

**CITY OF ATLANTA
CIVIL SERVICE BOARD
Findings of Fact and Order**

APPEAL NO. 2019-033AP
APPELLANT: Shun Gordon
Atlanta Police Department

Effective Date: August 31, 2019
Hearing Date: October 17, 2019

ACTION:
DISMISSAL

HEARING OFFICERS/BOARD
Nkoyo- Ene Effiong, Chair
Will Chandler
Plemon El-Amin, DWB

APPEARANCES

City of Atlanta:

Kareemah Lewis, Esq.
Nikkina Speaks, Litigation Support
Specialist

City Witnesses:

Major Carver Tyus, APD
Sergeant LaWanda Giles, APD

Observers:

Robert Hawkins

Appellant Representative:

Stephanie Mutti, Esq.
IBPO

Appellant's Witness:

Reneka Burleigh, APD

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:

- C-1 Notice of Final Adverse Action (NFAA) for employee Shun Keisha Gordon, issue date August 13, 2019. 3 pages.
- C-2 Notice of Proposed Adverse Action (NPAA) for employee Shun Keisha Gordon, issue date August 13, 2019, 3 pages.
- C-3 APD SOP.2050 Timekeeping
APD Policy Manuel 4.3-4.4.8, 2 pages.
- C-4 Interview with Ofc. Shun Keisha Gordon
By Sgt. L. Giles/ M. Gerwin pages 1-5, 12-15.

Appellant:

- A-1 Emails from Shun Gordon dated February 18, 2019, and February 22, 2019
To greese@atlantaga.gov 1 page.
- A-3 Timecard Audit Trail, December 14, 2017-October 31, 2018
19 pages.
- A-5 Various emails from and to Shun Gordon, and about Shun Gordon
6 pages.
- A-6 Medical bills for Shun Gordon
7 pages.

Stipulations:

1. Shun Gordon was presented the City of Atlanta Police Department Work Rules 4.1.1 and 4.2.33 at or near her time of employment.
2. December 26, 2017, was the last day Shun Gordon actively worked a shift with the Atlanta Police Department.
3. Shun Gordon was given a doctor's note and excused from work on December 26, 2017, pursuant to the FMLA policy for a two-week period from January 2, 2018, to January 13, 2018.

VIOLATIONS

Dismissal for violation of employee work rule 4.2.33; APD SOP 2050
Timekeeping section 4.4 Leave of Absence (without pay)
Employee work rule 4.1.1 Appropriate Action Required

CHARGES

Officer Shun Gordon was given a two-week Family Medical Leave beginning January 2, 2018, through January 13, 2018. After which, Officer Shun Gordon did not return to work and is accused of not producing any documentation for extended leave, nor communicating through the proper channels of authority.

FINDINGS OF FACT

1. The Appellant, Shun Gordon, has been employed as an Officer of the Atlanta Police Department since 2015.
2. The Appellant was given a two-week family medical leave, with a doctor's note, from January 2, 2018, to January 13, 2018.

3. The Appellant has not returned to active duty since the December 26, 2017 date.
4. The Appellant was eligible for a 12-week excused leave and an additional extended only with proper documentation and/or supervisor permission.

DISCUSSION

Appellant Shun Gordon was employed as a Police Officer with the City of Atlanta Police Department for approximately two (2) years. On December 26, 2017, she requested a two-week Family Medical Leave of Absence because of a non-work-related medical concern. She provided her supervisor with a doctor's note and was given an FMLA for the period of January 2nd through January 13th, 2018. Since that time, the Appellant has not returned to work.

The Appellant says that she was in contact and updating her supervisor, Lt. Cantin, until he was reassigned and promoted to Captain around June 1, 2018. The Board finds this credible and supported by the City's time card reporting. The CHRONOS timecard audit trail lists Appellant as Family Medical Leave with Pay from December 29, 2017 through February 2, 2018. From February 22, 2018, through August 24, 2018, Appellant is listed as Family Medical Leave without Pay. On September 20, 2018, Appellant was listed as absent without leave, and on October 18, 2018 (the last date provided) Appellant is listed as unexcused Leave without Pay. Both the City and Appellant confirmed that only a supervisor with the rank of Lieutenant or higher could input this information into CHRONOS.

