

**BEFORE THE CITY OF ATLANTA
BOARD OF ETHICS**

In the Matter of:

Balram Bheodari

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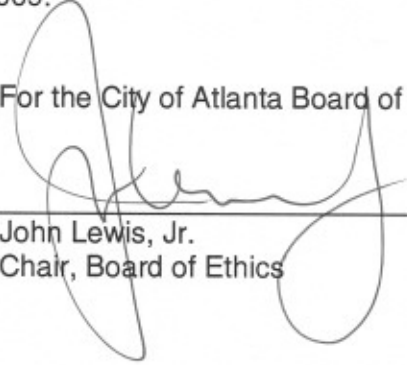
Case No. CO-08-003

DISMISSAL ORDER

This matter came before the City of Atlanta Board of Ethics for a probable cause decision on January 15, 2009. Having considered the record and determined that there is not probable cause to believe that the City's Code of Ethics has been violated, the Board orders that the complaint be dismissed.

So ordered this 15th day of January, 2009.

For the City of Atlanta Board of Ethics



John Lewis, Jr.
Chair, Board of Ethics

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Case No. CO-08-003

Probable Cause Report

Summary

This complaint should be dismissed for lack of probable cause to believe that Balram Bheodari, Deputy Assistant General Manager for the Department of Aviation, violated section 2-811 of the City's Code of Ethics in his regular overnight use of his city vehicle.

Findings

1. The Ethics Office received an anonymous complaint on May 1, 2008 against Balram Bheodari alleging a violation of section 2-811. Specifically, the complaint alleges that Mr. Bheodari used his assigned, city "take-home" vehicle in violation of city policy when he had a car accident in March 2008 on his way home from church with his wife in the vehicle.
2. Section 2-811 prohibits city officials and employees from using or allowing the use of public property for the private advantage of the official or any other person or private entity. There is an exception that allows city officials and employees to use city property "which is provided as a matter of public policy for the use of officials and employees in the conduct of official city business." Atlanta, Ga. Code §2-811.
3. Mr. Bheodari is the Deputy Assistant General Manager for the Department of Aviation (DOA) and reports directly to Aviation General Manager Benjamin R. DeCosta. Mr. Bheodari is responsible for operations, maintenance, security, ground transportation, automated people mover and operational oversight of Atlanta police and fire at the airport, and he directs and controls all functions relating to emergency incidents. Mr. Bheodari is an emergency first responder and expected to be available to return to the airport at any time, except when on approved leave. Interview with Balram Bheodari (Dec 9, 2008); Letter from Ben R. DeCosta (Nov. 24, 2008).
4. As an airport first responder, Mr. Bheodari was assigned a take-home vehicle beginning in January 2006. In September 2007, he was one of 12 department employees approved for overnight vehicle use for the period from October 1, 2007 through April 1, 2008. City of Atlanta Authorization for Vehicle Utilization Report for the DOA (2006-2008); Memorandum from Jan West-McIntyre to Benjamin DeCosta (Sept. 28, 2007).
5. DOA assigns take-home vehicles to all first responders because they are on call 24 hours a day and expected to travel immediately and directly to the airport from any location to respond to an emergency. The vehicles are equipped with special equipment that first responders use to monitor incidents and communicate with the operations center if a land-

line or cell phone fails to operate. The use of these vehicles permits first responders to enter the airport's restricted security areas. Letter from Ben R. DeCosta (Nov. 24, 2008).

