

CITY OF ATLANTA  
CIVIL SERVICE BOARD

**FINDINGS OF FACT AND ORDER**

APPEAL NO. 2021018AP

Effective Date: August 3, 2021

APPELLANT: **John Jarvis**  
City of Atlanta  
Atlanta Fire and Rescue

Hearing Date: March 24, 2022

ACTION:

Dismissal

HEARING OFFICER/BOARD

Suzanne W. Ockleberry, Chair  
Constance C. Russell  
Herman L. Sloan, DWB

APPEARANCES

City of Atlanta Representative:

Laura T. Yelling, Esq.  
City of Atlanta Law Department

Appellant Representative:

Gwendolyn Gillespie  
GRG Labor Representation and Consulting Services, LLC

City Witnesses:

Chief Roderick M. Smith, Atlanta Fire Rescue Department  
Investigator Victor Amey, Office of Professional Standards, Atlanta Fire Rescue Department

Appellant Witnesses:

Gwenette D. Baldwin  
John Jarvis

**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 Andre Dickens’ Executive Order regarding the Covid-19 Pandemic.

**EXHIBITS**

City Exhibits

- C-1            John Jarvis Disciplinary File
- C-2            Atlanta Fire Rescue Department Disciplinary Manual

Appellant’s Exhibits

- E-2            Notice of Proposed Adverse Action (NPAA) (page one)
- E-2.1         Notice of Proposed Adverse Action (NPAA) (page two)
- E-3            Appellant’s Response to Notice of Proposed Adverse Action
- E-8            Administrative Relief From Duty Notice
- E-10          Statement - Gwenette D. Baldwin
- E-11          Email - John Jarvis to Investigator Amey
- E-12          Email - Bobby Stewart to Gwendolyn Gillespie

- E-13 Email - Gwendolyn Gillespie to Fire Chief Roderick Smith
- E-14 Email - Fire Chief's Office to Gwendolyn Gillespie
- E-15 Progressive Discipline Policy

**STIPULATIONS**

None.

**VIOLATIONS**

Work Rule 2.10 Use of Substances

Employees of the Department are prohibited from using, possession, manufacturing, and/or distributing any illegal drug and/or controlled substance, at any time or place, including while at their workplace; as defined in the *COA Code of Ordinances Section 114-528; and 114-566 through 575:*

...

c. If the ability of an employee to perform is impaired due to the use and/or abuse of alcohol, illegal drugs, legal drugs, prescription drugs, and/or other substances, they must not report to work or be subject to duty.

**SPECIFIC CHARGE(S)**

While on duty operating a fire engine, Appellant was involved in an accident and was cited as "at fault." Pursuant to Atlanta Fire Rescue Department (AFRD) policies and procedures, a post-accident drug test was conducted and Appellant tested positive for marijuana (THC).

**FINDINGS OF FACT**

1. Since 2011, Appellant has worked for AFRD as a firefighter.
2. At the time of the incident which led to his dismissal, Appellant was assigned to Station 24, Aviation.

3. On October 20, 2020, Appellant was operating Fire Engine #24 and was involved in a single vehicle accident.
4. The Appellant was escorted by Investigator Victor Amey, Office of Professional Standards (OPS), to Caduceus Laboratory for post-accident drug/alcohol screening.
5. On October 20, 2020, Appellant was placed on administrative leave with pay.
6. Appellant's drug/alcohol screen was positive for marijuana(THC). The result was confirmed on November 10, 2020.
7. On November 11, 2020, OPS was notified that Appellant was deemed "disqualified from return to full duty status."
8. On November 13, 2020, Appellant's status was converted from administrative leave with pay and converted to leave without pay.
9. On November 13, 2020, Appellant provided a written statement to Investigator Amey in which he admitted to ingesting an "off-market" CBD oil.
10. On December 2, 2020, Appellant was interviewed by the OPS and affirmed his prior statement regarding usage of an "off market" CBD oil, as well that he had smoked marijuana recreationally.
11. On July 19, 2021, a Notice of Proposed Adverse Action (NPAA) was issued alleging a violation of AFRD Work Rule 2.10.
12. On July 27, 2021, a Notice of Final Adverse Action (NFAA) was issued alleging a violation of AFRD Work Rule 2.10.

