

CITY OF ATLANTA
CIVIL SERVICE BOARD

APPEAL No. 2020-033AP

Effective Date: August 25, 2020

Hearing Date: June 23, 2022

APPELLANT:
JINNETURIS H. MONTGOMERY

CITY OF ATLANTA DEPARTMENT:
DEPARTMENT OF CUSTOMER SERVICE/
ATL311

ADVERSE ACTION:
Dismissal

HEARING PANEL:
Carl Touchstone, Chair
Constance Russell
Robert Hawkins

**FINDINGS OF FACT AND
ORDER**

APPEARANCES

City of Atlanta Representative:
Joel A. J. Callins, Esq.
City of Atlanta Law Department

Appellant:
Appeared pro se

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 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 Code of Ordinances Sec. 114-528
- C-2 ATL311 Recommendation for Separation
- C-3 Notice of Proposed Adverse Action
- C-4 Employee Adverse Action Response
- C-5 Notice of Final Adverse Action
- C-6 Employee Notice of Appeal

BASIS FOR ADVERSE ACTION

City of Atlanta Code of Ordinances Sec. 114-528:

- “(b) The following actions constitute cause for which disciplinary action may be imposed, ...:
- (5) Excessive Tardiness.
 - (6) Excessive Absenteeism.”

PANEL FINDINGS AND CONCLUSIONS

Appellant was hired on March 25, 2016, as a customer service representative with the City of Atlanta’s Department of Customer Service, ATL311. On July 24, 2020, a Recommendation for Separation was issued. That document asserted multiple grounds for the recommendation. However, the Notice of Final Adverse Action that was entered into evidence only cited City Ordinance Sections 114-528(b)(5) and (b)(6), excessive tardiness and excessive absenteeism, respectively.

The evidence before the Hearing Panel consisted of six exhibits and two witnesses submitted by the City and the testimony of Appellant. Appellant testified that she had perfect attendance and was a top performer within the Department prior to becoming ill and taking authorized time off time pursuant to the Family Medical Leave Act (FMLA). She further testified

that upon her return to work on January 2, 2020, her shift was changed. Appellant's original shift was 7:00 a.m. to 4:00 p.m. Her new shift was 10:00 a.m. to 7:00 p.m. which did not allow her to attend medical appointments. She contends she raised the issue with Kenneth Butler, the Department Director. According to Appellant, she was told by Mr. Butler to attend her medical appointments as needed, and they "would work it out." There is no indication in the records submitted to the Hearing Panel that the issue was ever addressed within the Department. Mr. Butler was not called to testify. His signature does, however, appear on the Notice of Final Adverse Action advising Appellant of her dismissal.

The Recommendation for Separation prepared by, then Operations Manager, Tammy Dabney reflects that between January 23, 2020, and March 11, 2020, Appellant received an oral admonishment, a letter of counseling and two written reprimands for attendance. On May 13, 2020, Appellant was issued a Final Written Reprimand for attendance. The Appellant's attendance was tracked subsequent to May 13, 2020. The Notice of Proposed Adverse Action prepared by the City reflects more than fifty unscheduled call outs. Ms. Dabney testified that an unscheduled call out occurs when an employee calls in to say they are not coming to work.

ORDER

Insofar as the City of Atlanta asserts that the Appellant was dismissed for excessive tardiness and absenteeism, the Panel concludes that no evidence of tardiness was presented. The evidence reflects that Appellant was dismissed from employment with the City of Atlanta for excessive unscheduled call outs. Unscheduled call outs are defined as communications by an employee indicating an intention not to report for work. Accordingly, the Panel finds that the City has failed to meet its burden of proving that Appellant was excessively tardy for work. The unscheduled call out evidence does, however, establish that Appellant was excessively absent. The hearing evidence reflects that after being progressively disciplined and receiving a final warning for attendance Appellant called out on twenty occasions between May 14 and July 17, 2020.

Appellant suggested in her testimony that Kenneth Butler authorized her absences to accommodate her medical appointments. But, in her contemporaneous Adverse Action Response

the only interaction with Mr. Butler referenced related to Appellant's request to switch teams stemming from conflicts with the team leader. And as noted above Mr. Butler's signature appears on the Final Notice of Adverse Action.

Finally, at the hearing Appellant contended that the Notice of Proposed Adverse Action included call out dates that fell on weekends, vacation, and bereavement days. The Panel has reviewed the dates set forth in the Notice of Proposed Adverse Action. The Panel was presented with no evidence from which to determine what dates may have been vacation or bereavement dates. We find that nine of the dates listed between July 18, 2020 and August 26, 2020, were weekend dates, meaning either a Saturday or Sunday. All other dates included in the notice appear to be workdays.

The Panel notes that the Recommendation for Separation was prepared on July 24, 2020. The twenty call out dates in the Recommendation for Separation were for the period May 14, 2020, through July 17, 2020. The call out dates listed in that document were all workdays. The Notice of Proposed Adverse Action was issued a month later, on August 25, 2020. The Notice of Proposed Adverse Actions lists more than fifty unscheduled call out dates. Thus, it appears that the Department continued to document the Appellant's alleged unscheduled call outs after having made the decision to recommend separation. Because the decision to recommend separation had already been made based on the unscheduled weekday call outs documented between May 14, 2020, and July 17, 2020, the inclusion of weekend days after July 17, 2020, in the Notice of Proposed Adverse Action, even if erroneous, provides no basis for the Panel to overturn the Appellant's dismissal.

Based on the evidence presented and for the reasons stated above, the Board finds that the City of Atlanta has met its burden of proof and **AFFIRMS** the discipline imposed by the City against the Appellant and **DENIES** the appeal.

This 25th Day of July 2022.

E. Carl Touchstone

Carl Touchstone, Chair

Constance Russell

Constance C. Russell

Robert Hawkins

Robert Hawkins