CITY OF ATLANTA
CIVL SERVICE BOARD

APPEAL No. CSB 2023-021

Effective Date: June 28, 2023

Hearing Date: August 24, 2023

APPELLANT:
Russell Banks

CITY OF ATLANTA DEPARTMENT:
Department of public Works

ADVERSE ACTION:

3-Day Suspension

HEARING OFFICER:

Constance C. Russell

APPEARANCES

City of Atlanta Representative:
Kin Frazier

Appellant Representative:
Lavella Varnam

EXHIBITS

City of Atlanta:
C-1 Samsara Video
C-2 City Safety Investigation Report
C-3 City Vehicle Use Policy

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 ("the Code"), a hearing in the above-referenced case was held before the above-named hearing officer of the Atlanta Civil Service Board ("the Board") on the date set forth above, via a Zoom Webinar, facilitated by the City, pursuant to Mayor Andre Dickens' Executive Order regarding the Covid-19 Pandemic.

BASIS FOR ADVERSE ACTION

Section 114-528 (b)

(1) Negligence in performing assigned duties.

(20) Any other conduct or action of such seriousness that disciplinary action is considered warranted.

PANEL FINDINGS AND CONCLUSIONS

Appellant, an employee in the Department of Public Works, was involved in a motor vehicle accident on March 31, 2023, while driving a City vehicle. The City determined based upon its review of video footage that the Appellant was responsible for the accident because of a purported failure to yield the right of way to another driver while attempting to merge into traffic. A fifteen-day suspension was the recommended discipline. Appellant has been employed with the City for twenty-two years without any prior incidents. Because of his work history Appellant was only given a three-day suspension for the accident.

Appellant filed this appeal because he contends the accident was not his fault. The evidence presented by the City consisted of the City's investigative report, a Samsara video and the City's vehicle use policy. The evidence was presented through the testimony of Tracy Chambers, Deputy PMO. Ms. Chambers was not present at the accident and did not prepare the investigation report. Appellant and Sanquavious Dixon, a City employee who was riding with Appellant at the time of the accident, testified for Appellant.

The City's motor vehicle policy provides that accidents are to be investigated to determine whether an accident was the result of an employee's negligence or abuse. An employee may be subject to discipline if he operates a vehicle in a careless or negligent manner. An employee may also be disciplined if an accident is "preventable" meaning that the "accident would not have occurred if the employee had exercised due care and attention, regardless of whether a citation was issued by the police." Appellant was disciplined in the present case for purported violation of the vehicle policy for a preventable accident.

The evidence presented at the hearing in this matter is contested. It is the City's position that the evidence supports the conclusion that Appellant was at fault for the accident that occurred on March 31, 2023. The City pointed to the Samsara video footage and the contention that Appellant received a citation for failing to yield. Appellant testified he did not receive a citation. No traffic citation was presented in evidence. The Hearing Officer notes that the grounds for discipline are based upon a determination that the accident was preventable, which does not require proof of a citation. Therefore, the absence of a citation is not dispositive.

The Appellant testified that the accident was caused when a vehicle attempted to go around him to pass on the driver's side and hit the City vehicle. Another City employee was in the vehicle and also testified that the accident was caused by a vehicle attempting to pass the City vehicle on the driver's side. The crux of the City's case rests on its interpretation of the Samsara video footage. The City argues the video shows the Appellant was at fault.

Based upon viewing the video evidence the Hearing Officer finds that it is inconclusive. The video vantage point is from inside the vehicle. Presumably because of the City vehicle height, the video does not show the point of contact or circumstances of contact between the City vehicle and the other vehicle involved in the accident.

The description of the damage to the two vehicles in the City's investigation report is consistent with Appellant and his witness's version of events. The damage to the City vehicle was on the driver side front bumper and headlight. The other vehicle had damage from the passenger side door to its rear bumper. The damage description is consistent with the citizen vehicle being in motion to get ahead of the City vehicle to go around and failing to clear the City vehicle. The Appellant also specifically described the City vehicle bumper being pulled out and away from the vehicle body, a damage pattern compatible with the testimony that the citizen vehicle was moving, failed to clear and hit the City vehicle. The City presented no evidence such as pictures of the damage to its vehicle to refute the testimony of Appellant and his co-worker.

The fact that an accident occurred is not standing alone sufficient to support disciplining an employee. Rather, the City must establish that the employee was at fault or that the accident was preventable but for some failing by the employee. The testimony of the Appellant and his witness was credible. The City did not present evidence sufficient to meet its burden of proof that the accident was preventable but for some fault of the employee.

ORDER

Accordingly, based on the evidence presented and for the reasons stated above, the discipline of suspension imposed by the City against the Appellant is **Reversed** and the **Appeal is Granted**.

This 18th Day of September, 2023.

/s/ *Constance Russell*

Constance Russell, Hearing Officer