CITY OF ATLANTA CIVIL SERVICE BOARD
ORDER

APPEAL NO. 2019-042AP
APPELLANT: TARA JACKSON
Department of Parks and Recreation (DPR)
City of Atlanta (City)

Effective Date: November 14, 2019
Hearing Date: November 19, 2020

ACTION:
5 Day Suspension

HEARING OFFICERS/PANEL
Robert Hawkins, Chair
Carl Touchstone
Mary Ann S. Phyall, DWB

APPEARANCES

City of Atlanta Representative:
Danielle Jones, HR Director

City Witnesses:
Tara Jackson, Appellant
Wendell Bryant, HR Mgr. II - DPR
Rodney Millen, SW District Mgr. – DPR
Douglas Voss, Director of Parks

Appellant Representative:
Rita Cherry, Esq.
Counsel for NAGE

Appellant's Witnesses:
Tara Jackson, Appellant
Danielle Jones, HR Director
Rodney Millen, SW District Mgr. – DPR
Douglas Voss, Director of Parks

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.

EXHIBITS

City of Atlanta:

COA 1	Dr.'s excuses and various documents - 18 pages
COA 2	NPAA, NFAA and various documents - 17 pages
COA 3	Medical documentation - 13 pages
COA 4	2019 work Time Detail for Appellant – 15 pages
COA 5	Letter from City granting Family Medical Leave – 1 page

Appellant:

Exhibit A1	Document Bates-stamped 001-0028, 28 pages
Exhibit A2	Document Bates-stamped 0029-0049, 20 pages

STIPULATIONS

None

CHARGES

Suspended 5 days for violation of Atlanta City Code of Ordinance Section 114 -528:

Cause for Action:

(b)(3) Failure to carry out an official directive or refusal to carry out the lawful, reasonable directions given by a supervisor or other acts of insubordination.

INFRACTION

See City of Atlanta Notice of Proposed Adverse Action (NPAA) (COA 2 pg. 5)

FINDINGS OF FACT

1. The Appellant, Tara Jackson, held the position of Parks Worker III with the Department of Parks for approximately four years at the time of the suspension.

She was assigned to a team that operated heavy equipment such as, garbage trucks, mowers, sweepers and backhoes. The Appellant was part of a group of skilled employees known as principals who rotated the operation of these various machines during their shifts.

2. On June 24, 2019, the Appellant submitted a doctor's excuse prescribing 14-21 days of light work due to negative side effects from a medication regimen. The Appellant requested and was granted FMLA from July 16 – July 31, 2019 which was extended to August 15, 2019. Noting a second condition, a knee injury she suffered while on FMLA, the Appellant was granted FMLA again from August 16 – August 22, 2019. Then, granted the third FMLA of 2019 from August 23 – October 4, 2019.

3. On October 4, 2019 Appellant was released back to work by her physician to full participation without restriction. (Exhibit A1 pg. 28)

4. The Family Medical Leave Act (FMLA) of 1993 establishes that employees are entitled to a total of 12 administrative work weeks of leave (480 hours) within any 12-month period. To be granted FMLA, an employee must submit the following documentation:
    - Federal Government form completed by Doctor identifying applicant's condition
    - City application for FMLA signed by Department head, employee and their supervisor.

   It is then submitted for approval to the City Benefits HR group.

5. On October 17, 2019, the Appellant was asked by her supervisor, Rodney Millen to drive the garbage truck during her shift. His crew was short staffed and the Appellant was the only principal available that day to operate the truck. The Appellant refused, responding to him that the smell that emitted from the truck made her sick. She offered no medical condition associated with her denial of her supervisor's request. The Appellant clocked out of work early leaving her supervisor the task of calling out to other districts for assistance with garbage collection or having to record the work - incomplete.

6. On October 21, 2019, the Appellant was asked again to drive the garbage truck. She refused stating she had a disability and ultimately, was sent home. Mr. Millen contacted the HR department for information that would support the Appellant's claim. He testified that they found no documentation of a disability

on record. He then reported the incident to management via email.

7. The Appellant returned to work the next day, the 22nd, and was needed as a driver of the garbage truck - again refused.

