

CITY OF ATLANTA CIVIL SERVICE BOARD  
ORDER

APPEAL NO. 2019-004AP

Effective Date: February 12, 2019

Hearing Date: June 13, 2019

APPELLANT:  
Kakaskius Battle

HEARING OFFICERS:  
Sterling P. Eaves, Chair  
Mary Ann S. Phyll  
Nkoyo-Ene R. Effiong, DWB

APPEARANCES

City of Atlanta (“City”):  
None

Counsel/Representative:  
Shalanda Miller, Esq.  
Sarah Rasalam, Esq.

City of Atlanta’s Witnesses:  
Reginald Banks  
Janine Williams

Appellant:  
Kakaskius Battle

Counsel/Representative:  
None

Appellant’s Witnesses:  
Zakiya Booker

Observers:  
Carl Touchtone

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 Department of Watershed Management Record of Oral Admonishment.
2. Department of Watershed Management Policy and Procedures Bulletin.
3. City of Atlanta Code of Ordinances, Section 114-528.
4. Agape Foot & Ankle Clinic Return to Work and Disability Notification.
5. Email from Corliss Austin-Harris to Samantha Graves regarding Return to Work and Disability Notification.
6. City of Atlanta Administrative Leave Letter.
7. City of Atlanta Department of Watershed Management Notice of Proposed Adverse Action dated January 29, 2019 (the "NPAA").
8. City of Atlanta Department of Watershed Management Notice of Final Adverse Action dated February 6, 2019 ("NFAA").

### Appellant's Exhibits

None.

### Stipulations Prepared by the City:

None.

### Stipulations Prepared by Appellant:

None.

## VIOLATIONS

City of Atlanta Department Code of Ordinances Section 114-528:

(b)(12) Willful making of false statements to the public, supervisors, officials, boards, department heads or agencies or the willful making of false statements on an employment application within the city.

## CHARGES

See City of Atlanta Department of Watershed Management Notice of Final Adverse Action (City's Exhibit 8)

## FINDINGS OF FACT

1. Appellant was employed by the City of Atlanta (the "City") in the Department of Watershed Management (the "Department") as a Construction Maintenance Worker I. He has been with the City for approximately sixteen (16) months.
2. Appellant had a history of reprimands for excessive tardiness (City's Exhibit 1).
3. On or around December 12, 2018, Appellant submitted a doctor's note from Agape Foot & Ankle Clinic to the City related to his absence from the previous day (City's Exhibit 4).
4. The City contacted the doctor to confirm the validity of the doctor's note. The doctor denied treating Appellant in her practice. (City's Exhibit 5).
5. The doctor's medical assistant confirmed that the doctor did not see Appellant. The medical assistant, however, did see Appellant and assessed his feet. She also provided Appellant with the doctor's note.
6. On January 23, 2019, Appellant was placed on administrative leave with pay pending the City's investigation. (City's Exhibit 6).
7. On January 29, 2019, the Department issued a Notice of Proposed Adverse Action to Appellant (City's Exhibit 7) (the "NPAA") pursuant to which the City asserted that Appellant violated City of Atlanta Code Section 114-528(b)(12), and recommended dismissal.
8. On February 6, 2019, the Department issued a Final Adverse Action to Appellant (City's Exhibit 8) pursuant to which Appellant's employment was terminated

## DISCUSSION

Following an investigation into the validity of Appellant's doctor's note, the City determined that Appellant willfully forged a doctor's note in violation of City of Atlanta Code Section 114-528(b)(12). Accordingly, the City terminated Appellant's employment. Appellant appeals this decision.

Appellant was employed with the City as a Construction Worker I. During the year and three or four months with the City, it is undisputed that Appellant was often tardy to work (City's Exhibit 1). Appellant explained that he is a single father, and his daughter's daycare opened after he was scheduled to report to work with the City. He also stated that he had transportation issues that affected his ability to be at work on time. Appellant testified that he made the City aware of these constraints and that he attempted to obtain a different shift that would allow him to make it to work on time. Reginald Banks, Appellant's supervisor, stated that Appellant was a good employee in the performance of his job. Mr. Banks stated that the Appellant always notified Mr. Banks via text or phone that he would be out or tardy. Apart from excessive tardiness, Mr. Banks did not have any other issues, including Appellant's performance, with the Appellant. Mr. Banks also stated that Appellant's attendance record did not necessarily impact the City because the City was short-staffed and always looking for people to put on trucks to work anyway.

On December 11, 2018, Appellant stated that he informed his supervisor that he would be out that day and went to Agape Foot & Ankle Clinic (the "Clinic") to have his foot checked. Appellant stated that he did not request the day off in advance because (1) his supervisor told him he did not have any days to take off and (2) he did not know how to personally check what time he may have had available. Also, the usual City workplace practice, corroborated by Mr. Banks, appeared to be that Appellant contacted his supervisor informing his supervisor that he would be out.

Zakiya Booker, a former medical assistant at the Clinic, stated that she saw Appellant on December 11, 2018, and assessed his feet. She then created a medical file and scheduled an appointment for Appellant to meet with the doctor. This method of Clinic operation was the usual authorized practice in the Clinic in part because Ms. Booker and the Doctor were the only two employees in the business. Ms. Booker clearly stated that Appellant had not been treated directly by the doctor but was seen in the Clinic. Ms. Booker also said that she filled out the doctor's note with the date, patient's name and other critical information as required by the form (City Exhibit 4). Notably, she stated that the doctor's note forms already have the doctor's signature on them and she just fills in the blanks. This too was standard operating procedure in the Clinic. Based on Ms. Booker's testimony, which the Board finds credible, Ms. Booker believed she was authorized to see patients and give the doctor's note form completed to them. Most importantly, there was no testimony or evidence introduced by the City at the hearing that Ms. Booker's actions were unauthorized or outside the scope of her employment at the Clinic.

Just as the City issues official documents which are pre-signed by various elected and appointed officials in the ordinary course of City government operations, the Clinic in its normal operations issues the doctor's note pre-signed by the Clinic's supervising doctor. Ms. Booker merely filled in the blanks based on her instruction of the documents and the provision of service to this patient just as she was directed to do. The Appellant sought medical attention, and requested a doctor's note also known as a doctor's excuse from work, at his doctor's office visit. He was provided with a completed doctor's note/work excuse form by an authorized employee at the Clinic, complete with the doctor's signature on it and there was no reason why he should question its validity or Ms. Booker's authority. He delivered the completed form to his supervisor when he returned to work the next day.

Nothing in the record suggests that Appellant willfully forged or presented a forged document. While Appellant had a history of being tardy, he was not dismissed for poor attendance. Apart from his inability to consistently arrive at work on time due to his family obligations, there were no other concerns about Appellant's work performance. Given that the City appears to have a shortage of good employees, it is befuddling that the City would not try to find a shift that could accommodate Appellant's childcare needs, therefore preserving his employment with the City.

After hearing all of the testimony and reviewing all of the exhibits, the Board concludes, based upon consideration of the evidence, that the City was not justified in this disciplinary action.

**ORDER**

Based on the foregoing, the Board grants the Appellant's appeal and ORDERS the City to reinstate Appellant with full back pay consistent with this decision and in accordance with City Code Section 114-553(c).

*Sterling P. Eaves* 7/11/19

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Sterling P. Eaves, Chair

*Mary Ann S. Phyll*

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*Nkoyo-Ene R. Effiong*

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