

CITY OF ATLANTA
CIVIL SERVICE BOARD
FINDINGS OF FACT AND ORDER

APPEAL No. 2021-002AP

Effective Date: January 24, 2021
Hearing Date: November 4, 2021

APPELLANT: **William Walker**

City of Atlanta
Fire Rescue Department

ADVERSE ACTION:
Four (4) day suspension

HEARING OFFICER:
Suzanne Wynn Ockleberry

APPEARANCES

City of Atlanta Representative:
Keyshia Baytop

City Witnesses:
Section Chief Eric Kave
Deputy Chief Byron Kennedy
Sergeant William Walker

Appellant Representative:
Gwendolyn Gillespie

Appellant Witnesses:
William Walker, Jr.

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 – Notice of Proposed Adverse Action (NPAA)
- C2 – Notice of Final Adverse Action (NFAA)
- C3 - Runway Incursion Violation Packet
- C4 - Airport Monthly Training Sheets (January, 2020 - July, 2020)
- C4a – Aircraft Movement Area (AMA) Driving Training Power Point (undated)
- C5 - Statement of Sergeant Walker (July 15, 2020)
- C6 – Disciplinary Jacket for Sergeant Walker

Appellant:

- G1 - List of Discipline with Explanation by Sargent Walker
- BS1 - July 14, 2020 Video
- B18 - Statement by Sargent Walker dated July 15, 2020) (See Exhibit C5)
- B-20 -Closing of Investigation - August 20, 2020 (See Exhibit C3, p. 5)
- C12 - Memorandum from First Deputy Chief Byron Kennedy to Sergeant William Walker (March 23, 2020)
- A2 - Disciplinary Matrix - Chart 5.7
- A3 - Levels of Non Adverse/Adverse Disciplinary Authority - Chart 5.8

CHARGE

Four (4) day Suspension for violation of City of Atlanta Fire and Rescue Work Rule: 2.32(a) - *Unsatisfactory Performance* - Employees of the Department shall maintain sufficient competency to assume and perform their duties and responsibilities of their position. Employees shall perform their duties in a manner which establishes and maintains the higher standard of efficiency in carrying out the functions and objectives of the department.

STIPULATED FACTS BY THE PARTIES

None.

FINDINGS OF FACT

1. Appellant has worked for the City of Atlanta Fire Rescue Department (FRD) for approximately 20 years.
2. Appellant has been stationed at the Hartsfield-Jackson Atlanta International Airport (Airport) for approximately 13-14 years.
3. As part of his job responsibilities with FRD, Appellant drives an Aircraft Rescue and Firefighting (ARFF) unit.
4. In order to operate an ARFF unit at the Airport, Appellant must annually complete the Aircraft Movement Area Driver Training (AMA). (C4a)
5. Appellant completed training for his AMA license renewal on January 21, 2020. (C4)
6. Appellant's scores for his AMA training have historically been in the 100th percentile.
7. The AMA training indicates that the Federal Aviation Authority (FAA) defines a runway incursion as "any occurrence...involving the incorrect presence of an aircraft, vehicle or person on the protected area of a surface designated for the landing and take-off of aircraft." (C4a, p. 9)
8. The AMA training instructs that all vehicles must have specific clearance from Air Traffic Control (ATC) to cross or access a runway and the operator is to repeat back all ATC instructions, "especially crossing instructions". (C4a, p. 95, 99, 108, 118, 174, 178)
9. The AMA training indicates that if the operator is unclear about the instructions from

