

CITY OF ATLANTA  
CIVL SERVICE BOARD

APPEAL No. CSB2023-007

Effective Date: April 6, 2023

Hearing Date: May 18, 2023

APPELLANT:

Emmanuel Ibanga

CITY OF ATLANTA DEPARTMENT:

City of Atlanta Police Department

ADVERSE ACTION:

Dismissal

HEARING PANEL:

Hon. Herman Sloan, Chair

Suzanne Ockleberry

Constance Russell

**APPEARANCES**

City of Atlanta Representative:

Mohammed Nielson, Esq.

City of Atlanta Law Department

Appellant Representative:

James Martin Tucker, Esq.

**EXHIBITS**

City of Atlanta:

C-1 Composite Exhibit, including  
NPAA, NFAA;

C-2 City of Atlanta Police Department  
Standard Operating Rules;

C-3 Standard Operating Procedures  
Disciplinary Process;

C-4 A-C, Composite Exhibit, OPS

Investigation File and Report.

Appellant:

A-1 Text messages between Appellant and Houston Complainant.

**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.

**BASIS FOR  
ADVERSE ACTION**

City of Atlanta Police Department Standard Operating Procedure Work Rules 4.1.4 and 4.3.3.

(1) Rule 4.1.4: Conduct:

“Employees shall not act in an official or private capacity in a manner that shall bring discredit upon the Department or themselves.”

(2) Rule 4.3.3: Arrest or Court Actions Involving an Employee:

“Employees who have been arrested or become involved in any court action, in any capacity other than as a witness for the prosecution, shall immediately notify the Chief of Police in writing through the chain of command.”

**PANEL FINDINGS  
CONCLUSIONS**

Appellant, Emmanuel Ibanga, was a law enforcement officer employed with the City of Atlanta Police Department. He began his employment on April 4, 2019. At the time of his employment Appellant was also an officer in the United States Army Reserve. In September of 2020, Appellant was actively employed with the Department but on military leave.

On or about January 21, 2021, Jessica Milikin, a special agent with the U.S. Army Criminal Investigation Division (CID) contacted the Department's Office of Professional Standards Internal Affairs Unit (OPS). Special Agent Milikin reported that Appellant was under investigation based upon allegations of sexual misconduct by a female soldier. Specifically, the other soldier alleged that Appellant sexually assaulted her during an after-hours gathering in September 2020 while he was at Fort Gordon, Georgia for training. Special Agent Miliken also reported that there was a second sexual assault allegation against Appellant arising from events reported to have occurred in Houston, Texas on or around January 17, 2021. Because the second incident was not alleged to have occurred while Appellant was on military duty, Special Agent Milikin stated that the military had no jurisdiction and could not investigate that incident.

As a result of the information reported by Special Agent Milikin, OPS commenced an investigation of Appellant. An OPS investigator, Investigator Darin Smith, interviewed the alleged victim in the Houston incident. As reflected in the OPS investigative report, she confirmed that she was sexually assaulted by Appellant. While investigating the 2021 Houston incident, OPS determined that Appellant had been listed as a suspect in two other sexual assault cases in 2015, prior to his employment by the Atlanta Police Department. Those alleged victims were contacted and reiterated their claims that they were sexually assaulted by Appellant.

With respect to the September 2020 Georgia incident, the complainant's written submission to the military authorities was reviewed by OPS and incorporated in the OPS investigative summary. The description of the 2020 incident as recounted in the written submission reflected the commission of sexual assault. Appellant was alleged to have put one hand under the complainant's bra and the other between her legs without her consent. She reported that she only avoided being raped by fighting and screaming. Appellant was interviewed by OPS and denied the allegations. In addition to conducting its own investigation and interviewing Appellant, OPS obtained records from CID of its investigation.

As part of the OPS investigation Appellant was specifically asked if he notified his chain of command that he was the subject of a military investigation for sexual assault. He acknowledged that he did not report the investigation. He explained that he failed to report the investigation because it was pending. When questioned about the Houston incident, Appellant initially stated he did not recall being at the hotel and did not remember meeting with a woman with the complainant's name. When shown screenshots of photos Appellant acknowledged knowing the woman in the photos and having interacted with her at the Houston hotel. He acknowledged having sexual contact with the Houston complainant; but, denied that it was nonconsensual.

OPS concluded its investigation by determining that the contentions that Appellant violated Work Rules 4.1.4 and 4.3.3 were sustained. OPS found as to Work Rule 4.1.4, Conduct, that "Officer Ibanga's conduct while on military leave which resulted in a criminal investigation by the United States Military brings discredit to the Atlanta Police Department." Violation of Work Rule 4.3.3, Arrest of or Court Actions Involving an Employee, was sustained based on the determination that "Officer Ibanga went through the entire arrest process.... His contact with the military police for an ongoing investigation where he was the suspect requires him to notify his chain of command." The OPS investigative file and recommended disposition that the Work Rule violations be sustained were reviewed by the Department chain of command. The reviewing supervisors concurred in the investigator's recommendation. The recommendation for discipline

by the reviewing supervisors was dismissal. The matter was ultimately presented to APD Chief of Police Darin Schierbaum. Chief Schierbaum concurred with the recommendation of dismissal.