8. On October 24, Mr. Millen wrote a formal complaint. It included a warning to the Appellant regarding her conduct and that discipline would be the next step. (Exhibit COA 2 pg.1). Friday, October 25, 2019, the Appellant refuses to carry out her duties and was written up once again.

9. Three days later, October 28, 2019, Mr. Millen informed the Appellant that he had scheduled a 9:00am meeting with the HR department. He testified at the hearing that the Appellant stated she was not attending the HR meeting and walked out after being instructed not to. (Exhibit COA 2 pg. 4)

10. On October 30, 2019 a Notice of Proposed Adverse Action (NPAA) was issued violating Sec. 114-528 (3)(b) Failure to carry out an official directive or refusal to carry out the lawful, reasonable directions given by a supervisor or other acts of insubordination. Management recommended a 5-day suspension. (COA 2 pg. 5)

11. On November 5th, the Appellant offered a written response to the NPAA to Douglas Voss, Parks Director with several different reasons for not performing her work assignment, stating physical ailments but not citing a disability. (Exhibit A2 pg. 13)

12. The Appellant is a veteran. One of the Appellant's exhibits is a doctor's excuse dated October 23, 2019 from the VA signed by a physician's assistant. The Appellant was said to have a permanent condition called chondromalacia of the right knee and should avoid activity that loads the knee cap, such as operating equipment. This document was presented for the *first time* to the HR management team during the Appellant's cause-for-action meeting on November 5, 2019. (Exhibit COA 2 pg. 15)

13. On November 12, 2019 the NFAA was issued effective November 14, 2019, the department moved forward with the 5-day suspension. (COA 2 pg. 16)

DISCUSSION

Due to Mayor Keisha Lance Bottoms' Executive Order and COVID-19 pandemic

guidelines, the appeal of Tara Jackson was called virtually at 2:00pm via the internet platform of Zoom.

The Appellant, Tara Jackson was called as the City's first witness. She essentially verified her absence from work assignments during 2019 was due to various medical conditions. She is under the care of several doctors. The issue of not being able to operate the garbage truck due to her reaction to the smell, the Appellant testified that it was a 'trigger' associated with a medical condition she is being treated for and a topic she did not want to discuss publicly during the hearing.

The Appellant is still employed as a Parks Worker III with the City Parks department now reassigned to litter control in City parks.

It is clear to the Board that this employee experienced some difficult times last year however, also apparent to the Board is that the City has been supportive – granting 12 weeks of FMLA, hours of sick leave and providing Reasonable Accommodation Request forms. In addition, the Appellant's supervisor, Rodney Millen was quite tolerant during the month that led up to issuing discipline. HR Director, Danielle Jones testified that on several occasions she assisted the Appellant with explaining procedure, employee benefits and providing the HR related forms she requested.

The Appellant's representative, Attorney Rita Cherry contended that the City was aware of a disability the Appellant had that affected her ability to perform her work duties and did not act on it. However, employers have no duty to act when they perceive a disability. It is the employee who must submit proper documentation to be accommodated.

The Board does not decide legal issues during hearings. Its authority is limited under City of Atlanta Code - which the Board has the task to uphold and support.

In conclusion, the Board carefully considered all testimony and evidence presented by both the City and the Appellant during the hearing. The Board finds that the Appellant's behavior, as described, was intentional and is deemed insubordinate in the workplace. The requests made by the supervisor to the Appellant were reasonable under the circumstances. Failing to follow directives, among other things, undermines the ability for a supervisor to manage.

Moreover, HR management applied the process of progressive discipline appropriately according to Sec 114-526 of the City Code.

Therefore, for the following reasons:

- The refusal to meet with HR on October 28, 2019
- The several other confirmed reports of incomplete work assignments
- The fact the Appellant's refusals to work adversely affected other employees
- Not to mention, the Atlanta city residents denied garbage collection service

The Board rules that the Appellant's conduct was in violation of Sec 114-528 (b)(3). The disciplinary action is considered appropriate.

ORDER

The appeal of Tara Jackson is denied.

This the 4th day of December 2020.

Respectfully submitted,

Robert Hawkins

Robert Hawkins, Chair

E. Carl Touchstone

E. Carl Touchstone

Mary Ann Phyall

Mary Ann S. Phyall DWB