

**CITY OF ATLANTA CIVIL SERVICE BOARD
ORDER**

APPEAL NO. 2020-013AP

APPELLANT: MARK GARDNER
Atlanta Police Department (APD)
City of Atlanta (City)

Effective Date: June 1, 2020
Hearing Date: January 21, 2021

ACTION:
DISMISSAL

HEARING OFFICERS/PANEL
Robert Hawkins, Chair
Plemon Al-Emin
Mary Ann S. Phyll, DWB

APPEARANCES

City of Atlanta Representative:
Allegra J. Lawrence-Hardy, Attorney
Lawrence & Bundy, LLC
Kareemah Lewis, Atty, City of Atlanta

City Witnesses:
Chief Erika Shields, former Police Chief,
APD

Appellant Representative:
Lance LoRusso, Attorney
LoRusso Law Firm
Ken Davis
Kaila Fulgham, Paralegal
Lisa Halder
Rod Ganski

Appellant's Witnesses:
Mark Gardner, Appellant
Rick Mason, Retired Major APD
SPO Norman (Paul) Merritt, APD
Capt. Brian Schiffbauer, APD
Sgt. William Dean, Internal Affairs, APD
Sgt. James Borden

Observer – Randy Robertson, State Senator, District 29

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 virtually via Zoom Webinar, facilitated by the City, pursuant to Mayor Keisha Lance Bottoms 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.

CHARGES

Dismissal – for violation of the Atlanta Police Department Work Rule:

4.2.50 Maltreatment or Unnecessary Force

INFRACTION

See City of Atlanta Notice of Final Adverse Action (NFAA) (Exhibit C 02)

STIPULATED EXHIBITS

(C for Appellee/City of Atlanta - A for Appellant)

By and through their undersigned counsel, Appellee and Appellant hereby stipulate to the admissibility of the following exhibits;

| | |
|-----------|---|
| C 03 | APD.SOP 2010 Work Rules |
| A-4 | APD.SOP 2020 Disciplinary Process |
| C 04 | Atlanta City Code Pt. II, Ch. 98, div. 1, § 98-28 |
| A-12 | Atlanta City Code Pt. II, art. VI, div. 1 § 115-502 |
| C 05 | Atlanta City Code Pt. II, art. VI, div. 3 § 115-526 |
| A-14 | Atlanta City Code Pt. II, art. VI, div. 3 § 115-528 |
| C 06/A-15 | Atlanta City Code Pt. II, art. VI, div. 3 § 115-530 |
| A-7 | Mayor Bottom's Executive Order 2020-92 |
| C 01/A-17 | Notice of Proposed Adverse Action (NPAA) dated May 31, 2020 |
| C 02/A-17 | Notice of Final Adverse Action (NFAA) dated May 31, 2020 |
| C 09/A-27 | Offense Report of Ofc Gardner, Incident #201511766-08 |
| C 08/A-30 | Taser log for Appellant |
| C 10/A-45 | BWC video from Mark Gardner |
| A-43 | BWC of Appellant Ivory Streeter |
| C 14/A-44 | Video from Lonnie Hood BWC |
| C 13/A-42 | Video from Carlos Smith BWC |
| C 12/A-39 | Video from Sheldon Drinkard BWC |

A-40 Video from Steven McKesey BWC
A-41 Video from Willie Sauls BWC
C 11 Video from Roland Claud BWC
A-33 Email from John Chafee to APD Public Affairs dated May 31, 2020
C 07/A-36 POST Profile for Mark Gardner

ADDITIONAL EXHIBITS INTRODUCED DURING HEARING

A-16 Ordinance section 114-532 Emergency situations
A-20 Email from witness, Brian Schiffbauer dated May 31, 2020
A-35 Email from Chief Shields to Department
A-46a APD Policies that Mandate OPS Investigation

STATEMENT OF STIPLATED FACTS

By and through their undersigned counsel, Appellee and Appellant hereby stipulate to the admissibility of the following facts.

