

CITY OF ATLANTA
CIVIL SERVICE BOARD
FINDINGS OF FACT AND ORDER

APPEAL No. 2017-053AP

Effective Date: September 5, 2017

Hearing Date: March 17, 2022

APPELLANT: **Zoel Murphy**

City of Atlanta
Police Department

ADVERSE ACTION:
Seventeen (17) day suspension

HEARING OFFICER:
E. Carl Touchstone, Chair
Herman L. Sloan
Suzanne Wynn Ockleberry

APPEARANCES

City of Atlanta Representative:
Michael C Wynter, Esq.

City Witnesses:
Captain Hajredin Zenelaj
Sergeant William Dean

Appellant:
Zoel Murphy

Appellant Witnesses:
Zoel Murphy

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 Andre Dickens 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 – Atlanta Police Department (APD) Standard Operating Procedures (SOP) 2010 Work Rules
- C2 – Office Professional Standards (OPS) Investigation File No 16-C-0665- UAF (Partial and Redacted)
- C3 - OPS File No. 16-C-0665-UAF Video Footage
- C4 - OPS File No. 16-C-0665 - UAF Investigation Disposition

- (Redacted)
- C5 - NPAA and NFAA
 - C6 – APD SOP 2020 - Disciplinary Process
 - C7 - OPS File No 16-C-0665-YAF Employee Discipline Worksheet

CHARGES

Sixteen (16) day Suspension for violation of City of Atlanta Police Department Work Rule: 4.2.50 - *Maltreatment or Unnecessary Force* - 4.2.50 (1) - Employees are expressly prohibited from the unnecessary or unreasonable use of force against any person or property: (2) Employees shall only use that force which is reasonable and necessary to affect an arrest, prevent an escape, necessarily restrict the movement of a prisoner, defend himself/herself or another from physical assault, or to accomplish other lawful objectives. The reasonableness inquiry refers to whether the employee’s actions are “objectively reasonable” in light of the facts and circumstances confronting him or her, without regard to their underlying intent or motivation. The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split second decisions about the amount of force necessary in a particular situation. (Graham v. Connor, 490 U.S. 386 (1989).c

One (1) day Suspension for violation of City of Atlanta Police Department Work Rule: 4.4.4(1) - *Operation of City Vehicles or Vehicles used for law enforcement purposes*- Atlanta Police Department personnel shall operate all city vehicles and vehicles used for law enforcement purposes in such a manner as to avoid injury to persons or damage to property at all times.

STIPULATED FACTS BY THE PARTIES

None.

FINDINGS OF FACT

1. Appellant has worked for the City of Atlanta Police Department (APD) for approximately 17 years.
2. Appellant has served in the rank of Sergeant with the APD for the past seven (7) years.
3. On May 17, 2016, Appellant was operating an APD patrol car in Zone 1. (C-2).
4. Appellant was in his APD patrol car at the intersection of Donald Lee Hollowell Parkway and James Jackson Parkway when he was flagged down by a citizen who reported a possible carjacking. (C-6).

