

**CITY OF ATLANTA CIVIL SERVICE BOARD
ORDER**

APPEAL NO. 2020-027AP

APPELLANT: KRAIG JENNINGS
Dept of Parks and Recreation (DPR)
City of Atlanta (City)

Effective Date: October 26, 2020
Hearing Date: February 11, 2021

ACTION:

10 Day Suspension

HEARING OFFICERS/PANEL

E. Carl Touchstone, Chair
Plemon El-Amin
Mary Ann S. Phyll, DWB

APPEARANCES

City of Atlanta:

Candace Kollas, Esq.
Monique Clark, Esq.

City Witnesses:

Wendell Bryant, HR Manager II - City
Deja Robins
Nicholas Snow, Aquatic Facility Asst.

Appellant Representative(s):

Kwame Townes, Esq.
LeRoya Chester-Jennings, Esq.

Appellant's Witnesses:

Marquessa Moore, Aquatic Facility Asst.
Askia Drellie Bashir, Aquatic Supervisor
Sonia Wimbish, Business Analyst Senior

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 virtually via Zoom Webinar, facilitated by the City, pursuant to Mayor Keisha Lance Bottoms Executive Order regarding COVID-19, and before the above-named hearing officers of the Atlanta Civil Service Board ("Board") on the date set forth above.

CHARGES

Suspended 10 days for violation of City of Atlanta Code §114-602:
Sexual Harassment

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

INFRACTION

See City of Atlanta Notice of Final Adverse Action (NFAA) (Exhibit C-4)

EXHIBITS

City of Atlanta:

- C-1 Article VI Division 5 Sexual Harassment
- C-2 Investigative Report
- C-3 Disciplinary Letter
- C-4 Notice of Final Adverse Action (NFAA)
- C-5 Jennings Affidavit
- C-6 Notice of Proposed Adverse Action (NPAA)

Appellant:

- A-2 Email correspondence regarding Deja Robin's performance
- A-6 Oral Admonishment Form for Deja Robins
- A-8 Audio recording of Nicholas Snow

STIPULATIONS

None

FINDINGS OF FACT

1. Appellant, Kraig Jennings, a City employee for more than 30 years was a DPR Aquatics Facility Supervisor at the Martin Luther King Aquatics Center at the time charges were filed against him. The Appellant had recently been promoted to his supervisory position September 2018.
2. On February 5, 2019 allegations of harassment were made against him by one of the employees he managed.

3. Deja Robins, a certified lifeguard working as an Aquatics Facility Assistant for just a year before making the complaint. She first contacted the Human Resources Business Partner Ivy Scott who, in turn, referred her complaints to the Office of Labor and Employee Relations.
4. Ms. Robins alleged that between September 20, 2018 and February 5, 2019 she experienced an ongoing pattern of harassment from the Appellant that included inappropriate comments to her of a sexual nature regarding her body; comments to her about the sexual relationship between he and his wife; disparaging remarks to her and others about how her City issued shorts fit; and, yelling at her in front of employees and patrons.
5. Based on the nature of the complaints made by Ms. Robins, the Office of Labor and Employee Relations initiated an administrative internal investigation into the matter.
6. One of the employees interviewed during the investigation was Nicholas Snow who claimed to feel weird and uncomfortable when he heard countless sexually explicit comments made by the Appellant while at the workplace. Mr. Snow gave a statement of his experiences and, in his words, "awkward" work atmosphere. He was also a witness to loud arguments between Ms. Robins and the Appellant, one in particular, in front of the pool patrons.
7. The results of the investigation found that there was reasonable cause to believe that the allegations of sexual harassment against the Appellant were true and that he violated the City of Atlanta Municipal Code of Ordinances Section 114-602, Sexual Harassment. Recommendation - Sexual Harassment Prevention Training and a 10-day suspension. The investigation of DPR case number 2019.009 was completed September 21, 2020. (Exhibit C-2)
8. On September 28, 2020, Jeffrey B. Norman, Interim Commissioner of Human Resources sent a letter to DPR Commissioner, John Dargle, Jr. summarizing the allegations, investigation and the recommended discipline of the Appellant. Ultimately, the investigation was considered complete and the Appellant faced disciplinary action. (Exhibit C-3)
9. On October 7, 2020, the Appellant was issued the NPAA for violating Section 114.602, Sexual Harassment. (Exhibit C-6)
10. Five days later, the Appellant submitted an affidavit in response to the NPAA denying the allegations. Included in his response were letters in support of the Appellant's character and work ethics from nine individuals. (Exhibit C-5)
11. On October 21, 2020, management issued the NFAA. The Appellant was suspended from October 26, 2020 through November 6, 2020 and on November 7, 2020 he returned to his city employment as a pool manager.
12. Ms. Robins remains a city employee but reassigned to another department.