1. Appellant was first employed by the City of Atlanta as a sworn police officer on August 19, 1997.
2. Appellant was, at the effective date of his termination on June 1, 2020, a regular, non-probationary employee of the City of Atlanta Police Department, who held the sworn position of Police Investigator, which is below the rank of Lieutenant.
3. Atlanta Mayor Keisha Lance Bottoms ordered a curfew in the City of Atlanta, to begin at 9:00 P.M. on May 30, 2020, through sunrise on May 31, 2020 (Executive Order 2020-92) (Exhibit A-7).
4. On May 30, 2020, Appellant was on duty as an investigator on the fugitive unit, In uniform, and working as part of an arrest team that had been deployed in the Downtown Atlanta area.
5. While engaged in his duties on the evening of May 30, 2020, the Appellant was equipped with a TASER brand Conducted Energy Weapon, serial number X4000399Y, issued to him by the Atlanta Police Department.
6. The Appellant received a training titled DE-ESCALATION OPTIONS FOR

GAINING COMPLIANCE on March 28, 2020 (Exhibit C 07/A-36).

7. The Appellant received a training titled USE OF FORCE on March 28, 2020 (Exhibit C 07/ A-36).
8. The Appellant received a training titled CULTURAL AWARENESS on March 28, 2020 (Exhibit C 07/A-36).
9. The Appellant received a training titled TASER 7 USER CERTIFICATION on March 4, 2020 (Exhibit C 07/A-36).
10. The Appellant was made aware of Atlanta Police Department Work Rule 4.2.50 prior to May 30, 2020.
11. On May 31, 2020, Appellant was served with a Notice of Proposed Adverse Action (“NPAA”), indicating dismissal effective on June 1, 2020 and citing a violation of Work Rule 4.2.50, Maltreatment or Unnecessary Force. (Exhibit C 01/A-17).
12. Later on, May 31, 2020, Chief Erika Shields served Appellant a Notice of Final Adverse Action (“NFAA”), effective June 1, 2020 (Exhibit C 02/A-17).

DISCUSSION

Due to Mayor Keisha Lance Bottoms’ Executive Order and COVID-19 pandemic guidelines, the appeal of Mark Gardner was called virtually at 10:00am via the internet platform of Zoom.

The hearing for Mark Gardner, an APD officer with 23 years of city employment commenced with the City’s first and only witness - his former commander, Chief Erika Shields. The representative for the City, Atty. Lawrence-Hardy opened by citing Sec. 98-28 of Atlanta City Code pt. II *Hiring and firing authority; qualifications of chief*, that Chief Shields, and only Chief Shields, had the authority to fire the Appellant. Sec. 98-28 (a) of the code states, ...*The police chief is the hiring and firing authority for the department of police, subject to applicable ordinances, rules and regulations.*

The City failed to perform several steps critical to this case and required by City Code:

- *An employee against whom an adverse action is to be taken shall be given a written notice of proposed adverse action, signed by the appointing authority or designee, at least*

10 working days prior to the effective date of the proposed adverse action. Exhibit A-15 §114-532(a)

Approximately 30 minutes were afforded the Appellant between the City issuing of the NPAA and NFAA.

- *In an emergency situation, the adverse action may become effective immediately following the employee's response, if any. Exhibit A-15 §114-530(a)*
Appellant was not given the opportunity to respond.
- *During the period of the notice, the employee is expected to perform usual duties without disrupting the activities of other employees or operations of the city department. Any action by the employee to the contrary shall be considered an emergency situation as define in § 114-532(a).*
Appellant was not given the opportunity to work.
- *The appointing authority or designee may immediately suspend an employee with pay upon the determination that the following circumstances exist:*
 1. *There is cause to believe that the employee is committed a crime involving moral turpitude or a felony which is job related or deters the employee from effective performance of the employee's job.*
 2. *The retention of the employee in active-duty status may result in damage to property or may be disruptive, detrimental or injurious to the employee, coworkers, subordinates or the general public or may be disruptive to the daily operation of a city government. Exhibit A-16 §114.532(a)*

The City elected to dismiss not suspend with pay.

In conclusion, the Board carefully considered all evidence, including the documents, the testimony and the stipulated facts presented by the City and the Appellant during the hearing. Regarding emergency action, the Board believes the City did not follow its own emergency guidelines. Moreover, the firing authority did not follow the personnel regulations of the Atlanta Code of Ordinances in the dismissal of this employee.

ORDER

The Dismissal of Appellant, Mark Gardner is **REVOKED**.

This the 1st day of February 2021

Signed:

Robert Hawkins

Robert Hawkins, Chair

Plemon El-Amin

Plemon El-Amin

Mary Ann Phyll

Mary Ann S. Phyll, DWB