

CITY OF ATLANTA  
CIVIL SERVICE BOARD

**FINDINGS OF FACT AND ORDER**

APPEAL NO. 2023-008

Effective Date: April 14, 2023

Hearing: January 18, 2024

APPELLANT – **Timothy Garland**  
Department of Corrections

ACTION:  
30-day suspension

HEARING OFFICERS/BOARD  
Herman L. Sloan, Chair  
Constance C. Russell  
Suzanne Wynn Ockleberry, DWB

**APPEARANCES**

City of Atlanta Representative:  
Captain Tenique D. Sanders  
City of Atlanta Department of Corrections

Appellant Representative:  
Lovella Varnon AFSCME

City Witnesses:  
Officer Phillip Sims  
Lieutenant Rodney Morgan  
Sergeant/Investigator Mikel DeBerry  
Major Marnita Travis  
Deputy Chief Natasha Johnson  
City of Atlanta Department of Corrections

Appellant Witnesses:  
Timothy Garland

**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 (“Code”), a hearing in the above-referenced case was held before the above-named hearing officers of the Atlanta Civil Service Board (“Board”) on the date set forth above, via Zoom, facilitated by the City of Atlanta (“City”), pursuant to Mayor Andre Dickens’ May 10, 2023 Executive Order 2023-048 regarding the Covid-19 Pandemic.

**EXHIBITS**

City of Atlanta:

- C-1 Office of Professional Accountability (“OPA”) Disciplinary Complaint Investigative File
- C-2 Notice of Final Adverse Action (“NFAA”)
- C-3 Notice of Proposed Adverse Action (“NPAA”)
- C-4 Disciplinary History for Timothy Garland
- C-6 Department of Corrections (“DOC”) Employee Work Rule 2.32 Conformance to Directives
- C-7 Written Directive 200-13, Use of Physical Force Procedures, Section 8.1.2 Planned Physical Force
- C-8 Photographs of Detainee Hung Bui
- C-9 Recorded video of incident on March 27, 2022

**STIPULATED FACTS BY THE PARTIES**

None.

**VIOLATIONS**

DOC Employee Work Rule 2.49(b) – Maltreatment or Unnecessary Force

“An employee will only use necessary force against another person to effect an arrest, prevent an escape, necessarily restrict the movement of a prisoner, or defend himself or another from physical assault. In any event, only the nature and amount of force deemed reasonably necessary by a prudent person to accomplish a lawful purpose will be used.”

DOC Employee Work Rule – 2.32 – Conformance to Directives

“Every Employee of the Department will familiarize herself/himself with and conform to rules, regulations, directives, and standard operating procedures of the department.”

## **FINDINGS OF FACT**

1. Appellant Timothy Garland (“Appellant”) has been employed by the City of Atlanta Department of Corrections (“DOC”) as a Correction Officer for 23 years.
2. As a DOC Correction Officer, Appellant has a disciplinary history which includes prior violations of DOC Employee Work Rules 2.32 and 2.49. (C-4).
3. On March 27, 2022, Appellant was on duty as a Rover Officer in the City of Atlanta Detention Center (“Detention Center”) in the 3NE housing unit.
4. At approximately 10:34 a.m., Detainee Hung Bui was observed in cell 113 with the door open.
5. Detainee Bui was classified as a mental health detainee and was not to be out of his cell with the general population.
6. At the time Detainee Bui’s cell door was open, there were detainees from the general population who were out in the day room of the Detention Center near Detainee Bui’s cell. (C-9).
7. Appellant left the Control Room of the Detention Center and proceeded to the cell occupied by Detainee Bui.
8. Upon arriving at the cell, Appellant forcefully shoved Detainee Bui back into his cell and closed the door. (C-9).
9. The time between when Appellant approached the cell of Detainee Bui and the time when he forcefully shoved Detainee Bui back into his cell was approximately 1-2 seconds. (C-9).
10. Prior to Appellant forcefully shoving him back into his cell, Detainee Bui did not exhibit any aggressive behavior: His arms were down, he was standing in the doorway and never crossed the threshold out of his cell. (C-9).
11. Detainee Bui sustained injuries to his chest and was transported to Grady Hospital for treatment. (C-8).
12. On March 31, 2023, a Notice of Proposed Adverse Action (“NPAA”) was issued to Appellant for violating DOC Employee Work Rules 2.49(b) and 2.32. (C-3).
13. The NPAA notified Appellant that the proposed discipline was a 25-day suspension without pay for violation of DOC Employee Work Rules 2.49(b) and a 5-day suspension without pay for violation of DOC Employee Work Rule 2.32. (C-3).
14. Appellant was advised that the effective date of the suspension was April 14, 2023, with a return-to-work date of May 26, 2023. Appellant was further advised that he had until

April 7, 2023, to provide a response to the NPAA. (C-3).

