

CITY OF ATLANTA  
CIVL SERVICE BOARD  
**FINDINGS OF FACT AND ORDER**

APPEAL No. CSB-2022-013

Effective Date: November 14, 2022

Hearing Date: January 26, 2023

APPELLANT: **Kamar Bailey**

City of Atlanta  
Department of Public Works

ADVERSE ACTION:  
Dismissal

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

**APPEARANCES**

City of Atlanta Representative:  
Robert Steinberg, Esq.

City Witnesses:  
Anthony Smith  
Moses Tejuoso

Appellant Representative:  
Stephanie Mutti, Esq.

Appellant Witnesses:  
Kamar Bailey

**STATEMENT OF AUTHORITY**

Under the authority and provisions of Chapter 114, Article VI, Division 3, Sections 114-546 through 556 of the City of Atlanta Code of Ordinances (“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:

- A – Notice of Proposed Adverse Action (“NPAA”), Notice of Final Adverse Action (“NFAA”) and Civil Service Appeal Form
- B - Record of Oral Admonishment (April 13, 2022)
- C - Human Resources (“HR”) Personnel Record for Appellant

- D - Hapeville Police Department Incident Report for Incident 22-P04973
- E - City of Atlanta Vehicle Use Policy, Revised October 15, 2021
- F – Code Section 114-528
- G - Code Section 114-526

Appellant: None

### **CHARGES**

*Dismissal for violation of City of Atlanta Municipal Code of Ordinances:*

114-528(b)(4) -Misconduct, including but not limited to engaging in offensive conduct or language toward the public, supervisory personnel, or fellow employees.

### **STIPULATED FACTS BY THE PARTIES**

None.

### **FINDINGS OF FACT**

1. Appellant worked for the City of Atlanta (“COA”) as a Solid Waste Operator 1 in the Bureau of Solid Waste Services in the Department of Public Works for 13 years at the time of the incident which led to his dismissal. (Ex. C).
2. At the time of his dismissal, Appellant was responsible for operating a COA garbage truck to pick up garbage and recycling.
3. Appellant was to transport garbage to the East Point Transfer Station. And, if he collected recyclable items, he was to transport those items to a recycling center on Fulton Industrial Boulevard.
4. In order to drive the COA garbage truck, Appellant was required to have a commercial driver’s license (“CDL”).
5. On October 20, 2022, Appellant was stopped by a police officer with the City of Hapeville for running a stop sign at North Central Avenue and Sylvan Road. (Ex. D).
6. At the time of the traffic stop, Appellant was in a garbage truck which was marked as a COA vehicle and he was in a COA uniform.
7. During the traffic stop, Appellant failed to produce his CDL for the police officer.
8. During the traffic stop, Appellant struggled with a Hapeville police officer.
9. As a result of what occurred during the traffic stop, Appellant was arrested for obstruction and two (2) traffic offenses: failure to present a driver’s license and failure to stop at the stop sign.
10. Appellant’s supervisor went to the site of his arrest to retrieve the COA garbage truck.

11. On October 31, 2022, Appellant was issued a Notice of Proposed Adverse Action (NPAA) for the October 20, 2022 incident. (Ex. A).
12. The NPAA notified Appellant that the proposed discipline was a dismissal for violation of Code Section 114-528(b)(4) and 114-528(b)(9). (Ex. A).
13. Appellant was advised that the effective date of the dismissal was November 14, 2022. Appellant was further advised that he had until November 7, 2022 to provide a response to the NPAA. (Ex. A).
14. On November 3, 2022, Appellant failed to acknowledge any wrongdoing which resulted in his arrest by the Hapeville police while operating a COA vehicle. (Ex. A).
15. Appellant was issued a Notice of Final Adverse Action (NFAA) on November 7, 2022. The NFAA advised Appellant that he was being dismissed for violation of Code Section 114-528(b)(4). The dismissal was effective on November 14, 2022. (Ex. A).
16. Prior to the incident which led to his dismissal, Appellant was issued an Oral Admonishment on April 13, 2022 based upon a violation of Code Sections 114-528(b)(1), Code Section 114-528(b)(4) and Code Section 114-528(b)(20). (Ex. B).

### **DISCUSSION**

Due to Mayor Andre Dickens' Executive Order and COVID-19 pandemic guidelines, the appeal by Kamar Bailey was called virtually at 2:00 p.m. on January 26, 2023 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 Dismissal issued to Appellant for violation of Code 114-528(b)(4).

