

CITY OF ATLANTA CIVIL SERVICE BOARD
ORDER

APPEAL NO. 2017-016AP

Effective Date: April 12, 2017
Hearing Date: July 11, 2019

APPELLANT:

Andre Bent

HEARING OFFICERS:

Mary Ann S. Phyll, Chair
Nkoyo-Ene R. Effiong
S. Ralph Martin, DWB

APPEARANCES

City of Atlanta (“City”):

None

Counsel/Representative:

Shirnelle Council, Esq.

City of Atlanta’s Witnesses:

Emma Mills

Appellant:

Andre Bent

Counsel/Representative:

Pro Se

Appellant’s Witnesses:

None

Observers:

None

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

- C-1 Atlanta Police Department (APD) Notice of Proposed Adverse Action (NPAA)
- C-2 APD Notice of Final Adverse Action (NFAA)
- C-3 APD Internal Correspondence – Investigative Report
- C-4 APD Internal Correspondence – Findings, Disposition
- C-5 APD Employee Discipline Worksheet
- C-6 APD Policy Manual provisions: Work Rules, APD SOP2010
- C-7 APD – SOP – 3050 – Pursuit Policy
- C-8 APD – Officer Disciplinary History

Appellant's Exhibits

None.

Stipulations Prepared by the City:

None.

Stipulations Prepared by Appellant:

None.

VIOLATIONS

Atlanta Police Department Work Rule – 4.2.33: 10 Day Suspension –effective April 12, 2017: Conformance to Directives:” Employees are required to familiarize themselves with, and conform to the rules, regulations, directives, and standard operating procedures of the Department.”

CHARGES

See City of Atlanta, Atlanta Police Department Notice of Final Adverse Action (Exhibit C-2) (Violating pursuit policy, APD-SOP 2010, 3050).

FINDINGS OF FACT

1. Appellant has been employed as a police officer since November 10, 2011.
2. On March 18, 2016, Officer Andre Bent and Field Training Officer Carl Cobbins were on a directed patrol near the intersection of University Avenue and McDaniel Street, Atlanta, Fulton County, Georgia.
3. Appellant was driving, and Officer Cobbins was a front seat passenger.
4. While monitoring traffic, Appellant observed a motorcycle driver approaching the intersection at a high rate of speed.
5. Appellant began to patrol and saw the motorcyclist again facing northbound on Ira Street, and the officer drove up and questioned the cyclist about his behavior, but he took off at a high rate of speed.
6. As Appellant continued patrolling and had stopped at a red light at McDaniel and Gardner Street, S.W., the motorcyclist collided into the patrol car, and fled the scene heading northbound.
7. Appellant advised dispatch of what had occurred, gave a description of the cyclist and his direction of travel.
8. The officer drove in the direction of the cyclist to “place him under arrest,” and as he approached 500 block of McDaniel Street, activated his emergency equipment to administer a traffic stop, and alert pedestrians and other motorists of “approaching danger.”

9. The motorcyclist rode on the wrong side of the road and ran the red light at the intersection of McDaniel and Whitehall Streets.
10. At the latter intersection, the suspect collided with a vehicle that had entered from the east, causing the biker to be ejected, and the vehicle to drive off the roadway, striking a pole.
11. The biker suffered fatal injuries, resulting in his death.

DISCUSSION

The NPAA, Exhibit C-1, has an issue date of March 15, 2017, and an effective date of action of April 12, 2017. The Appellant signed and acknowledged the NPAA, March 15, 2017. The disciplinary authority and witness signed the NPAA, March 15, 2017. Note that “no emergency action” is checked (X).

The NFAA, with no emergency checked, is signed March 29, 2017, with date for NPAA of March 15, 2017, and effective date of April 12, 2017.

The date of the incident which is the subject matter of the discipline contained in the NPAA and NFAA is March 18, 2016.

Under section 114-530 (a) of the City Code, the following is provided: “Notice required. 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 ten (10) working days prior to the effective date of the proposed adverse action. However, in an emergency, the adverse action may become effective immediately following the employee’s response, if any.”

Subsection (b)(2), contents of notice required, the notice of the proposed action shall include, inter alia, the effective date of the adverse action, which shall be at least ten (10) working days after the notice is received by the employee.

As indicated heretofore, the NPAA is signed March 15, 2017, effective April 12, 2017. Ten (10) working days after March 15th is March 29th. The time for notice under the Code is exceeded by the NPAA and NFAA. Presumably, the Appellant received the notice at least by March 15, 2017, and beyond the ten (10) day limit.

Furthermore, there were no investigation or emergency extensions contained in the notices. No modification of changes in either notice was issued, and the time of the effective date from NPAA issue date exceeded the period of time permitted in the Code. The NFAA is out of conformity with the Code. See also Appeal No. 2017-059AP, T. Tyson.

With regards to the substance of the alleged violations, it is the opinion of the HOs that the evidence and testimony doesn't demonstrate a clear violation of APD's pursuit policy. With Appellant being placed in exigent circumstances, an apparent breakdown in communications, and a failure in communications during the incident, EIEI it cannot be concluded that the pursuit policy was violated or that Appellant failed to follow directives.

The case is dispositive, however, by the failure of the City to comply with the Code's time and notice provisions. As stated by the Board before, if the City does not follow its own procedures, the disciplinary case fails.

ORDER

Based upon the evidence and testimony presented, therefore, the Board grants the appeal, hereby reversing the 10-day suspension, in accordance with the City Code.


Mary Ann Phyll, Chair


Nkoyo-Ene R. Effiong


S. Ralph Martin, Jr., DWB

August 21, 2019