CITY OF ATLANTA
CIVIL SERVICE BOARD

FINDINGS OF FACT AND ORDER

APPEAL NO. 2023-020

Effective Date: July 5, 2023
Hearing: February 8, 2024

APPELLANT – **Marilyn Gates**
Department of Watershed Management

ACTION:
Dismissal

HEARING OFFICERS/BOARD
Constance C. Russell, Chair
Suzanne Wynn Ockleberry
Herman L. Sloan, DWB

APPEARANCES

City of Atlanta Representative:
Mohammad Nielsen, Esq.
City of Atlanta Law Department

Appellant Representative:
Carole Jones

City Witnesses:
Candace Kollas,
Deputy Commissioner of the Compliance and Regulations Division,
Department of Human Resources

Tanesha Billingsley, Director
Office of Medical Leave
Department of Human Resources

Jennifer Hicks
Human Resource Director,
Department of Watershed Management

Appellant Witnesses:
Marilyn Gates, 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 ("the Code"), a hearing 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, via a Zoom Webinar, facilitated by the City of Atlanta ("City"), pursuant to Mayor Andre Dickens' Executive Order regarding the Covid-19 Pandemic.

EXHIBITS*

City Exhibits:

C- Fitness for Duty Assessment (dated August 26, 2020)
C-2 Fitness for Duty Assessment (dated January 28, 2022)
C-3 Notice of Proposed Adverse Action (NPAA)
C-4 City of Atlanta Code of Ordinances, Sections 114-527 - 530
C-5 Notice of Final Adverse Action (NFAA)

Appellant's Exhibits:

None.

STIPULATIONS

None.

VIOLATIONS

City of Atlanta Code of Ordinances Section 114-528(b)(8) and (b)(20)

"The following actions constitute cause for which disciplinary action may be imposed but the imposition of disciplinary action shall not be limited to such offenses:

****

(8) Absence without official leave."

*The record as maintained by the court reporter is the official record of the exhibits admitted into evidence during the hearing.

***

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

SPECIFIC CHARGES

Appellant was evaluated twice for fitness for duty and determined to be "disqualified" to return to work. As a prerequisite to engaging in the interactive accommodation process mandated by the Americans with Disability Act (ADA), Appellant was provided with paperwork to be completed by Appellant's healthcare provider. The purpose was to notify the Office of Medical Leave (OML) Appellant's medical condition and the anticipated duration of the impairment. Appellant failed to return the completed medical paperwork to the OML, to begin the interactive accommodation process.

FINDINGS OF FACT

1. Marilyn Gates was employed by the City Department of Watershed Management.
2. As a consequence of a knee injury, Marilyn Gates had been absent from work since 2019.
3. On August 26, 2020, Marilyn Gates was evaluated to determine "fitness for duty."
4. On January 28, 2022, Marilyn Gates was again evaluated to determine "fitness for duty."
5. On June 20, 2023, a Notice of Proposed Adverse Action (NPAA) was issued to Marilyn Gates for violating City Code of Ordinances Sections 114-528(b)(8) and (b)(20), absence without official leave and any other conduct or action of such seriousness that disciplinary action is considered warranted.
6. On June 30, 2023, a Notice of Final Adverse Action (NFAA) was issued to Marilyn Gates for violating City Code of Ordinances Sections 114-528(b)(8) and (b)(20), absence without official leave and any other conduct or action of such seriousness that disciplinary action is considered warranted.

7. As of the date of the hearing Marilyn Gates had not provided documentation from her healthcare provider indicating that she is "fit to return to work".

DISCUSSION

Pursuant to Mayor Andre Dickens' Executive Order and COVID-19 pandemic guidelines, the appeal by Marilyn Gates was called virtually at 10:00a.m., on February 8, 2024, via the Zoom Internet platform.

The City's first witness was Candace Kollas. Ms. Kollas testified she was employed as Deputy Commissioner of the Compliance and Regulations Division of the Department of Human Resources. According to her the OML is one of the offices within the Compliance and Regulation Division. It is in this capacity that she first became familiar with Appellant. Appellant was an employee with the Department of Watershed Management and had been out on paid medical leave since December 2019. Ms. Kollas testified that Appellant was sent to be

evaluated to determine her fitness to return to duty on August 26, 2020 (CE # 1), and on January 28, 2022(CE# 2). Ms. Kollas testified that it was determined after each assessment that Appellant could not safely return to work. According to Ms. Kollas on January 28, 2022, at her fitness for duty assessment, Appellant was instructed that she needed to provide documentation to OML from her health care provider describing her condition, a plan of care and a determination as to whether she was cleared to return to work. Ms. Kollas testified that on May 4, 2023, the OML provided Appellant with ADA paperwork to be completed by Appellant's health care provider. Ms. Kollas testified that the OML cannot determine whether an employee has a disability as defined under the ADA and engage the employee in the interactive accommodation process unless the employee provides documentation from a health care provider setting forth the impairment and the extent of any requested accommodation. Ms. Kollas testified that the OML has not received any such documentation from Appellant or Appellant's health care provider. Ms. Kollas testified that the NPAA was issued on June 20, 2023, because of the Appellant's failure to engage in in the ADA accommodation process by providing the requisite medical documentation (CE # 3).