Mr. Anthony Smith, who is a Route Supervisor for the Department of Public Works and has been employed by COA for 12 years, testified that he was Appellant's supervisor at the time of the incident which led to his dismissal. Mr. Smith testified that he had been Appellant's supervisor for approximately three (3) months prior to October 20, 2022. He indicated that on October 20, 2022, another supervisor with COA alerted him that Appellant had been arrested and that Mr. Smith needed to go retrieve the COA truck. Mr. Smith indicated that by the time he arrived on the scene, neither the Appellant nor the arresting officer were present on the scene. Mr. Smith testified that he spoke to the police sergeant on the scene who explained to Mr. Smith why Appellant was arrested. Mr. Smith testified regarding various COA policies, Code Sections and state law violations which Appellant committed on October 20, 2022.

Mr. Moses Tejuoso, the Department of Public Works Program Director, testified that he participated in the decision to terminate the Appellant. Mr. Tejuoso testified regarding the various Code Sections which Appellant violated on the day of the incident. Mr. Tejuoso also testified about the Oral Admonishment which Appellant received in April, 2022.

Appellant indicated that on October 20, 2022, he was assisting another COA employee with their route. He testified that at the time he was stopped by the Hapeville police, he was headed to the

East Point transfer station to dump a load of garbage. Appellant testified that he did not run the stop sign as he saw the police officer prior to reaching the stop sign. Appellant indicated that after he saw the flashing blue lights and was stopped by the police, he was told that he was speeding. Appellant testified that upon being stopped by the police, he asked to call his supervisor and was denied that request. Appellant indicated that he was not asked for his license until he was removed from the truck. However, Appellant also indicated that when he went to reach for his license, he was pulled from the COA truck by a police officer. And, according to his testimony, “it went from there”. Appellant admitted that he struggled with the police officer but that he did so “out of shock”.

The City of Atlanta has the burden to establish cause for the adverse action of Dismissal for violation of Section 114-528(b)(4). And, the Board finds that the City of Atlanta has met that burden.

While the City presented evidence regarding violations of other Code Sections to justify the dismissal of Appellant, the only relevant evidence is that which substantiates what is noted on the NPAA and NFAA. In addition, while the Department of Public Works had the option to issue an NPAA and NFAA to the Appellant for violation of the COA policy on vehicle use or any other violations of Code Section 114-528, the decision by the Board as to whether the City of Atlanta established cause for termination must be based upon whether Appellant violated 114-528(b)(4) as set forth in the NFAA.

Appellant’s own testimony indicates that he violated Code Section 114-528(b)(4) by engaging in “offensive conduct...toward the public” when he struggled with a police officer who was attempting to arrest him for running a stop sign. At the time of the incident, Appellant was driving a COA garbage truck and was wearing a COA uniform. By engaging in a struggle with a public service employee from a neighboring jurisdiction, Appellant brought disrepute upon COA and its’ employees.

While Code Section 114-526 sets forth the COA policy on imposing progressive discipline, that Code Section also contains a caveat that progressive discipline should be implemented “where reasonable”. Here, based upon Appellant’s actions, it was reasonable for COA to issue an NPAA for dismissal rather than seeking a reprimand or suspension. Further, Code Section 114-527 (2)(b) indicates that reasonable disciplinary action should be determined based upon the seriousness of the offense, whether the offense was willful and deliberate and the employee’s record of performance and conduct. While the City cites to 114-526(a) to support the position that Appellant could be terminated for his conduct on October 20, 2022, this Code Section refers to removing an employee from the workplace without following the requirements of Code Section 114-530 and does not support the summary dismissal of an employee as argued by the City. Notwithstanding the foregoing, there was sufficient evidence presented at the hearing that Appellant’s actions in engaging in a struggle with a Hapeville police officer while on duty for the COA and his subsequent arrest, was willful, deliberate, and serious warranting termination.

Based upon the evidence presented during the hearing, COA met the burden to establish cause for the adverse action of Dismissal imposed upon Appellant.

**ORDER**

Based upon the evidence presented, the Board affirms the Dismissal issued to Appellant for violation of Code Section 114.528(b)(4).

This the 30<sup>th</sup> day of January, 2023.

Respectfully submitted,

*Herman L. Sloan*

Herman L. Sloan, Chair

*Robert Hawkins*

Robert Hawkins, Board Member

*Suzanne Wynn Ockleberry*

Suzanne Wynn Ockleberry, Board Member