

CITY OF ATLANTA  
CIVL SERVICE BOARD

APPEAL No. CSB-2022-010

Effective Date: September 12, 2022  
Hearing Date: July 27, 2023

APPELLANT:  
Michael Wilson

CITY OF ATLANTA DEPARTMENT:  
Department of Parks and Recreation

ADVERSE ACTION:  
20-Day Suspension & Demotion

HEARING PANEL:  
Robert Hawkins, Chair  
Suzanne Ockleberry  
Constance Russell

**APPEARANCES**

City of Atlanta Representative:  
Halima Wilson, Esq.  
Blaine Allen, Esq.

Appellant Representative:  
Stephanie Mutti, Esq.

**EXHIBITS**

City of Atlanta:

- C-1 Complainant e-mail
- C-2 Complainant Timeline
- C-3 Notice of Proposed Adverse Action (NPAA)
- C-4 Notice of Final Adverse Action (NFAA)
- C-5 City EEO Policy
- C-6 City Sexual Harassment Policy
- C-7 City anti-Bullying & Workplace Violence Policy

C-8 Summary of Investigation  
C-9 Investigation Interview  
Transcripts

Joint Exhibit:            Written Stipulated Facts

### **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**

Equal Employment Opportunity Policy

2.1 "The City of Atlanta strictly prohibits and does not tolerate discrimination in any form against any person in recruitment, examination, appointment, training, promotion, referral, retention, discipline, compensation, benefits, classification, termination, or any other aspect of personnel administration because of race, color, creed, religion, national origin or ancestry, ethnicity, sex (including pregnancy), sexual orientation, gender (including gender identity and transgender status), age, physical ability, citizenship, marital status, veterans' status, political affiliation, genetic information, equal pay, or any other characteristic protected under applicable federal, state, or local law."

Section 114-528 (b)

(4)- Misconduct, including but not limited to engaging in offensive conduct or language towards the public, supervisory personnel, or fellow employees

(20) - Any other conduct or action(s) of such seriousness that disciplinary action is considered warranted

## Section 114-602 Sexual Harassment

2.3 To ensure the integrity of the work environment, managerial and supervisory personnel are required to ensure adherence and compliance with this policy and, when informed of possible harassment, are required to take appropriate and prompt action in response to that information, including informing complainants of their rights under the procedures set forth in this policy."

3.1 "It is illegal and against the policies of the City for an applicant, employee, or other covered persons, including contractor, or vendor, male or female, to sexually harass another employee, contractor, vendor, or customer. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or non-verbal, or physical conduct of a sexual nature when:

3.1.3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or is severe or pervasive enough that a reasonable person would consider it as creating an intimidating, hostile or offensive working environment."

3.2 "Examples of sexual harassment include, but are not limited to:

3.2.4. Graphic verbal commentary about an individual's body, sexual prowess, or sexual deficiencies

3.2.6. Making suggestive, derogatory, insulting, or obscene comments or gestures

3.6 Comments about an individual's conformity to a sexual stereotype"

## City of Atlanta - Anti Bullying & Workplace Violence Policy

The COA's Anti-Bullying & Workplace Violence Policy includes, but is not limited to the following behaviors:

3.3 "Psychological Abuse: is defined as a behavior that potentially lowers self-esteem and/or self- efficacy, creates a perception of being targeted, threatened and/or intimidated ... "

3.4 "Workplace Bullying: is defined as aggressive behavior that is intentional and that involves an imbalance of power (whether actual or perceived). A person is bullied when he or she is exposed, repeatedly and over time, to negative actions on the part of one or more other"

3.5 "Workplace harassment: is defined as belittling, threatening, or any other hostile behavior directed at an individual worker including domestic or intimate partner, or any other covered person."

### **PANEL FINDINGS AND CONCLUSIONS**

This appeal arose from disciplinary proceedings precipitated by a complaint to the Department of Human Resources. The Complainant alleged, among other things, that she was subjected to sexual harassment and a hostile work environment. Appellant was at the time of the events at issue a supervisor in the Department of Parks and Recreation. His title was Interim District Supervisor. He was subsequently named District Supervisor.

The pertinent core facts are largely undisputed. On February 9, 2022, the Complainant was in a City vehicle on Department business with Appellant and two other supervisors. The Complainant was a temporary seasonal employee who reported to Appellant and had no supervisory duties. The Complainant was the only female in the vehicle. The other supervisors were also Appellant's subordinates.

During the group's trip they were engaged in a general conversation about marriage. At some point one of the supervisors interjected into the conversation comments of a graphic and offensive sexual nature relating to urinating on women and a desire to have "his a\*\* eaten." Appellant did not make the offensive comments, but he did make some statements in the course of the conversation. The other supervisor in the vehicle refused to participate in the conversation. Appellant did not contemporaneously admonish, reprimand, or direct the speaker to stop making the offensive comments.

