

CITY OF ATLANTA CIVIL SERVICE BOARD
ORDER

APPEAL NO. 2020-002AP
APPELLANT: CHE MILTON
Atlanta Police Department (the "Department")

Effective Date: January 3, 2020
Hearing Date: February 11, 2021

ACTION:
Dismissal

HEARING OFFICERS
Plemon El-Amin, Chair
Mary Ann Phyll
E. Carl Touchstone, DWB

APPEARANCES

City of Atlanta ("City"):

Counsel/Representative:
Kareemah Lewis, Esq.

City of Atlanta's Witnesses:
Investigator Michael Clayton
Captain Zenelaj Hajredin
Major Carven Tyus

Appellant:
Che Milton

Counsel/Representative:
Kevin Almeroth, Esq.

Appellant's Witnesses:
Nicholas Casinelli
Gabe Pica
Robert Fuller
Investigator Dexter Dumas
Che Milton

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 conference 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 Keisha Lance Bottoms' Executive Order regarding the Covid-19 Pandemic.

EXHIBITS

City of Atlanta

- C-1 Notice of Final Adverse Action
- C-2 Notice of Proposed Adverse Action
- C-3 Reissued Notice of Proposed Adverse Action
- C-4 Order of Extension of time for Further Investigation and/or Consideration
- C-5 Atlanta Police Department Work Rule 4.2.50 Maltreatment or Unnecessary Force
- C-6 Atlanta Police Department Work Rule 4.2.51 Reporting Required When Force Used
- C-7 Atlanta Police Department Work Rule 4.1.4 Conduct
- C-8 Atlanta Police Department Work Rule 4.2.33 Conformance to Directives
- C-9 Investigative Summary of Investigator Michael Clayton
- C-10 Interview Transcript of Che Milton
- C-11 Interview Transcript of Matthew Sanders
- C-12 Investigation Disposition
- C-13 Memorandum of Sergeant C. Faircloth
- C-14 Investigation and Disposition of OPS Complaint #19-C-0311-UAF
- C-15 Disciplinary History of Che Milton
- C-16 Body Worn Camera of Officer Che Milton (1)
- C-18 Body Worn Camera of Officer James Gikanga

Appellant

- A-1 NPAA
- A-2 NFAA
- A-7 Illustration of site where incident occurred

Stipulations

1. I, Che Milton, was made aware of Atlanta Police Department Work Rules 4.2.50, 4.2.51, 4.1.4, and 4.2.33.
2. I, Che Milton, agree that on June 23, 2019, I was employed with the Atlanta Police Department.
3. I, Che Milton, agree that on June 23, 2019, I was not on duty with the Atlanta Police Department.
4. I, Che Milton, agree that on June 23, 2019, I was working an approved extra job at Big Sky Buckhead Restaurant.
5. I, Che Milton, agree that on June 23, 2019, I encountered Mr. Matthew Sanders.
6. I, Che Milton, agree that on June 23, 2019, I was asked to escort Mr. Matthew Sanders out of Big Sky Restaurant.

7. I, Che Milton, agree that while escorting Mr. Matthew Sanders out of the Big Sky Restaurant that Mr. Sanders fell to the ground.
8. I, Che Milton, agree that at some point during the incident listed in stipulations 5-6 above, I called Mr. Matthew Sanders a “Stupid Ass Motherfucker.”
9. I, Che Milton, agree that I did not arrest Mr. Matthew Sanders.
10. I, Che Milton, agree that I did not cite Mr. Matthew Sanders with any criminal offenses.
11. I, Che Milton, agree that I did not notify a supervisor of my encounter with Mr. Matthew Sanders.
12. I, Che Milton, agree that I did not complete an incident report detailing the June 23, 2019 incident involving Mr. Matthew Sanders.

VIOLATIONS

Atlanta Police Department Work Rules:

4.2.50 Maltreatment or Unnecessary Force

4.2.51 Reporting Required When Force Used

FINDINGS OF FACT

1. Appellant was employed by the City of Atlanta (the “City”) in the Atlanta Police Department (the “Department”). He has been an officer with the City for 3 years.
2. On June 23, 2019, Appellant was working a city approved extra job at the Big Sky Buckhead Restaurant (the “Restaurant”), located at 3201 Cains Hill Place, Atlanta, GA.
3. While working on June 23, 2019, Appellant had an encounter with the restaurant’s patron, Matthew Sanders (“Sanders”).
4. Appellant was asked to escort Sanders out of the facility, after Sanders and his friend became disruptive upon being refused entry into the VIP area of the Restaurant.
5. At some point while escorting Sanders out, Sanders began to grab at various items.

