

**CITY OF ATLANTA CIVIL SERVICE BOARD
ORDER**

APPEAL NO. 2019-018AP

Effective Date: April 12, 2019
Hearing Date: December 5, 2019

APPELLANT: Joseph Stone
Department of Public Works (DPW)
City of Atlanta (City)

HEARING OFFICERS/BOARD
Robert Hawkins, Chair
S. Ralph Martin, Jr.
Mary Ann S. Phyll, DWB

APPEARANCES

City of Atlanta :
Shirnelle Council, Esq.
Reginald Martin, Esq.

City Witnesses:
Harry Sims, Supervisor
Solid Waste Route – DPW
John Busby, Supervisor
Solid Waste Route – DPW
Nia Parker, Director HR - DPW

Appellant Representative:
None

Appellant’s Witnesses:
Kendra Hillman
Kemond Evans, Supervisor
Sanitation Route, DPW

Observer:
Chandler Davis, City Law Department

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 before the above-named hearing officers 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:

1. Notice of Proposed Adverse Action (NPAA) dated 3/29/2019 - 2 pages
2. Notice of Final Adverse Action (NFAA) dated 4/11/2019
3. Certified copy of Chapter 114 – Personnel, Article VI – Labor Relations, Section 114-528 from Foris Webb, III, Municipal Clerk - 3 pages

Appellant:

None

STIPULATIONS

1. Joseph Stone was employed as an Environmental Service Worker with the City of Atlanta Department of Public Works.
2. On February 7, 2019, Appellant took three items out of Harry Sims’ vehicle: (1) gold phone charger; (2) two charger cords; and (3) one phone mount.

CHARGES

Dismissal for violation of Atlanta City Code of Ordinance Section 114-528:

- (b)(4): Misconduct, including but not limited to engaging in offensive conduct or language toward the public, supervisory personnel or fellow employee

- (b)(11): Abuse or theft of city property
- (b)(20): Any other conduct or action of such seriousness that disciplinary action is considered warranted

INFRACTION

See City of Atlanta Notice of Proposed Adverse Action (NPAA) (Exhibit 1)

FINDINGS OF FACT

1. The Appellant, Joseph Stone, City employee for seven years held the position of Environmental Service Worker in the Department of Public Works at the time of the incident.
2. DPW supervisor, Harry Sims, filed a complaint and initiated an investigation involving a theft from his city issued pick-up truck. A copy of the complaint was not presented at the hearing.
3. City security pulled the video footage that covered the area of Mr. Sims' work truck for Thursday, February 7, 2019. The video showed a male worker enter the pick-up truck, remove items and take to a car. (Exhibit 1). Mr. Sims identified the Appellant, Joseph Stone, as the man in the video.
4. When questioned on Monday, February 11, 2019 by HR, the Appellant admitted to removing the three items listed in the complaint. (Exhibit 1). He maintained that the items were ones he recently lost. He said that he confused the truck he entered to be his DPW supervisor, John Busby's city vehicle. Both vehicles are white however the make/model of the vehicles and the interiors are different. The Appellant also stated during the interview he later realized the next night, Friday, February 8, 2019, that the items were not his.

5. The day following the interview, the Appellant returned the car mount to supervisor Harry Sims. After being placed on administrative leave for the incident, he returned the phone charger and the phone cord to his supervisors.
6. Management recommended dismissal. Appellant, Joseph Stone was issued a NFAA on April 11, 2019 and dismissed from employment effective April 12, 2019.

DISCUSSION

The appeal of Joseph Stone was called at 2:05pm. Harry Sims, the City's first witness verified the personal items taken from his unlocked city issued truck: 1) His phone car mount, 2) His gold phone charger, 3) One charger cord (Exhibit 1).

The other charger cord noted in the exhibit was city property.

Mr. Sims, a DPW supervisor, stated that he questioned the Appellant Joseph Stone as to why he entered his truck without permission. The Appellant responded saying that he thought it was his DPW supervisor's vehicle. Mr. Sims described his city truck and outlined how its appearance differed from others.

