CITY OF ATLANTA CIVIL SERVICE BOARD
ORDER

APPEAL NO. 2019-024AP

Effective Date: June 25, 2019
Hearing Date: November 7, 2019

APPELLANT:
Erick Arnold

HEARING OFFICERS:
E. Carl Touchstone, Chair
Mary Ann Phyall
Nkoyo-Ene R. Effiong, DWB

APPEARANCES

City of Atlanta ("City"):
None

Counsel/Representative:
Joseph Siegelman, Esq.
Nikkina Speaks

City of Atlanta's Witnesses:
Erick Arnold
Randall Slaughter
Bobby Stewart

Appellant:
Erick Arnold

Counsel/Representative:
None

Appellant's Witnesses:
Erick Arnold

Observers:
Alicia Wyatt-Bullman
Keshia Baytop
Crystal Green

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 in Conference Room 2174 of the City Hall Tower located at 68 Mitchell Street, Atlanta, Georgia.

## EXHIBITS

The City's Exhibits

1. City of Atlanta Atlanta Fire and Rescue Department Notice of Final Adverse Action dated June 14, 2019 (the "June NFAA").

2. City of Atlanta Atlanta Fire and Rescue Department Notice of Proposed Adverse Action dated June 10, 2019 ("NPAA").

3. City of Atlanta Atlanta Fire and Rescue Department Notice of Final Adverse Action dated February 22, 2019 (the "February NFAA").

4. Memorandum to Erick Arnold from Lieutenant B.L. Stewart dated October 9, 2017.

5. City of Forest Park Municipal Court Certified Disposition.

6. Pictures (4) of Car Accident.

7. City of Atlanta Fire Rescue Work Rule pg 27.

Appellant's Exhibits
None.

Stipulations Prepared by the City:

1. On September 29, 2017, I, Erick Arnold, was arrested for (1) aggravated assault with a deadly weapon, (2) 1st-degree criminal damage to property, (3) 2nd-degree cruelty to children, and (4) reckless conduct. Those charges remain pending.

2. On November 22, 2018, I, Erick Arnold, was the driver in a single-vehicle collision.

3. On February 27, 2019, I, Erick Arnold pled guilty to (1) DUI, (2) Driving on Wrong Side of Roadway, (3) Striking Fixed Object, and (4) Too Fast for Conditions related to the collision on November 22, 2018.

## VIOLATIONS

City of Atlanta, Atlanta Fire and Rescue Department Work Rules:

1.03 Conduct
1.05 Obey the Law

## CHARGES

*See* City of Atlanta, Atlanta Fire and Rescue Department 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 Fire and Rescue Department (the "Department") as a firefighter. He has been with the City for approximately eight (8) years.

2. On September 29, 2017, Appellant was involved in an altercation for which criminal charges were brought (the "September 2017 Incident"). The case is currently pending in adjudication in Fulton County.

3. The City administratively relieved Appellant from duty with pay on October 9, 2017, for a period of ten (10) days. (City's Exhibit 4).

4. Following those ten (10) days, Appellant was on administrative leave without pay. (City's Exhibit 4).

5. On November 22, 2018, Appellant was involved in a single-vehicle accident as the driver and was cited by a Forest Park police officer for DUI, Driving on Wrong Side of Roadway, Striking Fixed Object, and Too Fast for Conditions. (City's Exhibit 2).

6. On February 22, 2019, the City took corrective action against Appellant and suspended him for the September 2017 Incident effective March 3, 2019. (City's Exhibit 3).

7. On February 27, 2019, Appellant pled guilty to DUI, Driving on Wrong Side of Roadway, Striking Fixed Object, and Too Fast for Conditions. (City's Exhibit 5).

8. The City issued an NPAA to Appellant, which Appellant signed with a disciplinary action of "15 (12hr) days suspension w/o pay" signed by Fire Chief Slaughter. (City's Exhibit 2).

9. On June 14, 2019, the City sent Appellant the NFAA by certified mail with a disciplinary action of "dismissal" signed by Fire Chief Slaughter. (City's Exhibit 1).

