

CITY OF ATLANTA  
CIVIL SERVICE BOARD

**FINDINGS OF FACT AND ORDER**

APPEAL NO. 2020-004AP

Effective Date: February 13, 2020

APPELLANT: **Daniel Dwyer**  
City of Atlanta  
Atlanta Fire and Rescue

Hearing Date: May 5, 2022

Action:

HEARING OFFICER/BOARD

Four (4) Day Suspension

Herman L. Sloan, Chair

**APPEARANCES**

City of Atlanta Representative:

Keyshia Baytop  
Fire Department Advocate

Appellant's Representative:

Lawrence J. LoRusso, Esq.

City Witnesses:

Chief Roderick Smith, Atlanta Fire and Rescue Department  
Daniel Dwyer

Appellant Witnesses:

Daniel Dwyer  
Captain David Ware, Atlanta Fire and Rescue Department

**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 officer 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 Notice of Proposed Adverse Action (NPAA)
- C-2 Notice of Final Adverse Action (NFAA)
- C-3 Internal Investigation Complaint Package 2019-IA-055
- C-4 Rules of Engagement SOG-4000.09
- C-5 Statement - Sgt. Michael Allen
- C-6 Statement - Sgt. Roderick Sewell
- C-7 Statement Battalion Chief Stephen Hill
- C-8 Statement - Daniel Dwyer

#### Appellant Exhibits

- A-1 Letter to Chief Michelle Middlebrooks re: 3412 Collier Dr.
- A-4 Collier Fire Helmet Video
- A-5 Photograph – Sally Skrine
- A-6 Photograph Ms. Skrine’s house on date of incident
- A-9 Photograph of hose from night of incident

### **STIPULATIONS**

None.

\*The record as maintained by the court reporter is the official record as to what was admitted into evidence during the course of this hearing.

### **VIOLATIONS**

#### **Atlanta Fire and Rescue Department (AFRD) Work Rule 1.00 – Appropriate Action Required**

“The demands for fire department services are many, varied, and often extreme. Employees shall meet these demands by:

- a. Responding in an appropriate manner to every situation encountered.”

### **SPECIFIC CHARGE(S)**

On June 27, 2019, while under the supervision of Appellant, Truck 16 was dispatched to a working fire and was given assignment of primary search of the first floor. While performing those duties, Appellant entered the structure without his crew which is in immediate conflict with no freelancing, accountability, and maintaining crew integrity, in direct violation of Rule 1.00.

### **FINDINGS OF FACT**

1. On June 27, 2019, units responded to a working fire at 3412 Collier Drive, NW, Atlanta, Georgia, an occupied dwelling.
2. Truck 16 and Engine 22 were initially assigned “primary search” of the dwelling.
3. Upon arrival to the address of the fire, with the exception of his breathing apparatus and helmet, Appellant was fully dressed in his “turnout gear.”
4. Appellant was the officer-in-charge for Truck 16.
5. Sergeants Roderick Sewell and Michael Allen, the drivers of Truck 16 were not fully dressed and were instructed by Appellant to put on their “turn out gear” and meet him on the front porch of the dwelling.
6. Appellant went onto the front porch of the dwelling and encountered Captain David Ware and Firefighter D. Barkley of Engine 22.
7. Appellant, Captain Ware and Firefighter Barkley entered the residence.
8. The Appellant observed the body of the occupant and began the process of recovery when a flash-over occurred.
9. Appellant was able to complete the recovery of the occupant, as Captain Ware and Firefighter Barkley continued to attempt to extinguish the fire.
10. A call to go “defensive” was made even though Captain Ware and Firefighter Barkly were still in the residence attempting to extinguish the fire.
11. During the “after action” review of the previous night’s actions, Battalion Chief Sean Johnson, asserted that Appellant failed to maintain the integrity of his crew and engaged in “Freelancing.”
12. On January 29, 2020, a Notice of Proposed Adverse Action (NPAA) was issued charging Appellant with violating Rule 1.00 Appropriate Action Required.

13. On February 7, 2020, a Notice of Final Adverse Action (NFAA) was issued charging Appellant with violating Rule 1.00 Appropriate Action Required.

## DISCUSSION

As its first witness, the City called Fire Chief Roderick Smith, a 29 year veteran with AFRD. Chief Smith testified that he had reviewed the file of the internal investigation conducted after the fire on June 27, 2019 at 3412 Collier Drive. Chief Smith testified that in responding to a working fire at 3412 Collier Drive, Truck 16 was given the assignment of primary search of the first floor. Appellant, the officer-in-charge (OIC) of Truck 16 entered the residence without his crew members and removed a 94 year old victim. On June 28, 2019 an “after action” review of the firefighters’ actions the night before was conducted. During this review, when the Appellant was asked by Battalion Chief Sean Johnson, “who was with you from your crew inside the structure” the Appellant responded “no one.” Chief Smith testified that the Appellant’s actions were in direct conflict with AFRD rules pertaining to maintaining crew integrity and not engaging in “Freelancing.” Consequently, Appellant was being disciplined for violating Work Rule 1.00 - Appropriate Action Required.

