

CITY OF ATLANTA
CIVL SERVICE BOARD
FINDINGS OF FACT AND ORDER

APPEAL No. 2017-018AP

Effective Date: March 29, 2017

Hearing Date: May 26, 2022

APPELLANT: Tracy Robinson

City of Atlanta
Department of Public Works

ADVERSE ACTION:
Dismissal

HEARING OFFICER:
Robert Hawkins, Chair
Herman L. Sloan
Suzanne Wynn Ockleberry

APPEARANCES

City of Atlanta Representative:
John Gainey, Esq.
Joshua Foster, Esq.

City Witnesses:
Byron John Gibson

Appellant Representative:
Antonio Thomas, Esq,

Appellant Witnesses:
Tracy Robinson

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 officers of the Atlanta Civil Service Board (“Board”) on the date set forth above.

EXHIBITS

City of Atlanta:

- C1 – City of Atlanta Code of Ordinances §114-573
- C2 – Caduceus Patient Visit and Lab Summary Results for Tracy Robinson
- C3 - Notice of Proposed Adverse Action issued March 8, 2017, and Notice of Final Adverse Action issued March 24, 2017

CHARGES

Dismissal for violation of City of Atlanta Code of Ordinance Section 114-573: *Results of drug/alcohol analysis* -A positive test result of the drug/alcohol analysis made under this division shall constitute cause for which disciplinary action may be imposed, up to and including dismissal.

STIPULATED FACTS BY THE PARTIES

None.

FINDINGS OF FACT

1. At the time of his dismissal, Appellant had worked for the City of Atlanta Department of Public Works since October 2012.
2. Appellant was employed by the Department of Public Works as a Heavy Equipment Technician Specialist which required him to operate heavy equipment.
3. Appellant was required to have a Commercial Driver's License (CDL) to operate the heavy equipment while employed by the City of Atlanta.
4. As part of the recertification process for his CDL, Appellant submitted to a physical examination and a random drug and alcohol screen at Caduceus Midtown Clinic on February 7, 2017. (C-2).
5. On February 10, 2017, Quest Diagnostics issued a report which indicated that Appellant's urine was positive for Cocaine Metabolites. (C-2).
6. On February 21, 2017, LabCorp conducted another test on Appellant's urine which confirmed the presence of Cocaine Metabolites. The LabCorp results were reported to Caduceus on February 23, 2017. (C-2).
7. On March 8, 2017, Appellant was issued a Notice of Proposed Adverse Action (NPAA) as a result of the positive drug screen in violation of Code Section 114-573. (C-3).
8. The NPAA notified Appellant that the proposed discipline was dismissal. (C-3).
9. Appellant was advised that the effective date of the dismissal was March 22, 2017. Appellant was further advised that he had until March 15, 2017 to provide a response to the NPAA. (C-3).

10. The NPAA was signed by Appellant's Supervisor, the Department Head, the Director of Human Resources and the Commissioner. (C-3).
11. On March 22, 2017, Appellant responded to the NPAA and indicated that he attended a Super Bowl party and had some "jello shots" that may have contained something unknown to him. (C-3).
12. Appellant was issued a Notice of Final Adverse Action (NFAA) on March 24, 2017. The NFAA advised Appellant that he was being dismissed from his employment with the City of Atlanta for violation of Code Section 114-573. The dismissal was effective on March 29, 2017. (C-3).
13. The NFAA was signed by the Director of Human Resources and the Commissioner on March 22, 2017. (C-3).

DISCUSSION

Due to Mayor Andre Dickens' Executive Order and COVID-10 pandemic guidelines, the appeal by Tracy Robinson was called virtually at 10:00 a.m. on May 26, 2022, via the Zoom Internet platform. Due to technical difficulties, the hearing commenced at 10:19 a.m.

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 Appellant's dismissal.

Byron John Gibson, Director of Human Resources for Public Works and Transportation for the City of Atlanta as of September 2021, testified that random drug and alcohol screens are performed on City on employees to ensure the safety of the public while employees are performing their duties. Mr. Gibson testified that discipline of termination is consistently enforced when an employee has a positive drug or alcohol screen. He testified that a split test is usually done to confirm the results of the screen.