15. Appellant provided a response to the NPAA on April 7, 2023, and indicated that he bore some of the responsibility for the incident on March 27, 2022, but contended that his training as a member of the VIPER team was different from that of a regular officer and that he had reached out to the Employee Assistance Program. (C-2).
16. A Notice of Final Adverse Action (NFAA) was issued to Appellant for violating DOC Employee Work Rules 2.49(b) and 2.32 and imposed a 25-day suspension without pay for violation of DOC Employee Work Rules 2.49(b) and a 5-day suspension without pay for violation of DOC Employee Work rule 2.32. (C-2).
17. The NFAA indicated that the suspension was effective April 14, 2023, with a return to work ate of May 26, 2023. (C-2).

### **DISCUSSION**

Pursuant to Mayor Andre Dickens' Executive Order and COVID-19 pandemic guidelines, the appeal by Timothy Garland was called virtually at 2:00p.m., January 18, 2024, 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 suspension issued to Appellant for violation of DOC Employee Work Rules 2.49(b) and 2.32.

Officer Phillip Sims was the first witness to testify on behalf of the DOC. He indicated that he is a Correction Officer for the DOC and has been in that position for 22 years. Officer Sims testified that his job responsibilities include the safety and security of the inmates, employees and anyone entering or exiting the facilities.

He indicated that on March 27, 2022, he was assigned to the 3NE Housing Unit of the City Detention Center. He was assigned as a Control Room Officer and Appellant was working as a Rover Officer. Officer Sims testified that Detainee Bui was classified as a mental health detainee and was not allowed to be out of his cell with the general population. He indicated that he noticed that Detainee Bui was out of his cell and asked why he was out of his cell. Officer Sims, reading from his written statement which was collected as part of the investigation by Investigator Mikel DeBerry, indicated that Appellant left the Control Room, went to Detainee Bui's cell, stopped in front of Bui's cell for approximately 2 seconds and then used significant force to push Detainee Bui back in his cell. Officer Sims noted that Appellant is physically larger than Detainee Bui and Detainee Bui did not do anything to suggest he was aggressive, violent or about to attack Garland.

On cross-examination, Officer Sims indicated that the video of the incident showed a brief period of time between when Appellant approached Detainee Bui's cell and before he shoved him. He also testified that Appellant was using hand gestures as he approached the cell.

Lieutenant ("Lt.") Rodney Morgan, who has been employed with the City for 20 years, testified that the is the Lieutenant on day watch at the Detention Center. He indicated that his

responsibilities are to manage and supervise the Detention Center during his shift, maintain the safety and security of the detainees, manage the employees, handle scheduling as well as any other issues that may arise during his shift. Lt. Morgan indicated that he is a frontline supervisor and manages civilians, correction officers and anyone under his rank.

Lt. Morgan indicated that he went to the 3NE Hosing Unit at 11:30 a.m. to perform a supervisor check. He testified that Appellant told him that Detainee Bui wanted to speak with him. When Lt. Morgan spoke with Detainee Bui, he told him that Appellant pushed him in his chest and forced him back in his cell. Lt. Morgan testified that pictures were taken of Detainee Bui's chest, and he was transported to Grady Hospital. Lt. Morgan indicated that there were other detainees out in the area, but no one was willing to provide a statement regarding the incident. When Lt. Morgan asked Appellant about the incident, he said that Detainee Bui was waving his hands, he asked Detainee Bui to step back in the cell, he refused, and that Detainee Bui tried to prevent the cell door from being closed. Lt. Morgan testified that Appellant told him he pushed the detainee back in the cell and closed the door. When Lt. Morgan asked Appellant to demonstrate, Lt. Morgan testified that the force Appellant used on him during the demonstration was more force than he expected.

On cross-examination, Lt. Morgan indicated that the general population is not to be let out of their cells with the mental health detainees. He indicated that mental health detainees are on a schedule and have to be restrained.

Sergeant ("Sgt.") Mikel DeBerry testified that he has been employed with the City for 28 years, is currently a Sgt in the OPA and has handled investigations for 10 years.

