

CITY OF ATLANTA
CIVIL SERVICE BOARD
FINDINGS OF FACT AND ORDER

APPEAL NO. 2017-035AP:

Effective Date: May 23, 2017

APPELLANT: Victor Price

Hearing Date: September 26, 2019

City of Atlanta (“City”)
Department of Public Works (“DPW”)

ACTION:

Ten (10) Day Suspension Without Pay

HEARING OFFICERS/BOARD:

Mary Ann Phyll, Chair
S. Ralph Martin
Sterling P. Eaves, DWB

APPEARANCES

City of Atlanta’s Representative:

Joseph J. Siegelman, Esq.
Kareemah Lewis, Esq.
Nikkina Speaks, Paralegal

Appellant Counsel/Representatives:

Stephanie A. Mutti, Esq., SEIU/NAGE
Raemona Byrd-Jones, Esq., SEIU/NAGE

City/Respondents/Witnesses:

Victor Price, Appellant
John Roberts, Transportation and Bridge
Maintenance Coordinator, DPW
Kimberly Mallard, Emergency Preparedness
Coordinator, DPW
Nia Parker, Director of Human Resources,
DPW

Appellant’s Respondents/Witnesses:

Victor Price, Appellant

Observer:

Shanteria Starr, Executive Assistant for Commissioner of Human Resources

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. City of Atlanta DPW Notice of Final Adverse Action (“NFAA”), employee Victor Price, issue date May 18, 2017

C-2. City of Atlanta DPW Notice of Proposed Adverse Action (“NPAA”), employee Victor Price, issue date May 9, 2017

C-3. Photo of City of Atlanta DPW crew cab pick-up truck, side view, submerged in water up to door handles, employee in view sitting in the passenger seat looking out of open window and down at water flowing past vehicle, undated

C-4. Photo of vehicle from Exhibit C-3, front view, three (3) City employees sitting on top of truck cab, with second white pick-up truck behind and just to the side of the subject vehicle, undated

C-5. Handwritten map of area of flood on incident date, drawn by John Roberts, undated

C-6. City of Atlanta DPW NFAA, employee John Tolbert, issue date May 19, 2017

C-7. City of Atlanta DPW NPAA, employee John Tolbert, issue date May 9, 2017

Appellant:

App. Ex. 1. Google map of incident area dated September 25, 2019

Joint Exhibit:

J-1. City of Atlanta, DPW Vehicle Use Policy, Control ID. 08-CWP-DPW-01, three (3) pages numbered 15, 17 and 18, Sections 26-Categories of Accidents and 29-Disciplinary Actions, effective date 8/1/2015

Stipulations:

1. On April 5, 2017, Appellant was a Bridge Maintenance Supervisor.
2. On April 5, 2017, the Appellant managed a crew which included John Tolbert.
3. On April 5, 2017, the Appellant was in a different vehicle than Mr. Tolbert.
4. On April 5, 2017, the Appellant was in direct and regular communication with Kimberly Mallard.
5. On April 5, 2017, the Appellant was informed by Ms. Mallard that a City of Atlanta vehicle was stuck in the flood water.
6. On April 5, 2017, the Appellant, after having been told by Ms. Mallard not to enter the water, did not instruct Mr. Tolbert not to enter the water.
7. On April 5, 2017, the Appellant, after being told by Ms. Mallard not to enter the water, nonetheless entered the water in [his] vehicle, as did Mr. Tolbert in his, resulting in both vehicles getting stuck.

VIOLATIONS

Atlanta City Code 114-528(b)(1): Negligence in performing assigned duties.

City of Atlanta Vehicle Use Policy 26 & 29(3)(b) b. Second Moderate Accident - Suspension without pay up to thirty (30) days, the satisfactory completion of a defensive driving course as scheduled by the departments' Safety Manager or supervisor, and the satisfactory completion of a twelve (12) month probationary period.

CHARGES

Atlanta City Code, Section 114-528(b)(1): Negligence in performing assigned. [sic] duties.

Violation of City of Atlanta Vehicle Use Policy Section 26 & 29(B)(3).

FINDINGS OF FACT

1. The Appellant works for DPW as a Bridge Maintenance Supervisor.
2. The Appellant was, at the time of this incident, a City employee with twenty-four (24) years tenure.
3. Except for a minor traffic accident in 2015, the Appellant has never received discipline on his job.

4. On April 5, 2015, catastrophic rains caused low streets bridges contiguous with creeks to flood and become impassable in the City.
5. The City maintains a joint departmental inclement weather center which includes DPW Emergency Preparedness staff who dispatch City employees to assess the scene and potentially block streets in locations where reports of flooded streets have been received and verified.

DISCUSSION

On a cyclical basis, the Appellant, a City Bridge Maintenance Supervisor, is assigned as the on-duty emergency response supervisor for DPW. Throughout the assigned time, it is the Appellant's responsibility to organize and direct his group members to place blockades on the flooded streets so that no one can travel on them.

In the early morning of April 5, 2017, the Appellant received a telephone call from Ms. Mallard who advised him that at the Woodward Way, NW location, the City Department of Watershed Management ("Watershed") had reported that one of their trucks was now submerged in the catastrophic overflow from Peachtree Creek. She told the Appellant to be aware of that fact when he arrived at that location.