Appellant, the Complainant and the third occupant of the truck all concur that the statements were made and were improper— "over the line." The employee who made the offensive comments is no longer with the City of Atlanta and could not be reached by the person who investigated the HR complaint. Appellant does not dispute that the inappropriate conversation in the vehicle took place; but contends he should not have been disciplined based upon his handling of the matter.

Separate and apart from the offensive conversation, Complainant alleged in her complaint that Appellant created a hostile and bullying work environment. The Complainant alleged the Appellant asserted objections to her closing her door in the office. The Appellant acknowledged he had an issue with the Complainant closing her door in the office. The Complainant further alleged that the Appellant treated her inappropriately during a dispute over a parking space. Appellant disputes the findings of bullying and creating a hostile work environment arising from the door closing and parking space allegations.

The evidence before the hearing panel consisted of the City's exhibits, including witness interviews, a statement of stipulated facts and the live testimony of the Appellant and the HR

investigator. Based upon consideration of the live testimony and the documentary evidence, including the witness interview statements, the Hearing Panel concludes that the factual circumstances alleged relating to the door closing and parking space are open to dispute and do not establish EEO or workplace bullying violations.

The record reflects that the Complainant served as administrative support for the office. Appellant contends he felt that she needed to be accessible and should therefore keep her door open. Some witness interviews indicated that only one person routinely shut his door in the office—and that person was a supervisor. With respect to the parking allegations, Appellant's testimony that he had an ankle injury which required him to park near the building and had a practice of doing so is corroborated by other employee statements. Additionally, at least one employee asserted in his witness statement that the Complainant did not start parking in Appellant's preferred spot until after the vehicle incident. In light of the conflicting evidence and the Complainant's role in the office, the Panel does not find that the City has met its burden of establishing that Appellant's actions in relation to those complaints violated the City's policies.

Notwithstanding the foregoing findings, the totality of the evidence before the Panel supports the disciplinary actions taken by the City of Atlanta. The evidence of Appellant's violation of the City's sexual harassment policy and work rules 114-528(b)(4) and 114-528(b)(20) is overwhelming. The Appellant was the lead supervisor in a vehicle with subordinates when an employee made comments of a demeaning and graphic sexual nature which Appellant and everyone else in the vehicle knew to be wholly improper. Despite his supervisory role Appellant took no contemporaneous action to stop the offensive commentary or reprimand the speaker. His only contemporaneous attempt to intervene was purportedly saying "where y'all going with this conversation." Additionally, the Appellant himself made at least one comment that in the context of the vehicle conversation could be considered inappropriate. Appellant is alleged to have said that "some girls are on an elementary level."

The statements made on February 9 in the Appellant's presence unquestionably constituted verbal sexual harassment. The City of Atlanta's sexual harassment policy expressly states that "sexual harassment is unacceptable and will not be tolerated." It provides that prompt remedial action, calculated to end the harassment' is to be taken. (Sexual Harassment Policy Statement para. 1.2.) Appellant clearly failed to meet that standard. Supervisory personnel are required to "ensure adherence and compliance with [the] policy." (Sexual Harassment Policy para. 2.3.) Moreover, supervisors are required to report sexual harassment to the Office of Labor and Employee Relations. Appellant made no such report. "Supervisors who fail to report sexual harassment to the Office of Labor and Employee Relations may be subject to disciplinary action, up to and including termination." (Sexual Harassment Policy para. 6.7.)

The only female and only non-supervisor in the vehicle when the improper comments were made was the Complainant. The HR investigation reflects that Appellant not only did not acknowledge the clear power imbalance; he instead blamed the Complainant for allegedly participating in the conversation and disavowed any responsibility by suggesting the Complainant and speaker were two adults and there was nothing he could do. Only in his testimony before the Panel did Appellant finally acknowledge he "should have intervened stronger." In contrast, the supervisor in the car

who refused to participate in the conversation said in his witness statement that he recognized at the time the Complainant was upset.

Rules 114-528(b) 4 and (b) 20 establish general prohibitions against misconduct including offensive language toward employees and any other conduct of such seriousness that disciplinary action is warranted. Appellant's specific comment about some girls being on an elementary level, given his supervisory position and in the context of the vehicle interaction, qualifies as offensive language toward an employee in violation of Rule 114-528(b)4. Appellant, as the chief supervisor present, had a responsibility to the Complainant to act when the February 9 commentary became offensive. The evidence reflects that Appellant completely abdicated his responsibilities as a supervisor and by failing to act was complicit in the egregiously harassing conduct. The Panel finds therefore that the City of Atlanta has met its burden of proving a violation of 114-528(b)5.

### **ORDER**

Based on the evidence presented and for the reasons stated above, the Board **AFFIRMS** the discipline of suspension and demotion imposed by the City against the Appellant and **DENIES** the appeal.

This 24<sup>th</sup> day of August, 2023.

*Robert Hawkins*

Robert Hawkins, Chair

*Suzanne Ockleberry*

Suzanne Ockleberry

*Constance Russell*

Constance Russell