- ATC, the operator is to ask ATC to repeat the instructions. (C4a, p. 112)
10. Appellant also receives Federal, State and Monthly training as well as training on every shift regarding his job responsibilities at the Airport with FRD. (C4)
 11. Prior to the July 7, 2020 incident which led to his four (4) day suspension, Appellant received a Letter of Counselling (LOC) and a Letter of Reprimand (LOR) between November 12, 2015 and February 20, 2020. (C6)
 12. On March 23, 2020, Appellant received notification from First Deputy Chief Byron Kennedy that a review of the six (6) grievances he filed would not result in the LOR being removed from his personnel file. (C12)
 13. On July 7, 2020, Appellant was driving ARFF Unit #3 in response to an Alert 2 for an emergency on a Delta flight that was inbound on runway 9 Right (9R).
 14. Lieutenant Settles accompanied Appellant in ARFF Unit #3 in response to the alert. (C3)
 15. ARFF Unit #10, which was occupied by Lieutenant Munson, was also responding to the same alert as Appellant. ARFF Unit #10 was in front of Appellant's vehicle. (C3)
 16. ATC instructed both units to cross runway 9R at R7. (C3)
 17. While in route to the alert, the Delta flight indicated that assistance from ARFF was no longer needed. (C3)
 18. In returning back to the standby location at Station #40, ARFF Unit #10 turned right onto runway 9R rather than crossing the runway as instructed by ATC. (C3)
 19. ARFF Unit #3, which was being driven by Appellant, also turned right onto runway 9R rather than crossing the runway as instructed by ATC. (C3)
 20. Runway 9R was in use by an aircraft at the time the ARFF Units turned onto the runway. (C3)
 21. On the date of the incident, Airport Operations logged the incident as a runway incursion. (C3)
 22. As a result of ARFF Units #10 and #3 entering runway 9R, the Federal Aviation Administration (FAA) issued a Letter of Investigation to the Airport General Manager on July 8, 2020. (C3)
 23. On August 20, 2020, the FAA notified the Airport General Manager that the investigation was closed as there was no violation of 14 CFR part 139. The letter also noted that the "airport has followed the consequences of non-compliance in your Airport Certification Manual." (C3)
 24. On July 15, 2020, Appellant provided a statement to Captain/Battalion Chief Thomas Franklin about what the incident on July 7, 2020. (C5)
 25. In his statement, Appellant notes that he heard "ARFF #10 plus 1 cross 9R onto November." He indicated that he was "looking for directional markings to get back on November not to go down the runway; however [he] was being blocked by the view of the lead truck ARFF10." (C5)
 26. Appellant also noted in his statement that he had a conversation with Lieutenant Munson during which Appellant told him: "We did not get permission to ride the runway. He told us to cross 9R onto the November instead of telling us to deviate." (C5).
 27. Due to the July 20, 2020 incident, FRD issued a Notice of Proposed Adverse Action (NPAA) to Appellant on January 6, 2021 for violation of FRD Work Rule 2.32(a). The effective date of the NPAA was January 24, 2021 with a proposed disciplinary

- action of a four (4) 12 hour day suspension without pay. (C1)
28. On January 14, 2021, FRD issued a Notice of Final Adverse Action (NFAA), which was sent by certified mail to Appellant on January 15, 2021, which suspended him for four (4) 12 hour days effective January 24, 2021. (C2).
 29. After the July 7, 2020 incident but prior to the effective date of his suspension, Appellant received three (3) Letters of Reprimand. (G1, C6)
 30. On July 14, 2020, Captain Bobby Stewart of the Office of Professional Standards (OPS) along with police officers from the City of Fairburn and College Park came to Appellant's home to conduct a wellness check. Appellant's father, William Walker Jr., and not Appellant was at the home at the time of the visit. (BS1).

DISCUSSION

Due to Mayor Keisha Lance Bottoms' Executive Order and COVID-10 pandemic guidelines, the appeal by William Walker was called virtually at 10:00 a.m. on November 4, 2021 via the Zoom Internet platform.

After hearing arguments from both sides and reviewing all of the evidence presented, the Board finds that there was sufficient evidence presented by the City to affirm the four (4) day suspension which was issued to Appellant.

Code Section 114-533(b) states:

If the appellant is a non probationary sworn officer of the department of police who holds the rank of lieutenant or below that of lieutenant or sworn officer of the department of fire who holds the rank of captain or any rank below that of captain, the hearing officer/panel may not modify, but must affirm or revoke a suspension or demotion...

Based upon the foregoing Code Section, the Board is to determine whether to affirm or revoke the four (4) day suspension issued to Appellant. In making such a determination, the Board is guided by Code Sections 114-526 through 114-530.

The evidence presented at the hearing indicated that Appellant has received and receives extensive training to competently perform his job duties as a Sergeant with FRD. Section Chief Eric Kave testified that Appellant has successfully passed all of his training requirements, including the AMA Driver Training and has often scored in the highest percentile for the last 5 -6 years. Chief Kave indicated that the training includes instruction that the operator of the ARFF unit is to carry out the orders of ATC while at the Airport regardless of what errors any other responding unit engages in, including the lead unit. Chief Kave explained that the ATC instructions have to be carried out verbatim due to aircrafts taking off and landing on the runways and any collision between an aircraft and an ARFF unit can be catastrophic. As result, Chief Kave testified that there is no room for deviation or interpretation of instructions from ATC.

While both the Lieutenant and the Sergeant work as a team and jointly decide on the direction of the vehicle, the Sergeant is the operator of the ARFF unit. If there is an issue with the instructions

the operator of the ARFF unit receives from the Lieutenant, if the operator is not clear about the instructions from ATC or another ARFF unit is not following the instructions from ATC, the AMA Driver Training and testimony by Chief Kave indicates that the operator of the ARFF unit is required to: 1) communicate with the lead ARFF to try to correct their course; and/or 2) stop his/her ARFF unit and communicate with ATC to ensure the correct instructions have been received. Chief Kave and Deputy Chief Byron Kennedy testified that if the operator of the ARFF disregards instructions from a Lieutenant which are contradictory to those received from ATC regarding the direction of travel for an ARFF unit, FRD will not find that the operator was insubordinate for failing to obey a supervisor.

