

CITY OF ATLANTA
CIVIL SERVICE BOARD

FINDINGS OF FACT AND ORDER

APPEAL NO. 2021-024AP

Effective Date: May 2, 2023

Hearing: December 7, 2023

APPELLANT – **Tara Wright**
Department of Aviation

ACTION:
Dismissal

HEARING OFFICERS/BOARD

Constance C. Russell, Chair

Suzanne Wynn Ockleberry

Herman L. Sloan, DWB

APPEARANCES

City of Atlanta Representative:
Hermise, Pierre, Esq.
City of Atlanta Law Department

Appellant Representative:
Stephanie Mutti, Esq

City Witnesses:
April Broaders
Vice President Director of Human Resources
Department of Aviation

Jan Lennon
Deputy General Manager of Operations
Department of Aviation

Kathy Roby
Human Resource Manager II

Appellant Witnesses:
Tara Wright, Appellant

Anna Avato
Union Representative
Professional Association of City Employees

Gwendolyn T. Lane

Stephanie J. Willis

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 of Atlanta (“City”), pursuant to Mayor Andre Dickens’ Executive Order regarding the Covid-19 Pandemic.

EXHIBITS*

City Exhibits:

- C-1 Correspondence from Dr. Beck
- C-2 Corrected Disability Form
- C-3 Correspondence regarding the Accommodation Process
- C-4 Appellant’s Response to Notice of Proposed Adverse Action (NPAA)
- C-5 Notice of Final Adverse Action (NFAA) and NPAA
- C-6 City of Atlanta Code of Ordinances, Section 114-528
- C-7 Tara Wright – Return to Work Letter
- C-8 Tara Wright Timecard (January 1, 2020 – December 31, 2020)
- C-9 Tara Wright Timecard (January 1, 2021 – September 1, 2021)

Appellant’s Exhibits:

- A-1 City of Atlanta Medical Authorization and Release
- A-2 City of Atlanta Code or Ordinances Section 114-422
- A-3 Family Medical Leave Act (FMLA) Approval Letter (dated October 8, 2020)

*The record as maintained by the court reporter is the official record of the exhibits admitted into evidence during the hearing.

STIPULATIONS

None.

VIOLATIONS

City of Atlanta Code of Ordinances Section 114-528(b)(2)

“The following actions constitute cause for which disciplinary action may be imposed but the imposition of disciplinary action shall not be limited to such offenses:

(b) Incompetence, inability or failure to perform assigned duties, including but not limited to loss of job requirements, such as the loss of a required license.”

SPECIFIC CHARGES

Appellant voluntarily entered into the Reasonable Accommodation Interactive process after

disclosing that she had restrictions in her ability to perform her job functions and duties as outlined in her job description. No vacancies were identified that she applied for or could perform with or without accommodations.

FINDINGS OF FACT

1. Tara Wright was employed by the City Department of Aviation as a Communications Dispatcher.
2. Tara Wright was assigned to work in the Department of Aviation, Airport Call Center.
3. Tara Wright's regular duties included answering emergency related telephone calls from airport staff, airport passengers and communication with first responders.
4. The Airport Call Center has a high call volume and is a fast-paced work environment.
5. Tara Wright was diagnosed as having a major depressive disorder, that was severe and recurrent.
6. Tara Wright's doctor recommended that Ms. Wright be assigned to another department which would be less emotionally taxing and better able to support Ms. Wright's continued recovery.
7. Tara Wright engaged in the City Reasonable Accommodation Interactive process.
8. Tara Wright received a listing of available jobs which was at least seven (7) pages in length.
9. On June 17, 2021, a Notice of Proposed Adverse Action (NPAA) was issued to Tara Wright for violating City Code of Ordinances Section 114-528(b)(2), inability or failure to perform assigned duties and proposing that she be dismissed.
10. On September 1, 2021, a Notice of Final Adverse Action (NFAA) was issued to Tara Wright for inability or failure to perform assigned duties in violation of City Code of Ordinances Section 114-528(b)(2) and dismissing Tara Wright from employment with the City.
11. Tara Wright has not provided documentation from her healthcare provider indicating that she is prepared to return to work.