The City stated that Anita Alexander of Personnel communicated by email to the Appellant that she considered Absent Without Official Leave (AWOL). Yet, the Appellant claims that she never received that email or any email from the Atlanta Police Department during 2018 concerning her status. The City admits that it did not request email receipt verification and that the mailed correspondence did not have the complete address, nor was it sent via certified mail.

APD Major Carven Tyus, Commander of the Office of Professional Standards, testified that in January of 2019, he was made aware of an incident involving Officer Shun Gordon in Douglas County. The Atlanta Police Department received a courtesy call from the Douglas County Police Department

concerning Officer Gordon. This incident was never clarified, denied, or admitted into this hearing. However, Major Tyus testified that it instigated an internal investigation of Appellant's status with the Atlanta Police Department by Investigator Battle and Sergeant LaWanda Giles of Internal Affairs. Several concerns arose: (1) there was no clear trail of verifiable communication; (2) there was insufficient documentation of medical status; and (3) if AWOL, then the Officer's weapon and badge must be turned in or retrieved (which did occur in January 2019).

On February 25, 2019, Sergeant LaWanda Giles, and Investigator M. Geurin interviewed at length Officer Shun Gordon, and the partial transcript was entered as City's Exhibit C-4. We find it important to note that there is a significant portion of the interview left out without explanation. Namely, pages 6-11 were not included in the transcription even though the document was 15 pages. This extensive interview presents that Officer Gordon was in contact with her supervisor Lieutenant Cantin until June 1, 2018, and that she was not in communication with anyone after he was transferred. She says that Anita Alexander called her in August of 2018 and informed her that her medical paperwork was insufficient for any extended leave. The interview raises numerous questions and doubts about the communications sent or received.

Appellant's Exhibit 5 presents seven (7) email exchanges between the Appellant and City's Tracy Sauls-Williams and others sent on January 24, 2019, which presents the Appellant's claim of not receiving emails /letters of her status from the City and the City representative's doubt of those claims.

The Appellant stated that she had several significant medical procedures in April and June of 2018 and provided some hospital and insurance receipts as Exhibit A-6 but admits that those receipts had not been sent to the Atlanta Police Department during her leave.

Both the City and Appellant agree that the Appellant was in contact with her supervisor Lieutenant Cantin from the period of January 1, 2018 until June 1, 2018 concerning her medical status and absence from work. The Appellant admits that she was out of contact with any supervisor upon Lieutenant Cantin's transfer. She also claims that she received no communication from the Atlanta Police Department concerning her status until the August 27, 2018 call from Anita Alexander.

The City claims that there were many attempts to communicate with Officer Gordon, but they could not verify those efforts. The City further claims that (1) the onus of communication is upon the employee and (2) that Officer Gordon is responsible for knowing and following the City's and the Atlanta Police Department's policy manual and procedures. Accordingly, it charged Appellant with violating Rule 4.2.33 of being unfamiliar and not conforming to SOP, and Rule 4.1.1 of not notifying supervisors or requesting assistance when the appropriate action is unclear.

The Board sees evidence of neglect and avoidance of responsibilities from both the City and the Appellant. While we agree that the employee had an obligation to keep the Atlanta Police Department informed and updated on her medical circumstances, the Board recognizes the extenuating circumstances of the Appellant who was on leave going through surgery when her supervisor was transferred. The Board recognizes the continuous updating of the Appellant's timecard status by a supervisor as some proof that her leave was authorized. Further, the City had little or no verification of its attempts to communicate with the Appellant. There is some evidence that her email address was duplicated incorrectly by the City.

ORDER

This Board upholds the Appellant's appeal and **REVOKES** the City's decision in accordance with City Code Section 114-553(b)

This the 22nd day of November 2019.

Signed:

Nkoyo-Ene Effiong

Nkoyo-Ene Effiong, Chair

Will Chandler

Will Chandler

Plemon El-Amin

Plemon El-Amin, DWB