On March 23, 2023, Appellant was served with a Notice of Proposed Adverse Action reflecting the recommendation of dismissal for violation of Work Rule 4.1.4, Conduct, and Work Rule 4.3.3, Arrest or Court Action Involving an Employee. Appellant refused to sign acknowledging receipt of the document. Despite refusing to sign the Notice of Proposed Adverse Action, Appellant responded and requested suspension in lieu of termination. On March 30, 2023, a Notice of Final Adverse Action confirming Appellant's dismissal was issued. The current timely filed appeal followed.

At the hearing on this appeal the City of Atlanta called as witnesses Assistant Chief Carvin Tyus, OPS Investigator Darin Smith and U. S. Army Special Agent Jessica Milikin. Appellant testified on his own behalf. Chief Tyus testified that he is responsible for reviewing OPS complaint investigations and recommending discipline. Chief Tyus's disciplinary recommendation of dismissal was adopted by Chief Schierbaum.

Investigator Smith was the lead OPS investigator. He was responsible for the investigative work and compilation of the report. As part of his investigation, he interviewed Appellant. Appellant confirmed to the investigator that as part of the military investigation, he was fingerprinted, photographed, and interviewed and within days of giving his statement to CID made contact with a criminal defense attorney. Those circumstances caused the investigator to conclude that Appellant violated Work Rule 4.3.3 by failing to report an arrest or involvement in any court action. Special Agent Milikin testified at the hearing that when Appellant came in to give his statement he was brought in by his chain of command and was not free to leave. At the conclusion of his interaction with CID appellant was not allowed to leave independently, rather he was released to his chain of command.

Appellant denies the multiple allegations of sexual assault asserted against him. However, the OPS investigator and the various reviewing officers in the chain of command found the allegations sufficient to support the conclusion that Appellant acted in a manner to bring discredit upon the Department or himself in violation of Work Rule 4.1.4. The Department additionally concluded that Appellant failed to report an arrest as required by Work Rule 4.3.3.

### **ORDER**

Appellant was dismissed for violations of Work Rule 4.3.3 and 4.1.1. The range of discipline for violations of those rules includes dismissal based upon the determination of the Chief of Police. Appellant was given a full opportunity to contest the proposed discipline. The record reflects and the Panel finds that the Department complied with the disciplinary process set forth in its Standard Operating Procedures.

With respect to the violation of Work Rule 4.1.1, Conduct, the multiple allegations of sexual misconduct against the Appellant range from sexual assault to rape. The record reflects that thorough investigations were conducted by OPS and the United States Army and provided to the Chief of Police. After reviewing the investigative record and hearing from Appellant, the

Chief of Police made a final determination that dismissal was the appropriate disciplinary action. Appellant has not been criminally prosecuted and denies the allegations made by the alleged victims. However, the standard for disciplinary action is not conviction of a crime.

There can be no dispute that the conduct alleged is serious enough to support dismissal if believed. The role of this body is not to second guess the disciplinary decisions of the Department or substitute its judgment for that of the agency. The question for this body is whether the final decision maker complied with the Department's procedures and was authorized to impose the discipline administered. There has been no contention that the disciplinary rules were not followed by the Department. In the present case the sexual misconduct allegations involve multiple occasions and multiple complainants, unknown to each other. Those circumstances are sufficient to support the Department's conclusion that the conduct allegation should be sustained and warranted discipline.

Work Rule 4.3.3. is straightforward. An employee who has been arrested or involved in a court action in any capacity other than as a prosecution witness "shall immediately notify the Chief of Police in writing through the chain of command." At the time Appellant was interviewed by Army CID he was fingerprinted and photographed. Shortly thereafter he contacted defense counsel. Special Agent Milikin testified that Appellant was escorted to his CID interview by his commanding officer and was not released until his commander appeared to escort him away from the facility. Appellant was an active police officer at the time he was fingerprinted, photographed and escorted to and from his interview with CID. The sine qua non of arrest as any police officer knows is that a person is in custody and is not free to leave. Based on the circumstances and Appellant's status as an active law enforcement professional the Department was justified in rejecting Appellant's claim of confusion or uncertainty about his duty to report an arrest. The record before the Department and this Panel supports the conclusion that Appellant was arrested and had a duty to report the arrest to the Chief of Police.

Based on the evidence presented and for the reasons stated above, the Board **AFFIRMS** the discipline of dismissal imposed by the City against the Appellant as to each Work Rule Violation and **DENIES** the appeal.

This 16 Day of June, 2023.

*Herman L. Sloan*

Herman L. Sloan, Board Member

*Suzanne Wynn Ockleberry*

Suzanne Wynn Ockleberry

*Constance Russell*

Constance Russell, Chair

