CITY OF ATLANTA CIVIL SERVICE BOARD
ORDER

APPEAL NO. 2019-043AP

Effective Date: November 22, 2019
Hearing Date: March 5, 2020;
November 5, 2020

APPELLANT:
Marquis Calhoun

HEARING OFFICERS:
Plemon El-Amin, Chair
Robert Hawkins
Nkoyo-Ene R. Effiong, DWB

APPEARANCES

City of Atlanta ("City"):
None

Counsel/Representative:
Kareemah Lewis, Esq.
Jessica Johnson (03/05/2020)

City of Atlanta's Witnesses:
Roy Sales
Jacqueline Thornton
Vance Williams

Appellant:
Marquis Calhoun

Counsel/Representative:
Gwen Gillespie

Appellant's Witnesses:
Miles Nicholson
Aretha Anderson
Marquis Calhoun

Observers:
Chandler Davis (March 5, 2020)
Calvin Blackburn (March 5, 2020)

Sharon Broach (March 5, 2020)
Alisha Marie Nair (March 5, 2020)

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 March 5, 2020, in Conference Room 2174 of the City Hall Tower located at 68 Mitchell Street, Atlanta, Georgia. The hearing was continued and later held virtually via Zoom Webinar, facilitated by the City, pursuant to Mayor Keisha Lance Bottoms Executive Order regarding COVID-19, and before the Board on November 5, 2020.

EXHIBITS

The City's Exhibits

1. City of Atlanta Atlanta Department of Corrections Notice of Final Adverse Action dated November 20, 2019 (the "NFAA").

2. City of Atlanta Atlanta Department of Corrections Notice of Proposed Adverse Action dated November 8, 2019 ("NPAA").

3. City of Atlanta Atlanta Department of Corrections Professional Conduct and Responsibilities Rule 1.03.

4. City of Atlanta Atlanta Department of Corrections Professional Conduct and Responsibilities Rule 2.32.

5. City of Atlanta Atlanta Department of Corrections Standard Operating Procedures No. 200-12.

6. City of Atlanta Atlanta Department of Corrections Post Order # 2.

7. City of Atlanta Atlanta Department of Corrections Work Rules 2.62, 2.63, 2.64.

8. City of Atlanta Code Section 114-528 Cause of Action.

9. Electronic Acknowledgement of Work Rules Log of Signatures for Marquis Calhoun.

10. Memorandum from Investigator Thornton to Captain Sales dated October 18, 2019.

11. N/A

12. Photographs of Restrictive Housing Unit 4 NE

13. Photographs of Cigarette Butts in Drain.

14. Copy of Marquis Calhoun's Phone.

15. Schedule: General Population Typical Housing Schedule.

16. City of Atlanta Department of Corrections Personnel Order.

17. Employee Disciplinary History.

18. City of Atlanta Department of Corrections Disciplinary Recommendation Chain of Command.

19. Atlanta Department of Corrections Police Central Facility Log Extract.

Appellant's Exhibits

A-1 Civil Service Appeal Form.

A-9 Email from Sebrena Parham to Jaqueline Thornton.

A-17 Supplemental Incident Report.

A-18 City of Atlanta Guard Tour Log Sheet 4NE dated September 12, 2019.

A-22 Watch Day dated September 12, 2019.

A-26 Authorization for Disciplinary History Entry for Marquis Calhoun.

A-27 Memorandum from Chief Labat to Marquis Calhoun.

A-28 Atlanta Department of Corrections Preliminary Complaint Report.

A-33 Atlanta Department of Corrections Supervisor's Complaint Investigation Checklist.

A-38A Medical Records from Healthcare Provider.

A-38B List of Medications.

A-61 Facility Log.

Stipulations Prepared by the City:

1. I, Marquis Calhoun, was made aware of Department of Corrections Written Directive 200-12, Restrictive Housing Procedures section 8.6(b) and Post Order #2 Restrictive Housing Rover Officer, section B9.

2. I, Marquis Calhoun, was made aware of the Employee Assistance Program (EAP) offered through my employer, City of Atlanta.

3. I, Marquis Calhoun, have participated in the Employee Assistance Program (EAP) offered through my employer, City of Atlanta.

VIOLATIONS

City of Atlanta, Municipal Code of Ordinance and Atlanta Department of Corrections Work Rules:

114-528(b)(20) Any other conduct or action of such seriousness that disciplinary action is considered warranted
1.03 Truthfulness
2.32 Conformance to directives
2.62 Personal Cell Phones Prohibited in Restrictive areas

CHARGES

See City of Atlanta, Atlanta Department of Corrections Notice of Final Adverse Action (City's Exhibit 1)

FINDINGS OF FACT

1. Appellant was employed by the City of Atlanta (the "City") in the Atlanta Department of Corrections (the "Department") as a corrections officer. He has been with the City for approximately five (5) years.

