

CITY OF ATLANTA CIVIL SERVICE BOARD  
ORDER

APPEAL NO. 2016-024AP

Effective Date: September 9, 2016

Hearing Date: July 11, 2019

APPELLANT:

Josue Astorga

HEARING OFFICERS:

S. Ralph Martin, Chair

Mary Ann S. Phyll

Nkoyo-Ene R. Effiong, DWB

APPEARANCES

City of Atlanta ("City"):

None

Counsel/Representative:

Shirnelle Council, Esq.

City of Atlanta's Witnesses:

Celeste Murphy

Arthur Nixon

Carven Tyus

Appellant:

Josue Astorga

Counsel/Representative:

Sandra Michaels

Appellant's Witnesses:

None

Observers:

Michael Pulliam

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. City of Atlanta Atlanta Police Department Notice of Proposed Adverse Action dated August 26, 2016 (the “NPAA”).
2. City of Atlanta Atlanta Police Department Notice of Final Adverse Action dated August 31, 2016 (“NFAA”).
3. Internal Correspondence to Lieutenant H. Zenelaj.
4. Memorandum to Major B. K. Martin re Investigation and Disposition.
5. Atlanta Police Department Employee Discipline Worksheet.
6. Atlanta Police Department Policy Manual, APD.SOP.2010 Work Rule 4.2.3.
7. Atlanta Police Department Policy Manual, APD.SOP.2010 Work Rule 4.2.37.
8. Atlanta Police Department Officer Disciplinary History, Sergeant Josue Astorga.

### Appellant’s Exhibits

- A-1. Atlanta Police Department Employee Statement.
- A-2. City of Atlanta FY2018 Performance Evaluation.
- A-3. City of Atlanta FY2017 Performance Evaluation.
- A-4. City of Atlanta Mid-Cycle Review Form.

A-5. City of Atlanta FY2016 Performance Evaluation.

Stipulations Prepared by the City:

None.

Stipulations Prepared by Appellant:

None.

VIOLATIONS

City of Atlanta, Atlanta Police Department Work Rules:

4.2.3 Responsibilities of a Supervisor

4.2.37 Unsatisfactory Performance

CHARGES

See City of Atlanta, Atlanta Police Department Notice of Final Adverse Action  
(City's Exhibit 2)

FINDINGS OF FACT

1. Appellant is employed by the City of Atlanta (the "City") in the Atlanta Police Department (the "Department") as a Sergeant. He has been with the City for approximately 14 years.
2. Appellant has maintained a satisfactory work history with the City at all relevant times.
3. At all relevant times, Appellant maintained a supervisory position within the HITT unit. Relatedly, his direct supervisor was Major (then Captain) Celeste Murphy.
4. In the event of an incident, the standard protocol is for the supervising officer to contact his superior, relay information, and take direction for the superior officer.

5. On or around March 18, 2016, Appellant and other members of the HITT unit were on duty taking a meal break at R. Thomas restaurant where an incident occurred. (City's Exhibits 3, 4).
6. During the meal, two officers, Officer Tyer and Officer Green, were bantering back and forth with each other about who was faster. This led one officer to suggest a footrace in the restaurant's parking lot to determine who was faster.
7. One officer threatened to punch the other in the face and chided him about the other officer's inability to fight evidenced by that officer's recent loss in an amateur fight club. (City's Exhibits 3, 4).
8. Both officers stood up to exit the restaurant. Other officers followed. Appellant did not immediately proceed to leave the restaurant. (City's Exhibits 3, 4).
9. At some point, Appellant was made aware of a scuffle between the two officers and intervened to break up the altercation between the two.
10. Another officer informed Appellant that one of the two officers had unholstered his gun and held it near his left leg prior to the altercation between the two officers. This gun was found on the ground.
11. After Appellant broke up the fight, he contacted his superior, Major Murphy and relayed to her the information he had.
12. Major Murphy directed him to break up the officers and have everyone return to headquarters immediately. Appellant complied with this directive.

### **DISCUSSION**

Following an investigation into an altercation involving officers within the HITT unit, the City determined that Appellant failed to uphold his responsibility as a supervisor in violation of Atlanta Police Department Work Rules 4.2.3 and 4.2.37. Accordingly, the City suspended Appellant without pay for twenty (20) days. Appellant appeals this decision.

Appellant is employed with the City as a police officer/Sergeant. At all relevant times, he was a supervisor of the HITT unit and reported to Major Celeste Murphy. On or around March 18, 2016, Appellant was having dinner at R Thomas with the HITT unit when a fight broke out between two officers within the team. All parties acknowledge that this particular type of incident – a fight between officers involving a firearm – is unusual and not the type of incident that is common within the field. Notwithstanding the uniqueness of this incident, the City takes issue with how Appellant responded to the incident.