DISCUSSION

Due to Mayor Keisha Lance Bottoms' Executive Order and COVID-19 pandemic guidelines, the appeal of Kraig Jennings was called at 2:00pm via the Zoom Webinar format.

Harassment of any kind in the workplace is to be taken seriously. Harassment is discrimination, it encompasses many actions, knows no gender and can happen to anyone. In the case before the Board, the Appellant, Kraig Jennings' actions were reported by a female employee that he managed and these allegations resulted in an internal investigation. The conclusion of the investigation is as follows:

Based on testimonial and documentary evidence obtained during this investigation, there is reasonable cause to believe that the allegation of sexual harassment against Mr. Jennings is true. (Exhibit C-2)

DPR HR manager, Wendell Bryant testified that he disciplined the Appellant. He outlined the process used to investigate the case as well as what criteria (listed below) is considered when recommending discipline:

- Time accused has been employed by the City
- How egregious the offense
- If it were a first-time offense

In this case, the minimum discipline was recommended – attendance of a Sexual Harassment Prevention Training and a 10-day suspension per Section 114-605(2)(a). Verification that the Appellant completed the training was not presented during the hearing.

Ms. Robins, the complainant, was called as a City witness. She gave an account of the charges she made against the Appellant two (2) years prior. The Appellant's representative questioned Ms. Robins about her work performance, compliance of work rules and truthfulness. A co-worker and witness to harassment of Ms. Robins was Nicholas Snow. He felt that Ms. Robins was not being treated fairly - ultimately creating a hostile environment. Mr. Snow added that the work place was very amicable prior to the Appellant's promotion to a pool manager.

The Appellant's representative contended that the two employees, Ms. Robins and Mr. Snow, conspired together against the Appellant/supervisor with false accusations when he attempted to properly manage his department. Sonia Wimbish, the

Appellant's supervisor at the time, served as a mentor to the Appellant. She testified that she guided and advised him in his new position. However, when asked if she gave advice on the issues he was having with his staff, she stated that she didn't recall the subject nature of calls or conversations with him. Later in questioning, Ms. Wimbish did remember a time Ms. Robins was out of uniform and she reported her. Yet, the Appellant's NPAA with charges of sexual harassment was signed by Ms. Wimbish.

Neither side called the Appellant to testify. The Appellant denied all charges in a written affidavit. (Exhibit A-5)

In conclusion, an employer acts through its supervisors. The internal investigation conducted by the city's HR department determined that the allegations against the Appellant were true. The City held the Appellant accountable. However, the Board reviews both the Appellant and the City regarding discipline.

Section 114-79(e)(1) *The Board shall...provide advice and counsel to the mayor, the council, the commissioner of human resources, concerning the development, implementation and improvement of the civil service system.* The Board advises the following issues that appear in this case and listed below be strongly considered for improvement:

1. While it is not known if, in his new supervisory position, the Appellant confided in his supervisor, Ms. Wimbish regarding this matter - he should have. Upper management could have assisted in resolving the strained work relationship between the Appellant and his staff. In addition, emails to report Ms. Robins' work violations may have been resolved by a meeting between employee and upper management and/or a written report included in Ms. Robins' personnel file if the violations were chronic. (Exhibit A-2)
2. The City appeared to delay their response to Ms. Robins' February 2019 complaint creating an 18-month span between the allegations and the completion of the investigation in September 2020. The responsibility of management is to contain, control and eliminate any allegations of sexual harassment in a timely manner.
3. Section 114-605(2)(a) Resolving the complaint - *First offense: Sexual harassment training and disciplinary action ranging from a ten-day suspension to dismissal.* The Board questions if Appellant completed the sexual harassment course as the Code mandates.

Each individual has the right to work in a professional atmosphere which promotes equal opportunities and prohibits discriminatory practices, including sexual harassment...In the event incidents of sexual harassment do occur, it is the policy of the city to take prompt remedial action...Sec. 114-601

ORDER

The Board carefully considered all testimony and evidence presented by both the City and the Appellant during the hearing. The Board affirms the 10-day suspension of the Appellant for violating Atlanta City Code Section 114-602.

The appeal of Kraig Jennings is DENIED.

This the 2nd day of March 2021.

Respectfully submitted,

E. Carl Touchstone

E. Carl Touchstone, Chair

Plemon El-Amin

Plemon Al-Emin

Mary Ann Phyll

Mary Ann S. Phyll DWB