When asked on direct examination by the City’s representative, if an accurate definition of Freelancing would be “an individual deciding to work independently and committing to tasks and acts *without the express knowledge or consent of an officer or incident commander*”, Chief Smith responded “Correct.” (Emphasis added.) Chief Smith testified that AFRD’s Rules of Engagement (*City Exhibit 4*) consists of ten (10) rules which govern the conduct of AFRD members during all incidents requiring the active presence of AFRD. Further, Chief Smith testified that Rule 5 of the Rules of Engagement, governing “Accountability” is of particular importance as it relates to conduct to the Appellant during the incident on June 27, 2019. Chief Smith testified that from a safety perspective it is essential in an IDLH (immediately dangerous to life and health) environment to maintain crew integrity. Maintaining crew integrity during the operation ensures accountability for the location of each team member. Moreover, Chief Smith testified that Rule 5 of the Rules of Engagement specifically prohibits “Freelancing.”

On cross examination by the Appellant’s representative, Chief Smith was again asked to define “Freelancing.” In response, Chief Smith stated, “*in my terms* “Freelancing” is operating on one’s own personal accord as opposed to how they were directed to, so they are making decision outside of the scope of incident management.” (Emphasis added.) Chief Smith testified the issue is not whether the Appellant entered the structure alone, but did he enter without his crew? As the OIC, the Appellant is responsible for himself and his entire crew. The appellant’s decision to enter the structure without his crew compromised the crew’s ability to accomplish their

assignment. Chief Smith testified on cross-examination that the discipline of Appellant has nothing to do with the outcome, but the appropriateness of the Appellant's actions by separating himself from his crew and "his acting or freelancing by himself."

The Appellant, Daniel Dwyer, was called as a witness for the City and he testified on his own behalf. The Appellant testified that he was employed with AFRD for a little over fifteen (15) years and served as an OIC for approximately six (6) years. The Appellant testified that upon arrival at 3412 Collier Drive, NW, with the exception of his breathing apparatus and helmet, he was fully dressed in his "turn-out gear, but his drivers – Sergeants Roderick Sewell and Michael Allen were not and they had to get dressed. The Appellant testified Truck 16 was assigned the task of "primary search." During the course of testifying, the Appellant acknowledged t it is important that no one should function contrary to the assigned tasks and should not be attempting to fulfill a crew's assignment without the other crew members. The Appellant testified that he maintained an awareness of his crew members at all times, but that at no time prior to his entering the residence were his crew members in an IDLH environment. The Appellant testified he entered the residence without his crew members, but he did not do so alone and he did so, only because he was instructed to do so by Captain Ware. The Appellant testified there is nothing he is aware of in any AFRD policy that prevented him in the scenario presented, from entering the residence with another crew in an effort to rescue a citizen. Appellant further testified the Rules of Engagement do not address the situation confronted on June 27, 2019. The Appellant testified at the time of entry into the residence the conditions were favorable for entering the dwelling an attempting a rescue, if they had waited for Sewell and Allen to get their equipment on there would not have been time for attempting a rescue of the victim.

Captain David Ware, a 23 year veteran of the AFRD was called as a witness by the Appellant. Captain Ware the OIC for Engine 22 testified they were the first to arrive at the scene. Captain Ware testified the initial call came in as a house fire with entrapment. Captain Ware testified he was the incident commander, prior to Battalion Chief Johnson's arrival and at the time he saw Appellant on porch he was in command. Captain Ware testified Engine 22 was assigned the responsibility of attacking/extinguishing the fire, with search as a concomitant responsibility. Captain Ware testified he went over the radio and told Appellant to enter the home with him. Ostensibly as part of his crew. Captain Ware said he did this so that anyone listening to the radio would know who entered the residence. Captain Ware testified he was on front porch with Firefighter D. Barkley and several other fire fighters, but he asked Appellant to enter with him and Firefighter Barkley and not the other firefighters, because only the Appellant was fully dressed to enter into the IDHL environment. Moreover, Captain Ware testified the other members of Appellant's crew were getting dressed when the door was cut open by Truck 25 but only Appellant was dressed, so they made entry. Appellant went to search for occupants and Captain Ware and Firefight Barkley went to the fire to keep the fire off Appellant as he searched. According to Captain Ware, at the time they made entry into the residence, the conditions were

more than perfect to go in, make a rescue and come right out. It was not until they were on the porch, but before they entered the structure that Captain Ware became aware that Battalion Chief Johnson had reported to the scene.