Sgt. DeBerry indicated that he conducted the investigation into the incident involving the Appellant and Detainee Bui. He testified that based upon his investigation, Appellant violated DOC Standard Operating Procedure ("SOP") 200-13 – Use of Physical Force Procedures, 8.1.2 as he did not receive prior approval from a supervisor prior to using force on Detainee Bui. Sgt. DeBerry testified that Appellant also violated DOC Employee Work Rule 2.49(b) because he used unnecessary force when he shoved Detainee Bui back into his cell when Detainee Bui did not exhibit any aggression or threat prior to the use of force. Sgt. DeBerry testified that he does not make recommendations about discipline for DOC employees.

Major Marnita Travis, who has been employed by DOC for over 18 years, testified that she is the Facility Commander for the City Detention Center. Major Travis indicated that her job responsibilities include overseeing the daily operations for the City Detention Center, the Grady Hospital Detention Center and the City court detention areas. Major Travis testified that she also assists with employee discipline.

Major Travis indicated that a review of the investigation by Sgt. DeBerry indicated that Appellant had violated employee work rules and she made a recommendation of a 5-day suspension for violation of DOC Employee Work Rule 2.32 and a 25-day suspension for violation of DOC Employee Work Rule 2.49(b). Major Travis testified that Appellant had a disciplinary history which included a 2011 discipline for the same or a similar violation.

Deputy Chief Natasha Johnson was the last witness to testify on behalf of the City. Deputy Chief Johnson indicated that she has been employed by DOC for 28 years and her job responsibilities include overseeing operations of the jail, courts and the Grady Hospital detention area as well as

employee discipline. She also has responsibility for initiatives from the DOC and the Mayor's Office.

Deputy Chief Johnson testified that the charges of violation of DOC Employee Work Rule 2.32 and 2.49 against the Appellant were sustained. She testified that Interim Chief Elder Dancy made the final decision regarding discipline and determined that a 25-day suspension for violation of DOC Employee Work Rule 2.49(b) and a 5-day suspension for violation of DOC Employee Work Rule 2.32 would be issued to Appellant. She noted that the discipline issued to Appellant was commensurate with the discipline other DOC employees have previously received. Deputy Chief Johnson indicated that the discipline was modified so that the suspension was not consecutive, and the Appellant was suspended for one week per pay cycle until he reached the 30-day suspension without pay at the request of Appellant. On cross examination, Deputy Chief Johnson indicated that the general population and the mental health population at the Detention Center are segregated and the detainees in each group are let out of their cells at separate times. She testified that a red uniform signifies a mental health detainee and that those detainees can be volatile or aggressive.

Appellant testified that he has been a Correction Officer for 23 years. He indicated that the mental health and general population detainees are to be segregated: Mental health detainees are allowed to come out of their cells 2 at a time in leg or hand restraints for 1 hour per day out of a 5-day work week and for an additional 10 minutes to shower. He testified that rounds are conducted based upon the detainee status: Rounds are done every 30 minutes and every 15 minutes if a detainee is classified as suicidal.

Appellant indicated that on the day of the incident, Detainee Bui's cell door was closed when he left the area. When Appellant returned to the control booth to let the detainees out for court and allow the general population out of their cells, he noticed that Detainee Bui's cell door was open. He indicated that the cell door can be opened manually using a key or remotely by a control panel in the Control Room. He indicated that Officer Taylor was on the control panel on the date of the incident.

The evidence presented at the hearing indicates that Appellant violated DOC Employee Work Rule 2.49(b) on March 22, 2022, when he used unnecessary force against Detainee Bui. The amount of force used resulted in Detainee Bui being forcefully shoved back into his cell from which he sustained bruises to his chest. The force used by Appellant was more than reasonably necessary to place Detainee Bui back into his cell. Based upon the video evidence, prior to the use of force, Detainee Bui was not aggressive, was not trying to escape, and was not trying to assault the Appellant. Further, the evidence presented at the hearing indicates that Appellant violated DOC Employee Work Rule 2.32 by not conforming to DOC SOP 200-13, 8.1.2 Planned Physical Force when he failed to obtain approval from the ranking on-duty supervisor before using physical force against Detainee Bui on March 22, 2022. At the time Appellant forcefully shoved Detainee Bui back across the threshold of his cell, Detainee Bui was not trying to hurt himself or anyone else and was not trying to flee the area.

### **ORDER**

Accordingly, the Board **SUSTAINS** the discipline imposed by the City against Appellant and **DENIES** the appeal.

This 22<sup>nd</sup> day of January 2024.

*Herman L. Sloan*

Herman L. Sloan, Chair

*Constance C. Russell*

Constance C. Russell

*Suzanne Wynn Ockleberry*

Suzanne Wynn Ockleberry, DWB