5. When Appellant located the vehicle, a gray Infiniti, the driver of the vehicle increased his speed as he was leaving the area. (C-6).
6. Appellant began to follow the vehicle and activated his blue lights. During the ensuing chase of the vehicle, Appellant eventually activated his siren. (C-4).
7. Appellant chased the vehicle for approximately 7 ½ - 8 minutes. (C-3).
8. The driver of the gray Infiniti crashed the car into a fence at Joseph E. Boone Blvd and ran from the vehicle. (C-3).
9. Appellant used his vehicle to hit the driver which resulted in the driver going onto the hood of Appellant's APD vehicle. (C-3).
10. When the driver got back up from being knocked down, Appellant hit the driver again with his vehicle. (C-3).
11. The driver was arrested by another officer who was at the scene. (C-2).
12. Appellant never saw a weapon in the driver's hand and APD did not find a firearm at the scene of the crash or in the gray Infiniti. (C-2).
13. APD found a small amount of marijuana in the gray Infiniti. (C-2).
14. A Supplemental Pursuit report or a Supervisor's Use of Force Incident Supplemental Report was never completed for this incident by Lt. Pack, who was the evening watch commander, or by Lt Singh who signed off on Appellant's incident report. (C-2).
15. On September 19, 2016, the Fulton County District Attorney's Office contacted the Office of Professional Standards (OPS) regarding the May 17, 2016, incident. (C-4).
16. As part of the OPS Investigation into the incident, Appellant provided a statement to an OPS investigator on December 7, 2016. (C-2).
17. In his statement, Appellant indicated that he believed that the gray Infiniti had been taken in a carjacking and that the driver of the vehicle may have been armed. (C-2).
18. Appellant further stated that he saw the driver look back at him and motion towards his waistband. Fearing that the driver was armed, Appellant indicated that he struck him with his vehicle to stop the driver from reaching for a weapon. (C-2).
19. Once OPS concluded the investigation into the May 17, 2016, incident, the file was forwarded to Lt. (now Captain) Zenelaj. (C-2).
20. On March 7, 2017, Lt. Zenelaj notified Major Murphy that there was sufficient evidence to sustain a finding that on May 17, 2016 Appellant violated APD Work

Rules 4.2.50, 4.4.4 and 4.2.33. (C-4).

21. Prior to the incident on May 17, 2016, Appellant had received a Written Reprimand on October 10, 2014 for a Category B APD Work Rule violation (Rule 4.4.4), a Written Reprimand on October 30, 2014 for a Category B APD Work Rule violation (Rule 4.2.33) and a one (1) day suspension on November 12 2014 for a Category C APD Work Rule violation (Rule 4.2.50). (C-7).
22. APD SOP 2020 provides for a five (5) year Reckoning Period within which prior discipline can be considered for enhanced discipline for subsequent misconduct. (C-6).
23. If a subsequent violation of APD Work Rules occurs within the Reckoning Period, the violation may be increased to another category level. (C-6).
24. If a sustained Category C violation occurs during the Reckoning Period within which there are three (3) or more past violations, a subsequent violation is increased to Category D. (C-6).
25. The May 17, 2016, incident occurred within the Reckoning Period of Appellant's prior APD Work Rule violations. (C-6).
26. Unauthorized Use of Force is a Category C-D violation.
27. One of the possible disciplinary actions for a Category D violation is a sixteen (16) to twenty-five (25) day suspension which must be approved by the APD Assistant Chief or above. (C-6).
28. On August 22, 2017, Appellant was issued a Notice of Proposed Adverse Action (NPAA) for the May 17, 2016, incident. (C-5).
29. The NPAA notified Appellant that the proposed discipline was a suspension without pay for 17 days for violation of the APD Work Rules 4.2.50 and 4.4.4. (C-5).
30. Appellant was advised that the effective date of the suspension was September 5, 2017. Appellant was further advised that he had until August 23, 2017 at 11:30 a.m. to provide a response to the NPAA. (C-5).
31. The NPAA was signed by Assistant Chief Rodney Bryant on August 22, 2017. (C-5).
32. On August 23, 2017, Appellant responded to the NPAA and requested a reduction of the proposed discipline. (C-5).
33. Appellant was issued a Notice of Final Adverse Action (NFAA) on August 23, 2017. The NFAA advised Appellant that he was being suspended for sixteen (16) days without pay for violation of APD Work Rule 4.2.50 and suspended for one (1) day

without pay for violation of APD Work Rule 4.4.4. The suspension was effective on September 5, 2017. (C-5).

34. The NFAA was signed by Assistant Chief Rodney Bryant on August 23, 2017. (C-5).

DISCUSSION

Due to Mayor Andre Dickens' Executive Order and COVID-10 pandemic guidelines, the appeal by Zoel Murphy was called virtually at 10:00 a.m. on March 17, 2022 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 seventeen (17) day suspension issued to Appellant.

Code Section 114-553(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 must determine whether to affirm or revoke the seventeen (17) day suspension issued to Appellant. In making such a determination, the Board is guided by Code Sections 114-526 through 114-530.