DISCUSSION

Pursuant to Mayor Andre Dickens' Executive Order and COVID-19 pandemic guidelines, the

appeal by Tara Wright was called virtually at 2:00p.m., on December 7, 2023, via the Zoom Internet platform.

The City's first witness was April Broaders. Ms. Broaders testified that she has been employed for more than four (4) years with the City as Vice President Director of Human Resources (HR), assigned to the Department of Aviation. It was in this capacity that she first became familiar with Appellant. Appellant was an employee with the Department of Aviation assigned to the Communications Center. Appellant had been out on approved administrative leave and Ms. Broaders testified that she was "tasked with returning her to work." In fact, Ms. Broaders testified that she returned Appellant to work on or about December 22, 2019.

According to Ms. Broaders, Appellant was employed as a Communications Dispatcher Senior and her duties included answering emergency telephone calls from airport staff, airport passengers and communicating with first responders.

Ms. Broaders testified that after Appellant exhausted all of her approved FMLA leave as well as all accrued vacation, sick and compensatory leave, the City informed Appellant she needed to report to work on January 22, 2021. (CE # 7). Ms. Broaders testified that Appellant did not return to work after receiving the return-to-work letter. Instead, she informed the City she had not been released by her doctor to return to work and requested a continuation of her leave of absence. Ms. Broaders testified Appellant provided medical documentation indicating that she was unable to perform the essential functions of her job in the Call Center. Ms. Broaders testified that the medical documentation submitted by Appellant indicated that Appellant was experiencing neurological issues which impacted her ability to perform several basic life functions, and this inhibited Appellant's ability to perform the essential functions of her job and her ability to be present at work. Ms. Broaders testified that medical disability documentation submitted by Appellant indicated she was suffering severe emotional distress because her daughter was hospitalized with COVID.

Ms. Broaders testified Appellant's job as a dispatcher is considered essential and mission critical, could not be performed remotely and required her to report to work. Ms. Broaders testified that Appellant requested to be placed in another department where her duties would be less emotionally taxing and hopefully further support her continued recovery.

Ms. Broaders testified that the Department of Aviation accommodated Appellant's request for placement in another department. Once an accommodation request is approved, Ms. Broaders testified that based upon the employee's approved restrictions, a determination is made as to what positions are available. Ms. Broaders testified that generally the Department will work closely with the Talent and Acquisition Team to determine what positions are available based upon the parameters imposed by the employee's approved restrictions. Ms. Broaders testified that throughout this process HR works with the City's Center of Excellence and the Talent and Acquisition Team to ensure that employees apply for positions for which they meet the minimum qualifications. She also testified that employees are vetted for the positions and granted an interview. Ms. Broaders testified that the City provided Appellant with a listing of more than thirty-seven (37) job opportunities. However, Appellant did not complete the job application

process for all thirty-seven (37) positions. Ms. Broaders testified that Appellant was initially given thirty (30) days to find an alternate position. Subsequently, Appellant was given an additional thirty (30) days.

On cross-examination, Ms. Broaders testified that although she was uncertain as to the nature of the complaint, the Office of Labor and Employee Relations placed Appellant on paid administrative in 2019 because of a complaint filed by Appellant. Ms. Broaders testified that the call center at Hartsfield Jackson Airport is a fast-paced work environment. Ms. Broaders testified that the City is required to comply with the Americans with Disabilities Act (“ADA”) and that the reasonable accommodation interactive process utilized by the City complies with the ADA.

Ms. Broaders testified that as part of the reasonable accommodation interactive process, she followed-up with the Talent Acquisition Team to ensure that positions within the Department of Aviation for which Appellant applied, she was properly vetted and, if she met the minimum requirements, that the hiring manager granted Appellant an interview.

The City’s next witness was Jan Lennon, Deputy General Manager of Operations for the Atlanta Airport. Ms. Lennon testified that she is responsible for the entire operations of the airport including participating in employee disciplinary actions. She testified that if there is an allegation that an employee violated a policy or procedure, there is a full investigation and, if after the completion of the investigation there is a recommendation for formal discipline, the employee has the right to appeal. Ms. Lennon testified that the first step in the investigative process is reviewing the policy or procedure alleged to have been violated. Next, witness statements are taken, and any digital/video evidence is reviewed to determine whether any such evidence substantiates the allegations concerning the alleged violation. As part of her duties, Ms. Lennon testified she handles all employee appeals.