After that call, the first place the Appellant and his crew were dispatched to block was the 1800 block of Lenox Road, NE, where the South Fork of Peachtree Creek crosses under the roadway bridge. The Appellant was in one City DPW truck and three members of his crew were travelling in tandem with his truck in a second DPW truck that carried the road barriers. It was a very busy day for the Appellant, he testified, because the unabated heavy rain required him to also manage other work crews at other locations throughout the City. But as the Appellant admitted in the stipulations to this appeal and his testimony before the Board, he never communicated the Watershed information to the group members with him that day even though he had plenty of time to do so before they arrived.

The group's second stop was at the intersection of Northside Drive NW, at Woodward Way, NW., where Peachtree Creek flows next to Woodward Drive NW and then under the Northside Drive bridge. This was the area that Mrs. Mallard had previously warned the Appellant about the flooded conditions. When the group arrived at that location, a City of Atlanta Fire Department fire truck and personnel were already present. The on-site City employees discussed that since Woodward Way westbound from Northside was flooded further down the street, that another set of road barriers needed to be placed at the other end of that section of Woodward Way at Peachtree Battle Ave. Fire personnel left the scene shortly thereafter, going downhill on Woodward Way in the direction of the flooded area.

What the Appellant did not know was that Oldfield Road intersects Woodward Way on its northside before the flooded part of Woodward Way. When the fire personnel left the scene, although they went toward the flooded area, they did not continue on Woodward Way but they turned right/northbound onto Oldfield Road and avoided the flooded part of Woodward Way. Because of where the DPW group was located with their view obstructed, they did not see the

fire truck turn right onto Oldfield Road.

The Appellant and his crew closed the road barriers after the fire truck left and travelled in the same direction so they could get to the intersection of Woodward Way and Peachtree Battle Ave. NW. The group's truck with the road barriers went first, and the Appellant followed in his City vehicle. Just like with the fire truck, because Woodward Way turns northbound going down a hill, the Appellant testified that he lost sight of the group's first truck. He passed the intersection of Oldfield Road travelling the same route and a few seconds behind the group's first vehicle. As he went downhill, he drove through a few inches of water from the overflowing creek which, within seconds, became a rising calamitous flood of three to four feet above the roadbed, engulfing his truck. The Appellant testified that he stopped his truck, tried to back-up or turn around and he could do neither.

At about the same time, and unknown to the Appellant, the group's first truck had now driven around the earlier-flooded Watershed truck, at which point the group's first truck also became inundated by the rising water, which was by now up to the door handles. Miraculously, the group's first truck occupants managed to escape the flooded truck, make it to the truck's roof and call for help.

City emergency rescue crews were dispatched to the scene after the Appellant notified Ms. Mallard of the situation. She testified that in that conversation with the Appellant, she asked the Appellant if she hadn't just told him about the Watershed truck being stuck in the flood waters. She also stated she was a little upset that the Appellant had not heeded her warning. In time, all City personnel were rescued without incident but not only was the Watershed truck a total loss, but the City also lost both of the DPW group's trucks.

At the hearing there was no dispute that the Appellant erred on that date. From the Appellant's standpoint, the stipulations admit his (1) prior knowledge of the existing danger at the incident scene, (2) failure to tell his group about the known danger, and (3) responsibility for the consequences. There is no dispute that the Appellant should be disciplined for the result of his error. The Appellant, however, believes that the 20-day suspension was too harsh but the final NFAA (exhibit C-1) reflects that a negotiated reduction in discipline was reached. The maximum allowable discipline available to DPW management was a 20-day suspension but after further consideration following the Appellant's oral response to the NPAA's proposed discipline, the City ultimately meted out a 10-day suspension which the Appellant has now served.

By way of explanation, the Appellant testified that while he agrees that he exercised poor judgment in proceeding on a flooded roadway, he did the best he could once he encountered the problem. Part of the Appellant's job is to go to the hazard and to protect the public from the hazard he stated. He was a longtime City employee when this incident occurred and even though he had been involved in a minor vehicle accident in 2015, he had never otherwise been disciplined by the City. In fact, all City employees, including his first-line supervisor who testified before the Board agreed that, but for this incident, the Appellant was and still is an exceptional City employee.

Nonetheless, on the day of this incident, unlike what the Appellant argues, this was not

just an exceptional employee who sometimes has to perform dangerous duties, having a bad day. What seems to escape the Appellant is that in this incident, his poor judgment in failing to exercise caution *even though he knew about the dangerous road conditions*, when coupled with his *failure to communicate to his group about the known danger ahead*, resulted in not only the City's loss of property (at least \$4,000 for the two DPW trucks alone) but it additionally cost the City the deployment time of its emergency responders, who thankfully and successfully rescued them all from what might have been a horrific ending. Therefore, in closing and for all the foregoing reasons, this Board finds itself unable to overturn the 10-day suspension of the Appellant in this case.

ORDER

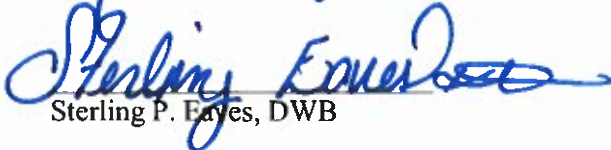
This Board **DENIES THE APPEAL** and confirms the discipline of the Appellant.

This the 2nd day of October, 2019.

Signed:


Mary Ann Phyll, Chair


S. Ralph Martin


Sterling P. Eaves, DWB