

**CITY OF ATLANTA CIVIL SERVICE BOARD
ORDER**

APPEAL NO. 2021-007AP

Effective Date: March 12, 2021

APPELLANT: Anthony Holley

Hearing Date: June 24, 2021

Department of Watershed Management (the "Department")

ACTION:

Dismissal

HEARING OFFICERS

Mary Ann Phyll, Chair

Sterling P. Eaves

E. Carl Touchstone, DWB

APPEARANCES

City of Atlanta ("City"):

Counsel/Representative:

Staci Miller, Esq.

City of Atlanta's Witnesses:

Brian Spencer

Darren Boykin

Anthony Holley - Appellant

Appellant:

Anthony Holley

Counsel/Representative:

Pecolia Jennings

Appellant's Witnesses:

Margaret Sylvester

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 (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, via a Zoom Webinar, facilitated by the City, pursuant to Mayor Keisha Lance Bottoms' Executive Order regarding the Covid-19 Pandemic.

EXHIBITS

City of Atlanta

- C-1 Report of Investigation
- C-2 Video of Holley Being Picked Up
- C-3 Still Shot of Vehicle Being Towed
- C-4 Holley Return Video
- C-5 Atlanta City Code Section 114-528
- C-6 Lance Hollis Statement of Incident
- C-7 NPAA
- C-8 NFAA

Appellant Holley

- A-1 Duke Health Record
- A-3 Letter from Anthony Holley dated 10-12-2020
- A-5 Department Award to Anthony Holley dated 8-3-2018
- A-6 Memo from Greg Greeson to Joe Fortson dated 10-14-2020

Stipulations

None.

VIOLATIONS

City of Atlanta Municipal Code of Ordinances:

114-528 (b) (4) Misconduct, including but not limited to engaging in offensive conduct or language toward the public, supervisory personnel, or fellow employees.

114-528 (b) (8) Absence without official leave.

114-528 (b) (11) Abuse or theft of city property.

114-528 (b) (20) Any other conduct or action of such seriousness that disciplinary action is considered warranted.

FINDINGS OF FACT

1. Appellant Anthony Holley (“Appellant”) was employed by the City of Atlanta (the “City”) in the Department of Watershed Management (the “Department”).
2. Appellant has worked with the Department approximately 3.5 years as a construction maintenance worker.
3. On October 9, 2020, Appellant clocked in to work at 11:00 p.m. at the Department’s Pipeyard facility.
4. Approximately 40 minutes after clocking in, Appellant took a City owned Ford F-150 pickup (the “Vehicle”), illegally parked it in front of fire hydrant in the parking lot of a private business, and abandoned the Vehicle for five (5) hours.
5. The abandoned city Vehicle was towed, at the request of the business owner, without Appellant’s knowledge.
6. Appellant made a report to the Atlanta Police Department that the Vehicle had been stolen.
7. Appellant stated during the investigation of this matter that he became ill and had an “accident” as a result of his illness, and that is what caused him to abandon the Vehicle for several hours.

DISCUSSION

An investigation was conducted after Appellant reported that the Ford F-150 that he took had been stolen. It was determined that the vehicle was in fact towed after it was illegally parked in front of a fire hydrant, in the parking lot of a private business and abandoned for several hours. Once the investigation was completed and notice was given, Appellant was ultimately dismissed for violation of four (4) subsections of City of Atlanta Municipal Code of Ordinances Section 114-528 (b). Appellant appeals this decision.

Appellant has been with the Department for approximately 3.5 years and his title was Construction Maintenance Tech 1. During the investigation into the alleged stolen Vehicle, it was determined that Appellant actually took the Vehicle and parked it illegally in front of a fire hydrant in the parking lot of a private business. Evidence showed that another automobile arrived at the same parking lot shortly after Appellant parked. Appellant exited the Vehicle and then left the lot as a passenger in the unidentified private auto. The evidence showed that Appellant came back to the lot, driven by another individual, approximately five (5) hours later. By the time Appellant returned, the Vehicle had actually been towed at the request of the business owner. Appellant later claimed that he was facing a medical emergency, which warranted him leaving the Vehicle at the time and place where he did. Evidence also showed that the location where Appellant left the

Vehicle was a business situated directly across the street from the Department's South River Water Treatment Plant.

The City contends that Appellant's actions on October 9, 2020 justified his dismissal. Appellant was initially placed on a Performance Improvement Plan after this incident. After completion of the investigation, Appellant was served with a Notice of Proposed Adverse Action ("NPAA") on February 12, 2021. On March 8, 2021, the City issued its Notice of Final Adverse Action ("NFAA") to Appellant, with the disposition being dismissal.