Daniel Dwyer's conduct, the night of June 27, 2019, may very well constitute a violation of an AFRD work rule, but the City failed to carry its burden of proving that his conduct violated Rule 1.00 - Appropriate Action Required, in the manner specified. Although it was never raised as an issue, and this Hearing Officer, does not find it to be an essential averment, it should be noted the NPAA and NFAA indicate that the date of the Appellant's actions were June 27, 2019. However the statements of Sergeant Michael Allen, Sergeant Roderick Sewell and Chief Stephen Hill, all indicate the date of the fire was June 28, 2019.

The word "Freelancing" is not defined in the Rules of Engagement. According to *City of Atlanta Code § 1.2*, "[t]he ordinary signification shall be applied to all words, except words of art or words connected with a particular trade or subject matter when they shall have the signification attached to them by experts in such trade or with reference to such subject matter." *Merriam-Webster*, defines "freelance" as being "a person who acts independently." This definition coincides with one definition of "Freelancing" given by Chief Smith, when on cross-examination he testified "Freelancing" is operating on one's own personal accord as opposed to how they were directed to, so they are making decision outside of the scope of incident management." Earlier, on direct examination, Chief Smith agreed to a definition of "Freelancing" while similar required the presence of additional more restrictive predicates, wherein the firefighter is also required to perform acts that are done without the express knowledge or consent of an officer or incident commander. Although all three definitions of "Freelancing" are similar, there are differences, however minute. During the course of the hearing both Chief Smith and the Appellant testified that firefighters are given instructional training on the dangers of "Freelancing" and the deleterious effects it can have to successful incident management. However, because there is no standard definition of what "Freelancing" means, a firefighter risk having his actions judged in hindsight, during an after incident review, by someone who may employ yet another definition of what "Freelancing" entails. Thus, firefighters of the AFRD run the risk of being arbitrarily cited for violating Rule 5 of the Rules of Engagement and consequently Work Rule 1.00 – Appropriate Action Required. It is clear from the evidence presented the Appellant did not act on his own personal accord. The testimony of the Appellant and Captain Ware was that the Appellant did not enter into the residence until requested to do so by Captain Ware. Captain Ware, who prior to the arrival of Battalion Chief Johnson, was the incident commander maintained a higher rank than that of the Appellant, requested the Appellant to enter the residence. Thus, the Appellant was not acting on his own accord. Similarly, there is not any evidence the Appellant's actions were done without the knowledge or consent of an officer or incident commander. To the contrary, Captain Ware testified without contradiction he announced over the radio his request for the Appellant to enter into the residence. According to Captain Ware this was done so that anyone who was

monitoring the radio traffic would be aware of what was happening. Therefore, regardless of the definition of “Freelancing” utilized, the City has failed to prove a violation of Work Rule 1.00, as set forth in the NPAA and NFAA.

The City also alleges the Appellant’s actions were violations of the accountability standards and a failure to maintain crew integrity as set forth in the Rule 5 of the Rules of Engagement. As OIC it was Appellant’s responsibility at all times to maintain an awareness of where his crew members were and what they were doing. At all times pertinent, Sergeants Sewell and Allen were never in an IDLH environment and were at all times outside of the residence. There was no evidence presented by the City to refute the Appellant’s testimony that he maintained radio communication with his crew members throughout. Similarly, there was not any evidence presented that prior to the flash-over, that either Sewell or Allen was in an IDLH environment. It is uncontroverted that the Appellant entered upon the front porch of the residence without the other two members of his crew. Further, it is uncontroverted that the Appellant entered the residence with Captain David Ware and Firefighter D. Barkley. The Appellant’s crew, Truck 16 was given the assignment of primary search. Engine 22, Captain Ware’s crew was giving the assignment of attacking and extinguishing the fire, with search as a concomitant responsibility. The Appellant testified there is nothing in the Rules of Engagement which precluded him from entering the residence under the circumstances presented by this appeal. Moreover, Chief Smith testified there is nothing in the Rules of Engagement which prohibits a member of one crew from assisting another crew.

### **ORDER**

Whether or not the Appellant’s disregard of the direct order given by Battalion Chief Sean Johnson, violates another AFRD work rule, is not before the Civil Service Board. The City in the NPAA and NFAA elected to discipline the Appellant for violating Work Rule 1.00 – Appropriate Action Required and has failed to prove the violation as alleged.

It is the Order of this Board that the suspension without pay for four (4) 12 hour days be rescinded. Accordingly, the Board **REVERSES** the discipline imposed by the City against the Appellant and **AFFIRMS** the appeal.

This 6th day of June, 2022.

*Herman L. Sloan*

Herman L. Sloan, Hearing Officer  
Civil Service Review Board