Captain Hajredin Zenelaj, who has twenty-one (21) years of service with APD, testified that at the time of the incident, he was a Lieutenant assigned to OPS. Captain Zenelaj indicated that the May 17, 2016, incident was reported to OPS by the Fulton County District Attorney's office. Once OPS completed its investigation, Captain Zenelaj reviewed the report and the video footage of the incident and made a determination as to Appellant's culpability for violation of the APD Work Rules. Captain Zenelaj testified that his review of the video showed that the driver did look over his shoulder in the Appellant's direction and his hands were momentarily out of sight, but there was no definitive motion by the driver toward his waist or any indication that the driver had a weapon. Captain Zenelaj testified that officers are not trained to use their patrol vehicles to strike a suspect and based upon his review of the investigation, Appellant violated APD Work Rules regarding use of force and use of a city vehicle.

Sergeant William Dean, who has worked for APD for 30 years, testified regarding the APD disciplinary process. Sergeant Dean indicated that APD has a range of discipline for various violations as noted in the APD SOP 2020. The APD SOP 2020 also outlines the amount of discipline which can be administered by each ranking officer in APD. Sergeant Davis testified that an Assistant Chief has authority to administer a seventeen (17) day suspension. He also testified regarding how prior discipline within the Reckoning Period is used to increase the APD Work Rule category violation. Sergeant Dean indicated that because Appellant had three (3) prior

APD Work Rule violations and a sustained Category C violation within the Reckoning Period, the Category C violation for the May 17, 2016 incident was increased to a Category D violation. He indicated that a sixteen (16) day suspension is the minimum amount of discipline for a Category D violation.

Appellant testified that he struck the driver with his vehicle because he saw the driver reach for his waistband and, based upon the report that the driver was involved in a carjacking, he believed that the driver may have been reaching for a weapon. Appellant testified that because he believed that the driver may have been likely to shoot him, he made a split-second decision to bump the driver. Appellant indicated that he believed he was facing a deadly force situation and made the decision to use the tools at his disposal to ensure he was not shot. He indicated that after he struck the driver with his car the first time, “nothing had changed” because the driver got up and continued to flee. Appellant testified that he hit the driver with his patrol car a second time because he believed the suspect was still armed.

The video presented at the hearing indicated that on May 17, 2016, the night of the incident, Appellant used his APD patrol vehicle to hit the driver who was exiting a car which the driver had just crashed after engaging in a chase with Appellant. Once Appellant struck the driver with his vehicle, the driver got back up and Appellant struck the driver with his vehicle a second time. The video also showed that immediately prior to Appellant striking the driver with his vehicle, the driver looked back at Appellant. However, there is no indication from the video that the driver was reaching for his waistband. And, at the time the Appellant first struck the driver with his patrol car, there was another APD officer on the scene.

Based upon the evidence presented during the hearing, there were sufficient grounds for APD to find that Appellant violated APD Work Rules 4.2.50 and 4.4.4.

Prior to the issuance of the NPAA and NFAA, Appellant had already received a Category C violation and two (2) additional APD Work Rule violations within the Reckoning Period. Thus, the imposition of a seventeen (17) day suspension for the May 17, 2016 incident was in accordance with APD SOP 2020 and Atlanta City Code Sections 114-526(a) and 114-529.

The NPAA was issued to Appellant on behalf of Assistant Chief Rodney Bryant on August 22, 2017 with an effective date of September 5, 2017. The written or oral response by Appellant to the NPAA was due by August 23, 2017. The NFAA was issued to Appellant after his response on August 23, 2017. 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 seventeen (17) day suspension to Appellant for violation of City of Atlanta Police Department Work Rules 4.2.50 and 4.4.4

This the 25th day of March 2022.

Respectfully submitted,

E. Carl Touchstone

E. Carl Touchstone, Chair

Herman L. Sloan

Herman L. Sloan, Board Member

Suzanne Wynn Ockleberry

Suzanne Wynn Ockleberry, Board Member