Mr. Gibson testified that he reviewed the Appellant's personnel file and indicated that he was terminated because he had a positive drug screen while in a safety sensitive position as a driver with a CDL. He testified that once an employee is hired by the City as a driver, they are usually tested for drugs and alcohol and have a physical exam every other year. Mr. Gibson noted that his review of Appellant's personnel file indicated that a urine sample which Appellant provided at the Caduceus clinic on February 7, 2017, indicated that it was positive for Cocaine Metabolites and a retest by LabCorp confirmed the positive drug screen. Mr. Gibson testified that Appellant was informed of the positive drug screen on February 17, 2017, and he requested a retest which confirmed the initial positive drug screen. He testified that Appellant orally responded to the NPAA and that the NFAA was issued on March 24, 2017. Mr. Gibson testified that an employee is normally put on administrative leave until an investigation into the violation is completed, that he did not know why the Appellant remained at the Caduceus clinic for two (2) hours and that because a urine specimen has to be shipped off to a lab, he is unaware of any employee receiving the results of a drug and alcohol screen immediately after providing a specimen for testing,

Appellant testified that he worked for the City for six (6) years as a Heavy Equipment Technician Specialist. He testified that he was required to have a CDL because he had to drive vehicles as part of his job responsibilities. Appellant testified that he had a CDL for over 45 years and it has never been suspended or revoked. Appellant testified that a driver cannot maintain a CDL with a drug violation. He testified that the results from the February 2017 drug screen were not conveyed to the state agency responsible for oversight over CDLs.

Appellant testified that on February 7, 2017, he underwent a Department of Transportation (DOT) physical examination, and he also provided a urine sample to a technician at Caduceus. He testified that he waited a few minutes, took an eye test, had his blood pressure taken and then the technician stuck a strip into his urine sample. He testified that technician told him “it looks like you passed and that he could pour the urine sample into the toilet which he did. The technician provided him with a medical certificate and Appellant testified that she told him he could go back to work. Appellant testified that his medical certificate indicated that he completed the test and informed him of his next exam date. He indicated that he showed the medical certificate to his supervisor and went back to work.

Appellant testified that on February 17, 2017, his supervisor called him into the office and gave him a number to call. When he called the number, a physician informed him that he had failed the medical examination test and asked if he wanted to have an “extra test”. Appellant testified that he told the physician that he wanted to bring in more urine, but that the physician informed him the retest would be on the urine he previously provided. Appellant testified that after he spoke to the physician, his supervisor informed him that he was suspended and that he would receive something in the mail from the City regarding his employment. He testified that he received a letter notifying him that he was temporarily suspended. Appellant testified that he has never taken cocaine and has never tested positive for drugs in the twenty-five (25) years that he has been working. He testified that did respond to the NPAA by stating that there may have been something in the jello shots he consumed at a Super Bowl party.

The Board finds that the City presented sufficient evidence that Appellant violated Code Section 144-573 due to a positive drug screen performed by one lab which showed the presence of Cocaine Metabolites which was reconfirmed by a split screen test of his urine by a second lab. Even if Appellant disposed of his urine on the day of the exam, the second lab test was conducted on urine from the initial sample he provided on February 7, 2017. The Board does not find the testimony by the Appellant that he was informed that he passed the drug screen test on the day of the exam as credible. And, because Appellant did not submit his medical certificate into evidence, the Board cannot speculate as to the contents of that document. While Appellant testified that his CDL license had never been suspended as a result of positive drug screen, he also testified that the test results from the drug screen by the City were not conveyed to the state licensing authorities. Further, Appellant indicated in response to the NPAA that the positive drug screen could have been as a result of his consuming jello shots.

ORDER

Based upon the evidence presented, the Board affirms the Appellant's dismissal from his employment with the City of Atlanta and dismisses his appeal.

This the 3rd day of June, 2022.

Respectfully submitted,

Robert Hawkins

Robert Hawkins, Chair

Herman L. Sloan

Herman L. Sloan, Board Member

Suzanne Wynn Ockleberry

Suzanne Wynn Ockleberry, Board Member