During the examination of this witness, the City stressed the department's strict policy regarding city issued vehicles. Listed are two of them:

- City vehicles are assigned to DPW supervisors only to be utilized during work hours, and
- permission is required of the workers before entering one.

Mr. Sims stated that the Appellant admitted to stealing the items listed.

The Appellant's admission is also noted on the Statement of Stipulated Facts, item #2 signed the day of the hearing.

The Appellant returned all of the items and Mr. Sims stated that he personally apologized to him for his behavior. HR placed the Appellant on administrative leave for the incident.

A clear violation of policy was presented to the Board however; from this point the lines get blurred.

Next, the City called John Busby; the Appellant is his direct report. His testimony paralleled Mr. Sims' testimony. Likewise, the City's questioning of this witness emphasized the department policy of acquiring permission before entering a city vehicle. It was unclear to the Board whether the permission must come from the supervisor assigned to the vehicle or from any DPW supervisor.

The hearing continued. The City elected not to call their last witness, Kemon Evans. The Chair asked the Appellant if he would like Mr. Evans called as *his* witness. He responded, yes. The City raised no formal objection. Mr. Evans entered the hearing room and took the oath.

About a week before the infraction, the Appellant says that he lost his keys when working his route. The Appellant asked the witness, Mr. Evans, if he had allowed him, the Appellant, to drive Mr. Sims assigned city truck while Mr. Busby was on vacation. Mr. Evans, also a DPW supervisor, answered that he did not give the Appellant the keys to Mr. Sims city truck nor did he give the Appellant permission to drive the truck to search for personal car keys he reported lost that day on the work route. Mr. Evans stated that he offered his car to the Appellant and that his car was used instead. City did not cross examine the witness.

The Appellant called his final witness, Kendra Hillman. Unsure of the

date, she testified that it was before the infraction that she visited the Appellant's workplace. She contended that she witnessed Mr. Evans give the Appellant the keys to Mr. Sims' city truck to search for his lost car keys. She testified that she accompanied the Appellant in the city truck. They found the keys; the Appellant dropped her off at home before returning the city vehicle. Ms. Hillman is a personal acquaintance of the Appellant and familiar with the witnesses, referring to them during testimony by their first names. The testimony of this witness contradicts the testimony of the last witness, Kemond Evans.

The Board carefully considered all testimony and evidence presented by both the City and the Appellant during the hearing. The cornerstone of the employment relationship is one of trust. Workers that steal must be held accountable. However, while the Appellant's conduct was questionable, the Board finds that the factors surrounding the charges in this case do not rise to the level of dismissal.

The City of Atlanta Employee Handbook – DHR 10/10 pg. 24: Action to immediately remove employees from the work environment must be taken when employees commit an infraction that:

- Impairs or destroys their present or future effective performance,
- Impairs the effectiveness of others,
- Presents a danger to self, others or city property

The Appellant had seven years of city employment at the time of the infraction. He stated that he had a good work record. The City did not dispute his claim. In addition, his supervisor, John Busby, offered no negative comments during his testimony that related to the Appellant's conduct on the job or work performance.

Code Sec 114-527 Process of progressive discipline (2) (b) Course of action when rule or standard is violated. *Determination of appropriate disciplinary action. The reasonable disciplinary action shall be determined by considering relevant*

factors, including but not limited to the seriousness of the offense, whether the offense was willful and deliberate, unintentional or the result of gross negligence and the employee's record of performance and conduct.

In conclusion, the Board cites Code Sec 114-553(b) Finality of decision: *...For appeals of adverse actions, the hearing officer/panel may modify the action of the appointing authority but may not increase the severity of such action on the employee.*

ORDER

The Board thereby modifies the Appellant, Joseph Stone's dismissal to a 30-day suspension:

- 15-day suspension for the violation of Code Sec 114-528(b)(4)
- 15-day suspension for the violation of Code Sec 114-528(b)(11)
- The Board did not consider Code Sec 114-528(b)(20) in the decision, evidence was not brought forth to support the charge.

This the 17th day of December 2019.

Signed:

Robert Hawkins

Robert Hawkins, Chair

S. Ralph Martin

S. Ralph Martin, Jr.

Mary Ann Phyll

Mary Ann S. Phyll, DWB