### **DISCUSSION**

On October 20, 2020, Appellant, John Jarvis, an eight (8) year veteran of the AFRD who was assigned to the Aviation Division, was dispatched on an emergency medical call. Appellant was the driver of Fire Engine #24. As the fire engine was exiting the gate, it was involved in a single vehicle accident when it struck a cement post. (*City Exhibit 1*).

The police were summoned to the accident and Appellant, as the operator of the fire engine, was cited as being “at fault.” As a result of the accident, Appellant was escorted to Caduceus Laboratory for a drug and alcohol screen. Appellant was initially placed on administrative leave with pay pending the completion of the internal investigation by AFRD. After the results of the alcohol/drug screen revealed the presence of marijuana (THC) in the Appellant’s urine, he was placed on administrative leave without pay. On November 13, 2020, Appellant’s leave status was changed to “relief from duty without pay.” (*City’s Exhibit 1 and Employee’s Exhibit 8*). On August 3, 2021, Appellant was dismissed from his employment with the AFRD for violation of AFRD Work Rule 2.10. Appellant appealed his dismissal to the City of Atlanta Civil Service Board.

Fire Chief Roderick Smith, a 29 year veteran of the AFRD, testified that it is a City of Atlanta policy that any time a City of Atlanta employee is on duty, is operating a City-owned vehicle and is involved in an accident, the employee is required to submit to a screening to test for drugs and/or alcohol. Chief Smith testified that AFRD has a “zero tolerance policy” for use of drugs and alcohol while on duty and that everyone is tested.” Chief Smith testified that after the accident, Appellant was escorted by Investigator Amey to Caduceus Laboratory where Appellant provided a urine sample. (*City’s Exhibit 1*). According to Chief Smith, the City contracts with Caduceus to perform all alcohol/drug screens .

Chief Smith testified that pursuant to AFRD procedures, Appellant was placed on administrative leave with pay pending the results of the alcohol/drug screen. Chief Smith testified that the Appellant’s initial test result was positive for marijuana (THC) and the result was later re-confirmed after testing a “split sample.” Chief Smith testified that marijuana is illegal in the State of Georgia. He also testified that because AFRD operates heavy equipment in IDLH (Immediately Dangerous to Life and Health) environments at high rates of speed and in high traffic situations, AFRD does not permit the use of marijuana even if it is prescribed.

According to Chief Smith, the ensuing OPS investigation resulted in the issuance of a NPAA recommending Appellant’s dismissal on July 19, 2021, for violation of AFRD Work Rule 2.10 Use of Substances. Appellant was provided with a copy of the NPAA and declined to sign. He noted on the NPAA: “I have (sic) advised not to sign by my representative.” (*City’s Exhibit 1 and Employee’s Exhibit 2.1*). A NFAA was issued to Appellant on July 27, 2021 and set forth the same allegations as those contained in the NPAA. (*City’s Exhibit 1*).

Chief Smith testified that he met with the Appellant and Appellant’s representative. Chief Smith testified that he was made aware of Appellant’s concerns about being in a without pay status since November 2020. Chief Smith testified that during the meeting, he informed Appellant and Appellant’s representative that he would look into the matter and, if there was an error, that Appellant would be made whole. After the meeting with the Chief, roughly \$6,800.00 was deposited into Appellant’s checking account. Chief Smith disavowed any knowledge as to why the money was deposited into the Appellant's account or how the amount related to Appellant’s salary.

The City also presented the testimony of Investigator Victor Amey, who has been an investigator with OPS for two (2) years. Investigator Amey testified that as a consequence of the October 20,

2020, accident, he escorted Appellant to the Caduceus Laboratory for the alcohol/drug screen. Investigator Amey further stated that this is standard practice when the driver is deemed “at fault.” Investigator Amey testified that when an employee is involved in at “at fault” accident, it is the policy of the AFRD to initially place an employee on a leave with pay status for ten (10) days and, thereafter, the leave status converts to leave without pay.” Investigator Amey testified that after the alcohol/drug test came back as positive for marijuana (THC), he requested that the Appellant come in for an interview. After the interview, Appellant’s leave status was changed to leave without pay. (*City’s Exhibit 1 and Employee’s Exhibit 8*).