Ms. Lennon testified that she was familiar with Appellant because of the appeals process. Ms. Lennon testified that it was her recollection that Appellant was unable to perform her job as set forth in the disability documentation Appellant provided. Ms. Lennon testified that upon receiving Appellant’s request for an accommodation, the safety team and HR team reviewed the information provided which led to discussions regarding the process for allowing Appellant to apply for other jobs within the City for which Appellant qualified. Ms. Lennon testified Appellant was provided a listing of job openings within the City.

Ms. Lennon testified that as part of the appeal process, she met with Appellant and her union representative, after the issuance of the NPAA. Ms. Lennon testified that at that meeting, Appellant, and her representative expressed concerns regarding the length of time Appellant had been provided to find an alternative position and requested a further accommodation from the City. Ms. Lennon testified that in response to Appellant’s request she provided Appellant with an additional thirty (30) days within which to find an alternate position.

Ms. Lennon testified that Appellant’s dismissal was a consequence of Appellant having exhausted all accrued leave time, Appellant’s inability to perform her job functions and Appellant’s failure to secure alternative employment within the City. Ms. Lennon testified that in addition to any time Appellant may have been previously provided, at the meeting with

Appellant and her representative, she provided Appellant with an additional thirty (30) days to secure alternate employment. This was supplemented by an additional thirty (30) days.

The City's final witness was Kathy Roby. Ms. Roby testified that she is an HR Manager II and had been employed with the City for more than five (5) years. M. Roby testified that she was familiar with Appellant and the circumstances surrounding this appeal. It was Ms. Roby's testimony that Appellant had been given approximately six (6) months to secure a position.

Appellant's first witness was Ms. Anna Avato, a National Representative for the Professional Association of City Employees (PACE). Ms. Avato testified that she was involved as Appellant's union representative in trying to keep Appellant employed with the City. Ms. Avato testified that Appellant appealed the NPAA because the Department of Aviation changed all employees job descriptions during a time when Appellant was on leave and this change in job descriptions made it more difficult for Appellant to perform her job duties. Ms. Avato testified that after appealing the NPAA, a meeting was held on June 30, 2021, at which Ms. Lennon and Ms. Broaders were in attendance on behalf of the Department of Aviation. During this meeting Appellant was given an additional thirty (30) days to find a position within the City. Ms. Avato testified that the thirty (30) day timeframe was too short, because no one from the City's Talent Acquisition team reached out to Appellant to assist her in securing another position. Ms. Avato testified that it was over a year later before Appellant was offered a job.

On cross-examination, Ms. Avato testified Appellant received seven (7) pages of job listings: Several of the jobs were administrative positions for which Appellant was qualified, but the vast majority of jobs were jobs that required special skills such as electrician assistant or required a license that Appellant did not possess. Ms. Avato testified that Appellant applied for any job for which she was qualified but Appellant was never granted an interview despite assurances to the contrary from HR and the Talent Acquisition Team.

Gwendolyn Yvonne Lane, a former City employee, testified on behalf of Appellant. Ms. Lane testified that she worked with Appellant at the Atlanta Airport Call Center. Ms. Lane testified that the dispatcher job was very stressful. Ms. Lane also testified there were other jobs at the airport that were less stressful. Ms. Lane testified that because Appellant's salary was allegedly higher than other dispatchers, and even some supervisors, there was a great deal of discord.

Stephanie Juanita Willis, an employee with City Department of Transportation, testified that she met Appellant when they both were employed with the Streetcar Division. She testified that on several occasions she assisted Appellant in applying for positions.

Ms. Willis also testified she helped Appellant obtain a meeting with members of the Atlanta City Council regarding her employment.

On cross-examination, Ms. Willis testified that she was aware of Appellant being off from work on FMLA and that she had assisted Appellant in submitting applications for jobs that were contained on the seven (7) pages of job listings Appellant had been given to find an alternative position as an accommodation. Ms. Willis was also aware of Appellant's FMLA leave.