The runway incursion which occurred on July 7, 2020 was as a result of Appellant not following the instructions from ATC to cross runway 9R. Instead, Appellant turned right onto the runway while it was in use by an aircraft. Even though the FAA determined that the runway incursion was not a violation of 14 CFR Part 139, Appellant did not follow the requirements set forth in the AMA Driver Training. The FAA ruled that the Airport had followed the consequences of non-compliance with the Airport Certification manual, which according to the testimony of Chief Kave, included the suspension of AMA driving privileges for those involved in the July 7, 2020 runway incursion. As Chief Kave and Deputy Chief Kennedy testified, the City of Atlanta Department of Aviation has AMA licensing requirements for anyone operating a vehicle on Airport property which must be adhered to in addition to any requirements imposed by the FAA.

During the hearing, Appellant testified that he had received training on runway incursions and deviations and that he successfully passed the training course to receive his AMA license. He indicated that the training he received included instruction on movement at the Airport. While he testified that he received a directive from a Lieutenant to travel on runway 9R, his statement on July 15, 2020 indicates that he heard the instruction for “ARFF#10 plus 1 to **cross** 9R onto November”, that he was looking for “directional markings to get back on November **not to go down the runway**”, but he proceeded behind ARFF Unit #10 onto the runway because the unit “blocked “his view. Appellant reiterated in his statement that he heard ATC tell him to “cross 9R onto the November instead of telling [him] to deviate.”

Appellant indicates in his July 15, 2020 statement that Lieutenant Munson, who was in ARFF unit #10 which was the lead vehicle, told him after the runway incursion that he messed up and would take the heat. However, as the operator of ARFF Unit #3, Appellant was required to follow the directions from ATC and not the directions from Lieutenant Munson, who was in another unit. Further, there is no indication that Lieutenant Settles, who was riding in the ARFF unit with Appellant and was equally responsible for the movement of the unit, instructed him to turn onto runway 9R rather than cross the runway as instructed by ATC. Appellant admitted during his testimony that he was not allowed or approved by ATC to travel on runway 9R. Appellant also testified that in hindsight, he would ask his Lieutenant for clarity about a direct order that was in conflict with instructions from ATC and not deviate from ATC instructions.

Appellant testified that he believed he was being targeted based upon a “stacking” of discipline in his personnel file, which was clean prior to his asking questions about a blue card and abuses of authority. He testified that he filed grievances and he was disciplined for going to HR when he did not receive a response to any of his grievances. Yet, on March 23, 2020, Deputy Chief Byron

Kennedy responded to Appellant that he had reviewed all six of his grievances and determined that the LOR which had been issued to him was appropriate.

Appellant further indicated that he believed that the wellness check at his home on July 14, 2020 was harassment and that he also filed a charge with the Equal Employment Opportunity Commission (EEOC) that is still pending. But the wellness check and the discipline Appellant received for not following the chain of command occurred **after** the July 7, 2020 runway incursion.

Prior to the issuance of the NPAA and NFAA, Appellant had already received a LOC and LOR. Thus, the imposition of a four (4) day suspension for the July 7, 2020 incident was in accordance with Atlanta City Code Section 114-526(a) and Section 114-529. Pursuant to Atlanta City Code Section 114-526(b), the fire chief retains “authority to administer corrective and disciplinary action” notwithstanding the provisions of Atlanta City Code Section 114-526(a). Deputy Chief Kennedy testified that all of the four (4) employees involved in the July 7, 2020 runway incursion were charged with unsatisfactory performance. All employees, except one (1) who resigned prior to the completion of the investigation, were disciplined. And, Deputy Chief Kennedy also testified that he did offer to reduce Appellant’s suspension without pay from 4 days to 2 days which the Appellant rejected.

The NPAA was issued to Appellant on behalf of Fire Chief Randall Slaughter on January 6, 2021 with an effective date of January 24, 2021. The written or oral response by Appellant to the NPAA was due by January 12, 2021. The NFAA was issued on January 14, 2021. It was sent to Appellant by certified mail on January 15, 2021 with an effective date of January 24, 2021. The NPAA and NFAA were issued in compliance with Code Section 114-530.

ORDER

Based upon the evidence presented, the Board **AFFIRMS** the issuance of the four (4) day suspension to Appellant for violation of City of Atlanta Fire and Rescue Work Rule 2.32(a).

This the 9th day of November, 2021.

Respectfully submitted,

Suzanne Wynn Ockleberry
Suzanne Wynn Ockleberry, Chair