CITY OF ATLANTA CIVIL SERVICE BOARD
FINDINGS OF FACT AND ORDER

APPELLANT: **MICHAEL JONES**
Department of Aviation (Department)
City of Atlanta (City)

APPEAL NO. 2018-045AP
Effective Date: November 9, 2018
Hearing Date: June 24, 2021

ACTION:
DISMISSAL

HEARING OFFICERS
Sterling P. Eaves, Chair
Robert Hawkins
Mary Ann S. Phyall, DWB

APPEARANCES

City of Atlanta Representatives:
Alisha Marie S. Nair, Esq.
Joel Callins, Esq.
John Brogdon, Esq.

City Witnesses:
Janulyn Lennon, Interim Gen. Mgr., Atlanta Airport
Jerry Edwards, Sr., Security Division Mngr. - Retired
Paul Myer, Asst. General Manager for Operations

Appellant Representative:
Pro Se

Appellant's Witnesses:
Michael Ross, former Dir. of Maintenance – Atlanta Airport
Michael Jones, Appellant

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:

C-1 City of Atlanta Aviation Fingerprinting SOP
C-3 Atlanta City Code § 114-528
C-4 Notice of Proposed Adverse Action (NPAA)
C-5 Notice of Final Adverse Action (NFAA)

Appellant:

A-1 Security Identification Badge Application (SIDA) revised 11/2018
A-2 NPAA and USPS tracking information
A-3 Civil Service Appeal Form

STIPULATIONS

None

CHARGES

DISMISSAL- for violation of the City of Atlanta Municipal Code of Ordinance: §114-528 (b)(2) Cause for Action - *Incompetence, inability or failure to perform assigned duties, including but not limited to loss of job requirements, such as the loss of a required license.*

INFRACTION

See City of Atlanta Notice of Final Adverse Action (NFAA) (Exhibit C-5)

FINDINGS OF FACT

1. The Appellant, Michael Jones was employed by the City of Atlanta in the Department of Aviation as a Facility Maintenance Mechanic Senior. At the time of his dismissal, the Appellant stated that he maintained a personnel record clear of any disciplinary action during his 15 ½ years of employment.
2. On July 29, 2018, the Appellant was arrested for an altercation that occurred off City property. The Appellant had not notified his supervisor of the incident.
3. In August 2018, a news article regarding the incident was provided anonymously to the department management triggering an investigation.
4. The department's security division verified the information that the Appellant had been arrested and that charges were pending.
5. On September 5, 2018, the Appellant was called to a meeting with management.

6. The Airport Director of Security advised the Appellant that his pending charges were considered disqualifying criminal offences that prevented him from holding a security identification display area badge (SIDA). (Exhibit C-1)
7. A SIDA badge allows unescorted access to secured areas at the Atlanta airport, the Appellant's work location.
8. The Director allowed the Appellant 30 days to provide the department with a disposition of the charges. Immediately following the meeting, she placed the Appellant on administrative leave.
9. On October 26, 2018 the City sent the Appellant a NPAA via certified mail to the Appellant. (Exhibit A-2)
10. On November 6, 2018, the City sent the Appellant the NFAA with a disciplinary action of dismissal effective November 9, 2018. (Exhibit C-5)
11. The Appellant was indicted on criminal charges February 5, 2019.

DISCUSSION

The Appellant, Michael Richard Jones, in his opening statement, declared that he was eager to have the opportunity to address the Board and his former managers to find out why he was dismissed. The parties differed substantively on several issues of the case.

The City's first witness, Atlanta airport Gen Mngr. Janulyn Lennon, held the position of Director of Security at the time. She explained that the Appellant was dismissed from his city position because he no longer qualified for a SIDA badge due to pending criminal charges against him. Ms. Lennon was asked if there is a SOP for when the department learns a current employee has pending criminal charges? She answered, No.

However, what appears airport management observed to discipline the Appellant was the department's SOP - Fingerprinting Standing Operating Procedures. (Exhibit C-1) The process described in the SOP was for the fingerprinting of applicants, not for employees who are arrested. For example, presented during the hearing as evidence by the City under Determination of arrest status on page 3, all of the instructions listed do not apply to the Appellant's situation. Additionally, Michael Ross, witness for the Appellant, pointed out during his testimony that under Disqualifying Criminal Offenses on page 1 of the same exhibit, it states, *An individual has a disqualifying criminal offense if the individual has been convicted…* In that instance, the

city did not provide clarity as to why this SOP applied in this case with such wording when the Appellant had been arrested and not convicted.

During cross examination, the Appellant questioned Ms. Lennon about the location of a copy of his SIDA badge application. Federal regulations require airport management to maintain badge applications and associating documents 180 days after the termination of an employee's unescorted access authority. When files are no longer being maintained, the records must be destroyed. The Appellant contended that this document was vital to his appeal.

The Appellant argued that item #10 on the SIDA application form he completed in 2017 stated, *I must disclose to the Airport Security Coordinator and/or supervisor within 24 hours if I am convicted of any disqualifying criminal offense that occurs while I am in possession of an ATL Badge*. Thereby, placing him under a different rule that was revised on the 11/2018 application form after his dismissal. #10 was revised to include the words **charged and/or** before the word convicted. (Exhibit A-1)

The City did not challenge nor did they present proof during the hearing that the Appellant was under the rules of the revised SIDA application.

Michael Ross, former Director of Maintenance at the Atlanta airport worked with the Appellant over several years and considered him a valued and skilled employee who was selected to attend specialized training on new equipment just before his dismissal. He testified that he attended a discipline meeting with two other airport managers and the Appellant. He was surprised that there was no Union representation nor an employee witness in attendance – both allowed and usually present at such meetings. He continued saying that he felt that the dismissal was harsh and other forms of discipline were available to management, such as leave with pay, a work re-assignment off airport and even, being escorted to his work location area until the legal matters were settled. He testified that it was common knowledge that these options were afforded to other employees.

Employees should be aware and have a clear understanding of the disciplinary action taken against them by the City. The procedures followed by airport management did not apply to the Appellant's individual case. This case was presented to the Board with little documentation to support the allegations made against the Appellant and to warrant a loss of a position held for 15 plus years.

Furthermore, there are significant differences between an arrest, a charge and a

conviction. If the #10 rule listed on the SIDA application is as the Appellant argued and, the City did not dispute, the Board believes that the Appellant was qualified to hold a SIDA badge and thereby, should have been allowed to retain his work position until his criminal matter was adjudicated. Clear and convincing evidence was not presented by the City.

Finally, the Board acknowledges that airport management has authority to administer disciplinary action, however the Board questions if this authority extends to dismissing an employee before a conviction.

After careful consideration of all the testimony, reviewing all of the exhibits, and for all the foregoing reasons, the Board believes that the City's action to dismiss the Appellant was not merited. The City bears the burden of proof in all Board appeals and, in this case, the City did not meet its burden of proof. The Board concludes it is unable to sustain the discipline of the Appellant.

ORDER

The appeal of MICHAEL JONES is Granted.

This the 12 day of July 2021.

Respectfully submitted,

Robert Hawkins
Robert Hawkins

Mary Ann Phyall
Mary Ann S. Phyall, DWB

Sterling Eaves
Sterling P. Eaves