Both parties agree the standard protocol in the event of an incident is for the officer, in this case, Appellant, to contact his supervisor and heed her directions. It is undisputed that Appellant called Major Murphy, his superior, informed her of the incident and complied with her orders to have the officers return to headquarters immediately. Notably, the quarreling officers were working in separate cars and returned to headquarters separately. The City presented no evidence that Appellant failed to contact his superior or adhere to her commands. Instead, the City argues that Appellant did not intervene at the right time or convey information to his superior in a manner in which she could appropriately assess the severity of the situation.

The City seeks to hold Appellant accountable for not predicting that one officer within his unit would behave egregiously towards another. Specifically, the City makes much ado about the fact that Appellant did not intervene when the officers discussed engaging in a footrace, or when one officer threatened to punch the other. For this reason, the City maintains that Appellant should have received the 20-day suspension. This is untenable. The City's witness suggested it would have been unlikely for Appellant to be reprimanded for those acts had the incident not escalated to a fight.

Additionally, the City's investigation suggests that this was a situation that escalated quickly between two officers. (City Exhibit 3). Seemingly, the HITT unit is a small team that is accustomed to a certain level of competitiveness and banter between the officers. It appeared to the Board, that this was the culture of the unit and that the banter had not previously been physical. The City failed to present any evidence that a physical altercation has ever transpired between Officer Green and Officer Tyer. The Board is unclear how Appellant knew or should have known that the customary banter between members of the unit would escalate into a fight or a gun being drawn.

Furthermore, the City's own witness, Arthur Nixon, stated that Appellant told the officers to settle down or knock it off. It is unclear what other intervention was

necessary at that point. The City, which carries the burden in this matter, presented insufficient evidence to suggest Appellant should have done something more than verbally admonish the officers prior to the physical fight.

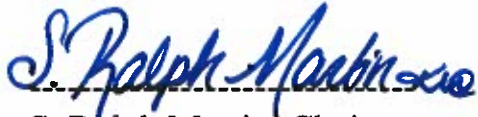
Seemingly, the City also argues that Appellant prevented Major Murphy from thoroughly assessing the situation and providing a directive commensurate with the gravity of the situation. The Board is perplexed by this. Major Murphy's sworn testimony (Appellant's Exhibit 1) and the City's investigative report (City's Exhibit 3) both show that Appellant told Major Murphy that he was informed that Officer Tyer unholstered his gun. Appellant also stated that he heard the metal hit the concrete. (Appellant's Exhibit 1, City's Exhibit 3). Major Murphy's employee statement also states that Appellant told her that he heard Officer Green say that Officer Tyer pointed a gun at him. (Appellant's Exhibit 1). The Board is unclear what other information Appellant needed to provide his supervisor.

Based on the evidence presented, it appears Appellant provided his supervisor with all the information he had at the time. This information included the allegation that a gun was involved. His supervisor gave a directive. Appellant followed that directive. The City has not proffered evidence that Appellant knew Officer Tyer pointed a gun at Officer Green and failed to disclose that information or presented a misleading description of events. Notably, not one officer is reported to have seen Officer Tyer point his gun at Officer Green. (City's Exhibit 3). At best, the other officers stated they saw Officer Tyer unholster his gun and have it down by his leg. (City's Exhibit 3). Based on the evidence, the Board is unable to conclude that Appellant was derelict his reporting of the incident.

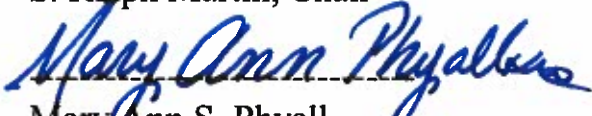
In short, the City seeks to hold Appellant responsible for the behaviors of others rather than Appellant's own actions in the situation. As the old adage suggests, hindsight is 20/20. The Board can only assume that the video presented a jarring depiction of the incident. The Board, however, is reluctant to determine the appropriateness of Appellant's behavior at the time of the incident based on hindsight. A review of the evidence presented shows that Appellant met the basic requirements laid out in the work rules. To the extent the City expected a better response from Appellant, it failed to operationalize that expectation in a Standard Operating Procedure.

**ORDER**

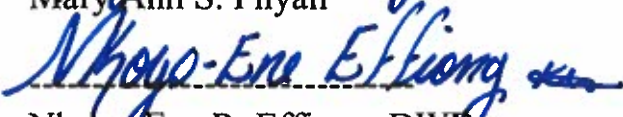
Based on the foregoing, the City's decision is REVOKED in accordance with City Code Section 114-553(b).



S. Ralph Martin, Chair



Mary Ann S. Phyll



Nkoyo-Ene R. Effiong, DWI