantauzzi returned to work on or about February 20, 2018. Prior to Inv. Fantauzzi's return, another missing persons case garnered extensive media attention, due to the fact that the victim was a doctor employed by the Centers for Disease Control (the "CDC doctor"). Appellant and Inv. Golphin began to focus their efforts on the CDC doctor disappearance and upon her return, Inv. Fantauzzi did too. It is alleged that Appellant failed to follow up with the primary investigator of the status in this case, in a timely manner. (City's Exhibit 1)

On or about March 6, 2018, the body of a female was found in the Yellow River, in Newton County, Georgia. It was determined that the body was that of the victim in this case.

The Department contends that Appellant violated the following Atlanta Police Department Work Rule(s). Rule 4.2.37 Unsatisfactory Performance; Rule 4.2.3 Responsibilities of a Supervisor; and Rule 4.2.33 Conformance to Directives (APD.SOP.3085 4.12.8). For said violations, Appellant received a ten (10) day suspension for violating Rule 4.2.37, a four (4) day suspension for violating Rule 4.2.3, and a one (1) day suspension for violating Rule 4.2.33, for a total of a fifteen (15) day suspension.

Based on the evidence, it appears that Appellant did in fact violate Rule 4.2.37 Unsatisfactory Performance. On February 6, 2018, the date that the report was received, Appellant had no way to anticipate her own absence from the office, on or about February 13, 2018, nor that of the Inv. Fantauzzi's around the same time. However, the City has shown that there were several missteps that occurred early on, in the investigation. For example, there was no physical response done to the Airport on the day, or shortly thereafter, of learning of the victim's disappearance. Appellant did speak with the grandmother, via telephone, but additional steps were warranted. Appellant failed to ensure that proper follow up was occurring to obtain video from MARTA and other sources at the Airport. Moreover, Appellant failed to follow up with the primary investigator of the status of the victim's case in a timely manner.

As it relates to Appellant's alleged violation of Rule 4.2.3 Responsibilities of Supervisor, the City has not met its burden. The City contends that Appellant, sometime during February and March, 2018, reassigned the victim's case several times and ultimately reassigned the entire Adult Missing Person team to the case of the missing CDC doctor. (City's Exhibit 2) The problem with this position is that Appellant's unit only consisted of three (3) investigators, including Appellant. The evidence suggests that Appellant reached out to her superior, Lieutenant Carven Tyus, for assistance but no additional personnel were provided. Specifically, the evidence indicates that Lieutenant Carven could have moved an investigator from the Homicide Unit, to assist Appellant with both of the investigations, that of the victim in this case and that of the CDC doctor, each of which were getting media attention. The issue concerning Appellant's lack of knowledge of the progress of victim's investigation and follow up are repetitive to Rule 4.2.37 and have already been addressed above.

As it relates to Appellant's alleged violation of Rule 4.2.33 Conformance to Directives/APD.SOP.3085 Missing Persons, the City has also failed to meet its burden. Herein, the City takes issue with the fact that Appellant did not conform to directives and issue a "Mattie's Call" in this case. After speaking with the victim's grandmother, Appellant took the position that a Mattie's Call was not warranted, since it was her understanding that the victim, although having autism, was quite functional. Specifically, the victim had been employed at the Airport and used MARTA to go to and from work for at least eleven (11) months prior to her disappearance. APD.SOP.3085 is the Conformance Directive that contains the Mattie's Call Alert Criteria for Activation (See City's Exhibit 2) Section 3 of the Directive states as follows: 3. The missing person must have Alzheimer's dementia, or other mentally disabling conditions that would impair the person from returning safely without assistance. Based on the information provided to

Appellant by the victim's grandmother, Appellant formed a good-faith belief that the activities of the victim in the eleven (11) months prior to her disappearance, indicated that the victim's autism did not impair her ability from returning safely without assistance.

After review of the testimony and evidence, the Board concludes that the City was justified in this disciplinary action, as it relates to the ten (10) day suspension without pay, for violating Rule 4.2.37 Unsatisfactory Performance. The City did not meet its burden concerning the four (4) day suspension for violating Rule 4.2.3 Responsibilities of Supervisor. The City also failed to meet its burden concerning the one (1) day suspension for violating Rule 4.2.33 Conformance to Directives.

ORDER

Based on the foregoing, the Board **AFFIRMS** the Appellant's 10-day suspension without pay. The Board hereby **GRANTS** the Appeal regarding Appellant's four (4) day and one (1) day suspensions, as noted above. Therefore, the total suspension for Appellant should be listed as ten (10) days suspension, without pay.

This the 13th day of January, 2020.

Signed:

Will Chandler

Will Chandler, Chair

Nkoyo-Ene R. Effiong

Nkoyo-Ene R. Effiong

E. Carl Touchstone

E. Carl Touchstone, DWB