Appellant testified that she started working for the City in 2014. Her last position was as a dispatcher in the Airport Central Call Center. Ms. Wright testified that as a dispatcher her duties included answering 911 emergency calls from airport staff, airport passengers, and the surrounding cities. She testified that dispatchers were also responsible for dispatching police, fire, EMS, monitoring alarm calls and watching the CCT monitors.

Appellant testified that it was a very intense and highly stressful job and that it became even more stressful after her rate of pay was disclosed to other employees.

Appellant testified that she was on paid administrative leave and April Broaders informed her she had to come back to work at the Airport Call Center. Appellant stated that she advised Ms. Broaders that the call center was a hostile work environment.

Appellant testified that she lost her husband to COVID, her youngest daughter also contracted COVID and was hospitalized in ICU, when she was informed that she needed to return to work Appellant testified that her doctor advised her that she needed to take leave, so she applied for and received FMLA.

Appellant testified that has an associate degree in computer network administration and that she has work experience as a medical assistant, an officer manager, in customer service, in grant writing and that she possesses a commercial drivers' license.

Appellant testified that of the jobs she applied for, she got three (3) interviews and two (2) of the three (3) were within the Department of Aviation

Appellant testified that when a job opening is posted, there is at least a thirty (30) day period before the application period closes.

On cross-examination, Appellant testified that Ms. Stephanie Willis assisted her in looking for an alternative placement. Appellant also testified that it was after the meeting with Ms. Broaders, Ms. Lennon, and Ms. Avato, that she given a thirty (30) day extension to find an alternate placement and that after the initial thirty (30) day extension expired, Ms. Avato requested an additional thirty (30) day extension.

Appellant testified that she was offered a job in 311 as a re-hire, but the offer was rescinded after she accepted.

Appellant testified that she was told her services were no longer needed and she was terminated in 2018. She fought the termination, was reinstated, and was then placed on paid administrative leave. She testified that in 2020 she became a dispatcher with Department of Aviation.

Appellant testified that in 2021, she received notice that she had exhausted her leave and that she needed to return to work. Appellant testified that she submitted medical documentation requesting a reasonable accommodation from the City because she had become overwhelmed with her husband's death from COVID and her daughter contracting COVID and being in ICU fighting for her life.

The Airport Communications Call Center was described as a fast-paced and highly stressful environment. Appellant was directed to return to work at the onset of the COVID pandemic. Appellant lost her husband to the virus. Appellant's teenage daughter contracted the virus and was in a hospital ICU, fighting for her life. Appellant provided medical documentation that these factors along with the general stressors of life, caused her to be unable to return to work in the fast paced highly stressful environment of the Airport Call Center. She requested a reasonable accommodation of her disability from the City and the City agreed to her request. However, the reasonable accommodation process consisted of providing Appellant with seven (7) pages of job listings within the City, the majority of which required a specialized skill set that Appellant did not possess or a license that she did not hold. Appellant was assured that the City's Center for Excellence and the Talent and Acquisitions Team would assist her in obtaining a suitable position.

Each of the City's witnesses was asked whether the Department of Aviation could require another department to hire Appellant and each witness answered that the Department of Aviation could not. The City was Appellant's employer, not the Department of Aviation. The ADA places the burden of ensuring Appellant received a reasonable accommodation upon the City of Atlanta and not the individual departments, bureaus, or divisions within the organizational structure of the City. It is incumbent upon the City, as the employer, to ensure that the provisions of the ADA as it pertains to reasonable accommodations are adhered to by the various departments, bureaus, and divisions. The City's official procedures appear to satisfy the requirements of the ADA. However, by providing a random job list and no real assistance to ensure Appellant was at least interviewed for the jobs for which she qualified, the City's application of its procedures did not meet its statutory obligation. Under the facts presented during the hearing, this Board finds that the City failed to provide proof that Appellant was provided with a reasonable accommodation for her disability.

ORDER

Accordingly, the Board **REVERSES** the discipline imposed by the City against Appellant and **GRANTS** the appeal.¹

This 16th day of January 2024.

¹ Appellant has not submitted documentation from a health care provider clearing her to return to work.

Constance C. Russell

Constance C. Russell, Chair

Suzanne Wynn Ockleberry

Suzanne Wynn Ockleberry

Herman L. Sloan

Herman L. Sloan, DWB