

CITY OF ATLANTA
CIVIL SERVICE BOARD
FINDINGS OF FACT AND ORDER

APPEAL No. 2018-039AP

Effective Date: September 24, 2018

Hearing Date: July 29, 2021

APPELLANT: **Freddie Aaron**

City of Atlanta
Department of Public Works

ADVERSE ACTION:
Termination

HEARING OFFICERS/BOARD:
Mary Ann Phyll, Chair
Suzanne Wynn Ockleberry, DWB
Herman L. Sloan

APPEARANCES

City of Atlanta Representative(s):
Michael C. Wynter, Esq.

City Witnesses:
Jerry Parks
Jenelle Bonds
Jennifer Hicks

Appellant:
Freddie Aaron

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, facilitated by the City, pursuant to Mayor Keisha Lance Bottoms Executive Order regarding COVID-19, and before the above-named hearing officer of the Atlanta Civil Service Board (“Board”) on the date set forth above.

EXHIBITS

City of Atlanta: C1 – Official Notice of Drug and Alcohol Analysis
C2 – May 11, 2018 Alcohol Testing Results
C3- DER Report
C4 – Notice of Proposed Adverse Action
C5 – Notice of Final Adverse Action
C6 – City of Atlanta Code of Ordinances 114-569, 114-572 and 114-573

Appellant: None

CHARGES

DISMISSAL for violation of City of Atlanta Municipal Code of Ordinances:
114-528(b)(2) – Any conduct or action of such seriousness that disciplinary

action is considered warranted
114-573 – Results of drug/alcohol analysis

FINDINGS OF FACT

1. Appellant worked for the City of Atlanta, Department of Public Works for 18 years.
2. On May 11, 2018, Appellant was part of a five (5) man crew assigned to a work location in Buckhead.
3. While in route to the work location, Appellant and a co-worker became engaged in a verbal discussion over the co-worker's use of his cell phone while in the work vehicle.
4. As a result of the disruption, Mr. Jerry Lewis Parks, Appellant's second line supervisor, referred the Appellant and his co-worker to Caduceus Occupational for drug and/or alcohol testing on May 11, 2018 at 12:50 p.m. based upon "Behavior that was so unusual and inappropriate in its nature as to create an unsafe work environment or disrupt the normal working condition". (C1).
5. The results of the breath test by the Caduceus Alcohol Technician indicated that Appellant had a breath alcohol level of .10 at 1:42 p.m. and a second test at 1:59 p.m. showed that Appellant had a breath alcohol .105. (C2).
6. On that same date, Jenelle Bonds, a City of Atlanta Designated Employee Representative (DER), notified Kenya Moore, HR Manager for the Department of Public Works, of the breath alcohol test results for the Appellant. (C3).
7. On September 10, 2018, the City of Atlanta, Department of Public Works, issued a Notice of Proposed Adverse Action (NPAA) to Appellant which indicated that the Proposed Adverse Action was to be a dismissal effective on September 24, 2018 for violating City of Atlanta Code Ordinance Sections 114-528(b)(20) and Section 114-573 due to his testing positive for alcohol above the .02 permissible limit. (C4)
8. On September 21, 2018, the City of Atlanta, Department of Public Works, issued a Notice of Final Adverse Action (NFAA) which was served on Appellant on September 25, 2018 and notified him of his dismissal effective September 24, 2018, citing to violation of City of Atlanta Code of Ordinance Sections 114-528(b)(20) and 114-573. (C5).

DISCUSSION

Due to Mayor Keisha Lance Bottoms' Executive Order and COVID-10 pandemic guidelines, the appeal of Freddie Aaron was called virtually at 2 p.m. on July 29, 2021 via the Zoom Internet platform.

After hearing arguments from both sides and reviewing all of the evidence presented, the Panel finds that there was sufficient evidence presented by the City that Mr. Parks, Appellant's second line supervisor, had a legitimate reason to refer Appellant and his co-worker to Caduceus for drug and alcohol testing on May 11, 2018 based upon the report Mr. Parks received from Appellant's direct supervisor that Appellant and a co-worker were engaged in a verbal dispute while on the job that was not professional behavior and disrupted the normal working conditions of the employees. (C1). This is supported by Appellant's own testimony that as a result of the verbal dispute, his supervisor told the driver of the vehicle to bring the entire crew back from the work location in Buckhead.

Ms. Bonds testified that the results of the breath test administered to Appellant on May 11, 2018 showed that he had a breath alcohol of at least .10. Appellant did not present any evidence to dispute the results of the breath test.

Ms. Jennifer Hicks, Human Resource Director for the Department of Watershed Management, Department of Public Works, testified that she is not aware of any DPW employee who has exceeded the recognized limit of alcohol of .02 and who has not been terminated.

While Appellant indicated that he was not drinking while on the job but had alcohol in his system from the night before, Section 114-569(d) of the City of Atlanta Municipal Court of Ordinances, prohibits an employee from reporting to work “while the employee’s ability to perform job duties is impaired due to the use of alcohol, prescription or other legal drugs and substances”. (C6). And, even if Appellant was not “drinking on the job”, his breath alcohol exceeded the recognized level of .02 under Section 114-569(d).

Based upon the evidence presented, there was just cause for the City of Atlanta to terminate Appellant pursuant to Section 114-573 for violation of Section 114-569(d) of the City of Atlanta Municipal Court of Ordinances.

ORDER

The appeal by Freddie Aaron regarding his termination from the City of Atlanta Department of Public Works on September 24, 2018 is DENIED.

This the 5th day of August, 2021.

Respectfully submitted,

Mary Ann Phyll

Mary Ann Phyll, Chair

Suzanne Wynn Ockleberry

Suzanne Wynn Ockleberry, DWB

Herman Sloan

Herman L. Sloan