On cross-examination, Ms. Kollas testified that she was unaware of any written standards directing the City as to how it is to send ADA paperwork to an employee. Ms. Kollas testified that the file indicated that Appellant was provided the ADA paperwork via email. According to Ms. Kollas, the medical personnel that performed the "fit for duty" assessments on Appellant were unable to render an opinion regarding Appellant's fitness for duty, because Appellant did not provide the requested medical records from Appellant's health care provider.

The City's next witness was Tanesha Billingsley, who has been the Director of the Office of Medical Leave since December 2023. Ms. Billingsley testified that she manages the City's ADA interactive accommodation process. She testified that it is her responsibility to assist employees in obtaining any necessary paperwork, as it pertains to the employee's ability to safely perform the essential duties of their job. Ms. Billingsley testified that she provided Appellant with the paperwork to begin the ADA interactive accommodation process. Ms. Billingsley testified that she spoke with Appellant over the telephone and that during this conversation Appellant provided her with an additional email address. Ms. Billingsley testified that the request for the Appellant to provide medical documentation from her health care provider was mailed to the Appellant by certified mail and was emailed to Appellant to two separate email addresses provided by Appellant. Ms. Billingsley testified that Appellant failed to provide the requested medical documentation.

On cross examination, Ms. Billingsley testified that the two email addresses to which she sent the request for Appellant to provide the medical records, were addresses provided to her by the Appellant. She also testified that the address to which the request was sent certified mail would have been the address the Department had on file for Appellant. Moreover, Ms. Billingsley testified that she spoke with Appellant after she emailed her the request for the medical paperwork to ensure that Appellant had received it.

The City's final witness was Jennifer Hicks. Ms. Hicks testified that since June/July 2021, she has been a Human Resources Director supporting the Department of Watershed Management. Ms. Hicks testified that Appellant was a long-time Department of Watershed Management employee who began her tenure in a janitorial capacity and her last position was in the mail room. Ms. Hicks testified that Appellant has been off work on paid administrative leave since 2019. According to Ms. Hicks, the Department had Appellant evaluated on two occasions to determine whether appellant could be safely returned to work.

Ms. Hicks testified that Appellant was absent without official leave.

Ms. Hicks testified that Appellant was provided with the required ADA paperwork to be completed by her heath care provider. Ms. Hicks testified that if Appellant had provided the completed paperwork from her health care provider setting forth her physical limitations, then the Department would have undertaken the process of determining what accommodation would be appropriate or if there was another job within the department that Appellant could perform consistent with the limitations contained in the ADA paperwork. Ms. Hicks testified that if an employee does not submit the requested medical documentation, the Department is unable to make a determination regarding any appropriate accommodation. Ms. Hicks testified that no medical documentation was ever submitted to document the extent of the Appellant's impairment. Ms. Hicks further testified that Appellant's failure to complete the paperwork and start the ADA process is why the NPAA process began.

On cross examination, Ms. Hicks testified Appellant was first offered accommodations under the ADA in 2019. Ms. Hicks testified that on August 20, 2019, she emailed Appellant the paperwork to begin the process. Ms. Hicks testified that she was transferred in October 201. However, when she returned in 2021, she determined that Appellant was still out on leave and that no determination had been made regarding Appellant's fitness for duty.

Appellant testified that in 2019 she had surgery but was not offered any ADA accommodations. She testified that in 2020, instead of an ADA accommodation, she was offered workers' compensation. The Appellant testified that after being on workers' compensation, she was placed on administrative leave, and she remained on administrative leave until she was terminated. She testified that that she was never offered accommodations under the ADA. Appellant testified that she is unable to bend her knee and that she is in constant pain. Appellant testified that no one ever told her about completing any paperwork pertaining to accommodations under the ADA.

The evidence presented to the Board was that the Appellant had been off work since 2019. Moreover, the evidence showed that the City, specifically, the OML, had endeavored to get the Appellant involved in the ADA interactive accommodation process, to determine what, if any, accommodations would be needed to safely return Appellant to work. There was no evidence that Appellant ever provided the OML with the requested medical documentation. The Board finds that it is more credible that Appellant was provided with the medical documentation request

for the ADA documentation. The uncontroverted testimony was that the request was mailed to Appellant via certified mail and emailed to Appellant to an email address provided by Appellant. The Board received no evidence in mitigation of Appellant's failure to submit the requested medical documentation.

ORDER

Accordingly, the Board **SUSTAINS** the discipline imposed by the City against Appellant and **DENIES** the appeal.

This 11th day of March 2024.

Constance C. Russell
Constance C. Russell, Chair

Suzanne Wynn Ockleberry
Suzanne Wynn Ockleberry

Herman Sloan
Herman L. Sloan, DWB