Investigator Amey testified to taking several statements from the Appellant regarding his positive drug screen. According to Investigator Amey, Appellant provided a written statement on November 13, 2020, wherein he stated that the positive result for marijuana was as a result of an off market CBD oil he was taking to relieve pain he was suffering from due to diverticulitis. Investigator Amey also testified that the Appellant was asked to come in and provide a formal statement that was in a question and answer format. Investigator Amey testified that during the course of this question and answer statement, the Appellant affirmed that he believed the positive result for marijuana resulted from an off-market CBD oil he was taking for pain due to diverticulitis. However, Investigator Amey testified that Appellant indicated that he last used marijuana on May 15, 2020.

In support of his appeal, the Appellant called Gwenette Baldwin as a witness on his behalf. Ms. Baldwin testified that she was a friend of the Appellant. On January 25, 2021, Ms. Baldwin provided a written statement on the Appellant’s behalf. (*Employee Exhibit 10*). Ms. Baldwin read the entire statement into the record. In that statement, Ms. Baldwin indicated that she provided Appellant with the CBD oil. In her statement, Ms. Baldwin also indicated that she purchased cannabis (i.e., marijuana) from a friend who told her that “the cannabis was very low in THC”. Ms. Baldwin testified that she used a recipe she found online to produce the CBD oil and that she shared the oil with the Appellant to help ease his discomfort from his diverticulitis and to help with his bouts of insomnia.

Appellant testified that he did not ingest the CBD oil with the intention of getting high, but to help relieve the constant pain from his diverticulitis. Appellant testified that he never felt high or experienced any sense of euphoria while using the CBD oil. During the course of his cross-examination, Appellant testified that he was aware that CBD oil could be purchased commercially in the State of Georgia, but that the over the counter commercially available CBD oil did not ease his pain. Appellant stated he was aware that he was taking a risk in using the off-market CBD oil which had been prepared by his friend. Appellant also acknowledged that he had not informed anyone in his chain of command about his medical condition and he also admitted to the recreational use of marijuana.

## **ORDER**

The Appellant, through his representative, argues that he was disciplined for violating Work Rule 2.10, when he was placed on leave without pay for more than thirty (30) days. Appellant argues that because the AFRD Disciplinary Manual Rule 7.2.3, provides that “[a] suspension without pay

for disciplinary purposes *may not exceed thirty days* for charges brought as a result of one incident” and he remained in a leave without pay status for nearly seven (7) months, any dismissal would be tantamount to double jeopardy as he would be punished twice for the same conduct which resulted in the rule violation. (*City’s Exhibit 2*), (**Emphasis added.**)

This Board is not aware of any legal authority that would allow it to apply the criminal law concept of double jeopardy to a civil administrative proceeding. Nor is this Board persuaded that the facts of this case merit any such action. It is noteworthy, that the only level of acceptable discipline for violating Work Rule 2.10, is dismissal. Moreover, after being informed by Appellant and the Appellant’s representative that he had been on leave without pay status for nearly seven (7) months, Chief Smith assured Appellant and his representative that if any mistake regarding the Appellant’s leave status had been made, he would ensure that it was corrected. No evidence was presented to this Board as to what those efforts entailed and nor will this Board speculate as to what may or may not have been done. We merely note that both Chief Smith and the Appellant acknowledged that roughly \$6,800.00 was deposited into Appellant’s account after the meeting with Chief Smith.

The Appellant was cited for violating AFRD Work Rule 2.10 Use of Substances. Specifically, Appellant was accused of operating a fire engine at a time when there was an illegal substance – marijuana- in his system. The evidence before this Board was that the Appellant tested positive for marijuana. This test result was reconfirmed. The Appellant gave statements indicating that he voluntarily ingested a substance containing marijuana. The Appellant even presented the testimony of the person who prepared the substance he ingested who stated that she prepared it from marijuana. The evidence that appellant violated Work Rule 2.10 Use of Substances is uncontroverted.

Accordingly, the Board **AFFIRMS** the discipline imposed by the City against the Appellant and **DENIES** the appeal.

This 19th day of April, 2022.

*Suzanne Ockleberry*

Suzanne W. Ockleberry, Chair

*Constance Russell*

Constance C. Russell

*Herman Sloan*

Herman L. Sloan, DWB