6. Sanders ended up on the floor with injuries to his face.
7. Investigator Dexter Dumas was also working at the Restaurant on June 23, 2019, and he helped Sanders get up, after the fall.
8. An ambulance was called and Sanders was transported to the hospital.
9. Appellant did not place Sanders under arrest at any time on June 23, 2019.
10. Sanders filed a complaint with the Department on or about June 27, 2019 alleging that Appellant used excessive force in removing him from the Restaurant on June 23, 2019.
11. The Department conducted its investigation and concluded that Appellant did in fact use excessive force.
12. On or about December 19, 2019, a Notice of Proposed Adverse Action (the “NPAA”) was issued by the City to Appellant, with proposed actions of: Dismissal and 3 Day Suspension.
13. On or about December 20, 2019, the City issued an Order of Extension of Time for Further Investigation and/or Consideration, which allowed for an additional ten (10) days.
14. On or about January 3, 2020, a Notice of Final Adverse Action (“NFAA”) was issued by the City to Appellant, without modification to the NPAA.

DISCUSSION

Based on the results of an investigation into a complaint of excessive force involving Appellant on June 23, 2019, the City determined that Appellant violated the following work rules: 4.2.50 Maltreatment or Unnecessary Force; and 4.2.51 Reporting Required When Force Used. The City ultimately dismissed Appellant from his duties with the Department for these violations. Appellant appeals this decision.

Appellant had been with the Department for approximately three (3) years. He was approved to work an off-duty extra job providing security at Big Sky Restaurant in Atlanta, Georgia. On June 23, 2019, Appellant was at Big Sky working security. He was asked to remove a patron, Matthew Sanders, after Mr. Sanders and his friend became disruptive when they were refused entry into the VIP area of the Restaurant. Appellant began to physically remove Mr. Sanders from the facility since Sanders was not complying with verbal requests to leave. Sanders was reaching for tables and objects. At some point, Sanders ended up on the floor with injuries to his face. Sanders contends he was forcefully pushed to the ground, which caused his injuries. Appellant submits that Sanders fell and that he did not cause Mr. Sanders’ injuries.

Work Rule 4.2.50 – Maltreatment or Unnecessary Force: 1) Employees are expressly prohibited from the unnecessary or unreasonable use of force against any person or property. 2) Employees shall only use that force, which is reasonable and necessary to affect an arrest, prevent an escape, necessarily restrict the movement of a prisoner, defend himself or another from physical assault, or to accomplish other lawful objectives. The reasonableness inquiry refers to whether the employee’s actions are “objectively reasonable” in light of the facts and circumstances confronting him or her, without regard to their underlying intent or motivation. The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene , and its calculus must embody an allowance for the fact that police officers are often forced to make split second decisions about the amount of force necessary in a particular situation (Graham v. Conner, 490 U.S. 386 (1989)).

Work Rule 4.2.51 – Reporting Required When Force Used: Employees who use force against any person or the property of any person shall make a report of the incident and report it to their supervisor as soon as practicable.

Investigator Michael Clayton (“Clayton”) of the Internal Affairs Unit, was the first witness for the City. Clayton testified that he has been an investigator with the City for 20 years and that his job is to prove or disprove cases. He was assigned to investigate the complaint filed by Sanders on June 27, 2019. Although there were a few other individuals that were interviewed by Clayton for his report, he testified about the statements that he took from Sanders, Appellant, Investigator Dexter Dumas, Nicholas Casinelli, and Robert Fuller.

Based on all of the statements received, examinations of body camera footage of the officers on scene, and any available video, Clayton completed an Investigative Summary (C-9) of his findings for submission to his chain of command. Clayton testified that his investigation found that while Appellant was removing Sanders from the Restaurant, Sanders was passively resisting. Sanders then started grabbing things while Appellant was forcefully walking him out and Appellant believed that he’d be hit with something by Sanders, so he dropped him.

The Investigative Summary notes, inter alia, that Appellant’s body cam recorded the early parts of his encounter with Sanders, showing Appellant forcefully walking Sanders out, Sanders turning around and confronting Appellant, Appellant pushing Sanders causing him to fall, and Appellant assisting Sanders up and continuing to walk him out. The BWC footage then goes black for several minutes and then when the video resumes, it shows Sanders lying face down on the concrete. (See C-9)

On or about July 19, 2019, Clayton completed his Investigative Summary and forwarded it to his chain of command, Captain Hajredin Zenelaj (Zenelaj). Of note, Clayton was asked by a Panel Member if officers are required to have body cameras activated even when working an off-duty job, and Clayton responded yes.