Section 114-528 (b) The following actions constitute cause for which disciplinary action may be imposed, but the imposition of disciplinary action shall not be limited to such offenses:

- (4) Misconduct, including but not limited to engaging in offensive conduct or language toward the public, supervisory personnel or fellow employees.*
- (8) Absence without official leave.*
- (11) Abuse of theft of city property.*
- (20) Any other conduct or action of such seriousness that disciplinary action is considered warranted.*

The City called Brian Spencer ("Spencer"), as its first witness. Spencer manages the Valve and Hydrant Assessment/Response Team within the Department. He has been employed with the Department for approximately eight (8) years. He testified that he is familiar with Appellant because the Appellant works in his department. Spencer stated that he received a call from Superintendent Lance Hollis ("Hollis") about the 10-9-2020 incident. According to Spencer, Appellant was told by Hollis to report the Vehicle stolen. Spencer added that he then started tracking the Vehicle with Atlanta Police Department ("APD"). Several exhibits were introduced during Spencer's testimony, which included video evidence of the Vehicle being parked by Appellant and him then entering the passenger seat of a red car; photo showing the Vehicle being towed; and video of Appellant's return to the parking lot after the Vehicle had been towed. See Exhibits C-2; C-3; and C-4.

The City then called Darren Boykin ("Boykin") as its next witness. Boykin is the Deputy Commissioner of the Department. He testified that in his capacity, he is responsible for all linear infrastructure services and personnel, which includes employee discipline. Boykin further testified that he made the decision to impose the discipline of dismissal in Appellant's matter. It was Boykin's belief that termination was appropriate because he wanted to stay consistent with the policies of the Department.

The City's final witness was Appellant. He testified that he clocked in at the Pipe Yard location before 11:00 p.m. He added that while he was out in the Vehicle, he needed to call his friend due to an emergency. Appellant stated that he could not say why he parked the Vehicle across the street from the Department's South River Facility. Appellant submitted that he had an "accident" after he left the Pipe Yard location and that he was heading to Moreland Avenue to get a ginger ale to settle his stomach. The "accident"

happened while he was on Moreland Avenue. Appellant contends that he initially chose to go to Moreland Avenue for food because he knew that businesses there were open at that time. Appellant testified that he chose to call his friend because he knew that she was only 3 minutes away from where he parked. Appellant claims that he told his supervisor earlier in the day that he didn't feel well. In response, Appellant stated that his supervisor told him to "handle his business" and that they weren't doing anything that evening. During questioning about City's Exhibit 6 (Hollis memo), wherein Hollis stated that he got a call from Appellant at 6:38 a.m., Appellant was asked why did he wait to call his supervisor. Appellant responded that he called immediately upon his return to the parking lot. It was brought out during questioning that video evidence showed that Appellant actually returned to the parking lot at 5:09 a.m.

Appellant admitted that he knew that he needed to clock out before leaving work. Appellant also admitted that he knew that he was not allowed to abandon a Department vehicle.

On examination by his representative, Appellant introduced Exhibit 1 to show that he had surgery for diverticulitis in August 2009. Appellant then confirmed, on re-direct, that he had not provided any other medical documentation between the years of 2009 and 2020.

Appellant's only witness was Margaret Sylvester ("Sylvester"). Sylvester testified that she is employed with the Department and her title is: Watershed Inspector Senior. She stated that she generally supervises 1 to 2 construction maintenance workers and that she has worked directly with Appellant. Sylvester added that in her capacity, she has never had a problem with Appellant and that he would always do what he was supposed to do.

On cross examination, Sylvester was asked about protocol when a worker has an emergency at work. Her response was that the employee must report to supervisor first, and if not reached, then a higher up must be notified. Sylvester stated that the employee should follow the chain of command. She added that if an employee can't make it back to work, then that person should email their supervisor.

After hearing all of the testimony and reviewing the evidence, it is clear to the Board that the City has met its burden with regard to Appellant's violations of Section 114-528 (b) (8) Absence without official leave; 114-528 (b) (11) Abuse or theft of city property; and 114-528 (b) (20) Any other conduct or action of such seriousness that disciplinary action is considered warranted. The Board hereby "Affirms" the violations against Appellant for those infractions.

The Board has concluded that the City has not met its burden with respect to violation of Section 114-528 (b) (4) Misconduct, including but not limited to engaging in offensive conduct or language toward the public, supervisory personnel or fellow employees. Therefore, the Board hereby "Denies" that violation against Appellant.

ORDER

Based on the foregoing, the Board hereby **AFFIRMS** the Appellant's discipline of **dismissal**.

This the 26th day of July, 2021.

Signed:

Mary Ann Phyll

Mary Ann Phyll, Chair

E. Carl Touchstone

E. Carl Touchstone, DWB

Sterling Eaves

Sterling Eaves