2. On September 12, 2019, Appellant was on duty at 4NE Restrictive Housing Unit and worked the Rover Officer's post. (City's Exhibit 10).

3. A Rover Officer is responsible for supervising the cleaning of all common areas and individual cells. (City's Exhibit 6).

4. The 4NE Restrictive Housing Unit houses detainees that are not suitable for assignment to the General Housing Unit due to mental health issues, medical issues, safety reasons, and/or issues related to inmate conduct. (City's Exhibit 5).

5. Detainee Enoch Baisden was detained in the 4NE Restrictive Housing Unit and identified as suicidal.

6. Suicidal detainees must be physically observed once every fifteen (15) minutes at irregular intervals unless one-on-one supervision is required. The monitoring must be documented in the "Suicidal Log" adjacent to the cell by the Roving Officer. (City's Exhibit 5).

7. Suicidal detainees should be restrained in leg-irons when outside of their cells. Leg-irons should be applied for use during recreation. Restraints should only be removed for showering and replaced after the detainee completes their shower. (City's Exhibit 5).

8. Appellant allowed Detainee Enoch Baisden to leave his cell for free-time without restraining him with leg-irons. (City's Exhibit 10).

9. Detainee Baisden retrieved cleaning materials from the utility room to clean his cell.

10. Detainee Baisden went to Detainee Jeremy Herring's cell and sprayed a cleaning chemical in the crack of the cell door resulting in an injury to Detainee Herring's eye. (City's Exhibit 10).

11. Appellant indicated in the Suicidal Log that he observed Detainee Baisden at 11:15 a.m. and 11:30 a.m. on September 12, 2019. (City's Exhibit 10).

12. On October 10, 2019, Appellant entered 6NE Housing Unit with his cell phone. (City's Exhibit 10).

13. Appellant was observed in the recreation yard, looking at his phone and smoking while detainees were lined up against the wall and one detainee wandering around with a blanket. This was during at time that everyone should have been on lock down. (City's Exhibit 10).

DISCUSSION

The City presented evidence, and Appellant did not deny that Appellant failed to secure Detainee Baisden with leg-irons on September 12, 2019. While Appellant maintains that Detainee Baisden was going to shower, he admitted that Detainee Baisden did not shower and instead requested to clean his cell. Appellant testified that he believed Detainee Baisden was dangerous but offered no credible reason why he allowed Detainee Baisden to go to the utility room without restraint or why Appellant did not accompany Detainee Baisden to his cell knowing he was not properly restrained. The City's Standard Operating Procedure was clear as to the requirement for the Roving Officer to restrain detainees and to supervise detainees while they are cleaning. Appellant failed to do both.

Appellant argues that he was charged with a violation that he did not commit. Appellant is correct that the NFAA and the NPAA listed the wrong work rule number. Those documents listed Work Rule 2.62 rather than 2.63. Notably, the City recorded the specific charge on all relevant documents as "Personal Cell Phones Prohibited in Restrictive areas." It appears as though the listing of "2.62" was merely a scrivener's error. Reading the documents in their totality, Appellant was aware he was being charged with violating the cell phone policy. To the extent the NFAA alleges a violation of 2.62, the Board finds that there is evidence to support such violation. To the extent the NFAA defines the violation as "Personal Cell Phones Prohibited in Restrictive areas," the Board finds that the City presented sufficient evidence to justify disciplinary action. Appellant did not dispute that he had a cellphone on his person while in 6NE. Sergeant Jacqueline Thornton testified that on October 10, 2019, she encountered him in the recreation yard, on his phone, and smoking in contradiction of the work rules. Appellant never once denied the encounter with Sergeant Thornton but rather argued that she did not follow protocol by announcing herself. Presumably, an announcement would have prevented

Appellant from being caught in the act of violating the work rules. It would not, however, change the fact that Appellant had been violating the rules, compromising the safety of the detainees, and creating a liability issue for the City.

After hearing all of the testimony and reviewing all of the exhibits, the Board concludes, based upon the preponderance of the evidence, that the City was justified in this disciplinary action.

ORDER

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

Plemon El-Amin

Plemon El-Amin, Chair

Robert Hawkins

Robert Hawkins

Nkoyo-Ene Effiong

Nkoyo-Ene R. Effiong, DWB