Captain Hajredin Zenelaj, Police Administration for the Department, was at all relevant times herein, a Lieutenant in the Internal Affairs Unit of the Office of Professional Standards. Zenelaj testified that once an investigation was done by detectives, that he then reviews the entire file for thoroughness and completeness.

Upon his review, Zenelaj believed that the investigation was thorough. His review showed that Appellant's body cam was buffering during the period that it was not activated. However, once the camera resumes, it goes back 2 minutes. Of note, Zenelaj testified that the statement made by Appellant to Sanders' friend, "Ask your homeboy what happened to him" supported that there was an application of force which caused Sanders' injuries. In addition, looking at the injuries also supported that there was an application of force.

The City's final witness was Major Carven Tyus (Tyus). In June, 2019, Tyus was the Commander in the Office of Professional Standards. In that capacity, Tyus' duties included reviewing all investigations prior to sending them out to chain of command for discipline. Tyus reviewed Appellant's investigation for thoroughness and completeness, and was in agreement with its findings.

Appellant called Nicholas Casinelli ("Casinelli") as his first witness. Casinelli testified that he was the team leader for security at the Restaurant on June 23, 2019. He had worked with Appellant for about 8 months at the time of the incident.

On the night of June 23, 2019, Casinelli encountered two gentlemen that did not have armbands to get into the VIP area. The gentlemen were argumentative about not being allowed into VIP. Sanders was one of the gentlemen. Casinelli believed that both of them were under the influence of alcohol or drugs. At some point, Sanders' friend did leave the area on his own, after being asked. Initially, Sanders walked off with his friend but then came back and wanted to try to get into the VIP again. Casinelli testified that once Sanders came back, that Appellant even advocated for him to be let inside the VIP, since his friend had left. Casinelli stated that when he responded "no," that's when Sanders began to escalate. He stated that Sanders then was not complying with commands. Finally, Casinelli stated that he did not see Appellant use force against Sanders.

Gabriel Pica ("Pica") testified as part of Appellant's case. Pica was the General Manager at the Restaurant on June 23, 2019. One of his duties was to gather information when incidents occur at the Restaurant. He spoke with a number of workers about the incident and learned from former employee Nick Lazar, that Sanders was being combative. (Pica testified that Mr. Lazar is now deceased). According to Lazar's statements to Pica, Sanders must have tripped and went to the ground, not anything else. Pica indicated that in his experience with Appellant, he never knew him to use force against people at the club, and that Appellant always de-escalated situations.

Robert Fuller ("Fuller") testified that he was security manager at the Restaurant on June 23, 2019. Fuller saw Appellant removing Sanders from the facility. He

indicated that Sanders was all over the place and grabbing whatever he could while Milton was pulling him out, including fencing and everything.

Investigator Dexter Dumas (“Dumas”) was called to testify by the Appellant. Dumas was also working security at the Restaurant on June 23, 2019, but he noted that he was reprimanded for working that night, since he was not approved to work. Dumas stated that he observed Appellant escorting Sanders out of the Restaurant and that he then moved around to Appellant’s left side to make sure that no one tried to attack him. He stated that he noticed Appellant standing straight up and Sanders was face down on the ground. Dumas testified that he did not see injuries on Sanders, but that he also never made eye contact with Sanders.

Finally, Appellant testified that he first encountered Sanders’ friend the night of June 23, 2019. He stated that he was trying to get Sanders into the VIP since his friend had left. Appellant’s request was not approved and he then told Sanders that it was time for him to go. Appellant submits that looking back, he gave Sanders too many chances. He didn’t believe that he was using force when he was removing Sanders from the Restaurant. He believed that he was de-escalating the situation. Finally, Appellant contends that he did not slam Sanders to the ground, causing his injuries.

Based on the evidence presented, the Board believes that City of Atlanta has met its burden to substantiate the dismissal of Appellant in this matter. This case was thoroughly investigated. Unfortunately, the video evidence does not show exactly how everything occurred, but the investigation has concluded that force must have been used to cause the extent of the injuries that the victim suffered. The City followed all of the proper procedures in this action and the Board is satisfied that the City’s discipline is appropriate in this matter.

After review of the testimony and evidence, the Board concludes that the City was justified in its action of **dismissal** in the instant matter. The City has met its burden concerning all of the allegations as presented.

ORDER

Based on the foregoing, the Board hereby **AFFIRMS** the Appellant’s dismissal.

This the 12th day of March, 2021.

Signed:

Plemon El-Amin

Plemon El-Amin, Chair

Mary Ann Phyll

Mary Ann Phyll

E. Carl Touchstone

E. Carl Touchstone, DWB