## DISCUSSION

Following a second incident involving law enforcement, the City determined that Appellant violated the Atlanta Fire and Rescue Department Work Rules and terminated Appellant's employment with the City. Appellant challenges the decision of the City.

The facts, in this case, are concerning both procedurally and substantively. Based on the evidence presented by the City, Appellant had an otherwise unblemished discipline record with the Department until September 2017. In September 2017, Appellant was involved in an off-duty incident that the City determined was a violation of Work Rule 1.03 Conduct, and a potential violation of Work Rule 1.05 Obey the Law. In October 2017, Appellant was placed on administrative leave with pay for ten days, followed by administrative leave without pay pending adjudication of the criminal matter. To date, the criminal case is still pending, and the City has not determined whether Appellant violated Work Rule 1.05.

On November 22, 2018, Appellant was involved in a single-car collision where he was charged with and ultimately pled guilty to DUI, Driving on Wrong Side of Roadway, Striking Fixed Object, and Too Fast for Conditions. In the Department, the first DUI offense is subject to a 15-day suspension without pay. The NPAA, signed by the Fire Chief, listed a 15-day suspension without pay as the disciplinary action. Under the NPAA, Appellant had until June 12, 2019, to present an oral or written response at the Office of Professional Standards. On June 14, 2019, the City sent Appellant the June NFAA via certified mail informing him that disciplinary charge was now dismissal. The June NFAA stated that Appellant was

being dismissed because "at the time of this accident, you were on 'Suspension without pay pending the adjudication of criminal court action.'" (City's Exhibit 1).

This concerns the Board for two reasons. First, at the time of the accident, November 2018, Appellant was on administrative leave, not suspension. According to the February NFAA, the suspension was effective March 3, 2019, well after the accident occurred. The City testified that administrative leave is not a disciplinary action. Thus, Appellant was not subject to any discipline at the time of the accident or when he pled guilty to the charges. For reasons unbeknownst to the Board, Appellant's status, which had been administrative leave without pay for eighteen months, was changed to suspension in February 2019. The City did not explain why Appellant's status was suddenly changed. It is not the Board's charge in this appeal to determine the properness of the February NFAA and discipline. The Board notes, however, that the change in status seems arbitrary. Furthermore, the change does not seem to be predicated on anything related to the September 2017 Incident.

Second, the City has a duty to follow its policies and procedures. The Board acknowledges that the fire chief has authority "to administer corrective and disciplinary action, to formulate rules and regulations for the operation of their departments." City of Atlanta Code 114-526(b). That does not absolve a fire chief from complying with any process the Code affords to its employees.

The Code is silent as to whether the disciplinary action listed in the NPAA must match the disciplinary action listed in the NFAA. Notwithstanding, the fundamental principles of notice would suggest it should. Employees should be aware of what disciplinary action the City intends to take. The Board is gravely concerned that Appellant was told he would be suspended and then received a letter in the mail indicating that he was dismissed. By the time the City informed Appellant of his dismissal, his opportunity to present an oral or written response to the Office of Professional Standards had already lapsed. (City's Exhibit 2).

Furthermore, there is a significant difference between a 15-day suspension and a dismissal. To the extent the Fire Chief determined that a different disciplinary action was warranted, which is under his authority to do, he should have rescinded the initial NPAA and reissued a new NPAA with the new disciplinary action. Upholding the City's discipline here would greenlight a disingenuous notice practice. That is a slippery slope that the Board cannot endorse.

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 <u>was not</u> justified in this disciplinary action.

## ORDER

Based on the foregoing, the Board **MODIFIES** the Appellant's dismissal to a 30-day suspension without pay for the November Incident. Following the 30-day suspension, Appellant should return to his status of suspended pending the adjudication of his criminal matter. No back wages or benefits apply because Appellant was otherwise on administrative leave without pay or suspension without pay.

This the 17th day of December 2019.

Signed:

*E. Carl Touchstone*

E. Carl Touchstone, Chair

*Mary Ann Phyall*

Mary Ann Phyall

*Nkoyo-Ene R. Effiong*

Nkoyo-Ene R. Effiong, DWB