6. Mr. Bheodari responded to or was on standby for more than 175 emergency incidents that occurred at the airport from October 2007 to March 2008. These emergency events included 87 aircraft emergency landings, 17 service disruptions, 16 fire alarms, 15 automobile accidents, 12 fuel spills, 5 weather-related events, 4 ramp accidents, 2 bomb threats, and 2 runway closures. Interview with Balram Bheodari (Dec. 9, 2008); Operational Summation of Significant Events for the DOA (Oct. 2007 – March 2008); Letter from Ben R. DeCosta (Nov. 24, 2008).
7. From October 2008 to March 2008, Mr. Bheodari performed non-routine work by responding to approximately 42 incidents at the airport after normal work hours, which were evening hours and weekends. Incident Log (Oct. 2007 – March 2008).
8. On March 6, 2008, Mr. Bheodari returned to work at the airport after normal work hours. He normally did not carry passengers in his city vehicle; however, after working late that night, Mr. Bheodari headed to church in his city vehicle with his wife as a passenger. He was travelling from church when they were involved in a serious car accident caused by a drunk driver. Mr. Bheodari and his wife were hurt, and the city vehicle was totaled. Interview with Balram Bheodari (Dec. 9, 2008).
9. The city's policy for regular overnight use of city vehicles requires at least 30 documented callbacks for each six-month period or extenuating circumstances that make the use of emergency mileage reimbursement impractical. The term "approved callbacks" is defined as "the employee returning to work after duty hours for non-routine work essential to the public well being"; the extenuating circumstances include the "existence of unique tools, radios or other equipment located in or needing to be transported in the city vehicle, which equipment would be essential to the employee in performing the emergency work." Atlanta, Ga. Code § 2-1715(b). The transportation of passengers in city vehicles is permitted only when necessary for the conduct of the city's business. Atlanta, Ga. Code § 2-1715(a).
10. In March 2008, the DOA's internal written policy prohibited the private use of city-owned vehicles and stated that passengers were not allowed in the vehicles unless necessary to conduct official city business. In addition, vehicles could not be taken home without a completed and approved application for overnight use of city vehicle. Policy and Procedure Bulletin #24 (Feb. 2002).
11. At that time, the DOA did not have a written policy that specifically addressed first responders and their overnight use of city vehicles. Airport officials state that the department allowed first responders unrestricted use of their assigned vehicles under a long-standing practice. Interview with Balram Bheodari (Dec. 9, 2008); Letter from Benjamin DeCosta (Nov. 24, 2008); Telephone interview with Robert Kennedy (Dec. 3, 2008).
12. In May 2008, after the accident, the department's written procedures were revised to state that first responders may have unrestricted use of their city vehicles. Policy and Procedure Bulletin #24 (May 2008).
13. In July 2008, the City adopted a citywide Vehicle User Policy for the first time. It states that city vehicles can be used only for city business, and no passengers shall be transported

except when necessary for the conduct of official city business. City of Atlanta Vehicle User Policy (Sept. 2008); Telephone interview with Jan McIntyre- West (Dec. 1, 2008). Mr. DeCosta requested that the City grant an exemption to allow airport first responders to have personal use of the vehicles and the ability to transport passengers other than City of Atlanta employees. The rationale for the request was that the department's first responders had to make themselves available 24/7 to respond to airport emergencies and would be hindered in their ability to perform their official duties during emergencies if they were not able to have personal use of city vehicles. Deputy Chief Operating Officer Luz Borrero approved the exemption on July 11, 2008. See Memorandum from Benjamin DeCosta to Greg Giornelli (July 3, 2008).

Conclusions of Law

14. It is not a violation of Section 2-811 of the Code of Ethics for a city employee to use a city vehicle to drive from home to work if the vehicle is provided to the employee as matter of stated public policy for use by the employee to conduct official city business.
15. On March 6, 2008, Mr. Bheodari qualified for regular overnight use of a city vehicle under the policies stated in section 2-1715(b) of the Code of Ordinances and the Department of Aviation's internal written policy. He had responded to more than 30 emergency incidents at the airport within the six-month period prior to his accident, and his take-home vehicle had special equipment that was essential for him to perform his official duties in dealing with airport emergencies.
16. There is insufficient evidence to show that Mr. Bheodari was using his city vehicle for private advantage when he allowed his wife to ride as a passenger in the car on March 6, 2008. Because he was on call as a first responder at the time and required to return immediately to the airport in the event of an emergency, it would be difficult for him to fulfill his job responsibilities if he were never allowed any personal use of his vehicle. Moreover, he believed that his department had given him sufficient authority to transport passengers other than city employees in his city vehicle through its long-standing practice.

Recommendation

17. Because the code allows the use of take-home vehicles and transport of passengers for official city business, Mr. Bheodari was required to use his city vehicle at all times while on duty as a first responder, and it would be difficult for him to carry out his official duties without some personal use of the vehicle, it is recommended that the complaint be dismissed for lack of probable cause.

Submitted by: Jabu M. Sengova
Associate Ethics Officer
January 14, 2009