



CIVIL SERVICE COMMISSION

City of Tucson

Minutes

**Daniel Atkinson
Appeal of Suspension
Tucson Police Department
April 2, 2015**

A quorum of the Civil Service Commission of the City of Tucson met at 9:00 a.m. on Thursday and April 2, 2015, at the City of Tucson Commerce Sentinel Building, 320 S. Commerce Loop Park in Tucson, Arizona for an Appeal of Suspension filed by Daniel Atkinson from the Tucson Police Department.

Present were Chair Arnold Elias, Commission Members Malcom Pavey and Max Parks. Staff present: Barry Corey, Legal Counsel; Tameron Collins, Human Resources Deputy Director; and Armida Saufley, Executive Assistant of Human Resources (Recording Secretary).

Mr. Michael Pang of Yen Pilch & Landeen, represented Officer Atkinson. Ms. Sivan Korn, Principal Assistant City Attorney, represented the Tucson Police Department. Chief of Police Villasenor was also present.

Per Exhibit A, Officer Atkinson has been charged as follows:

The actions and behaviors of Officer Atkinson #44793 are fully documented in Internal Affairs Investigation file OIA #14-0503 and incorporated herein, providing just cause for a suspension in the amount of 80 hours and are synopsized below.

- I. Behavior Officer Atkinson knew or reasonably should have known would result in disciplinary action.

On July 27, 2014, Officer Atkinson took custody of a female arrestee from a shoplifting investigation. While transporting the female to jail, she slipped a hand out of her handcuffs, reached out the partially rolled down window of the patrol car, opened her unlocked door from the outside and jumped out of the moving vehicle. The female was transported to UMC for treatment of her injuries which included abrasions to her arms, hips, legs and face as well as a broken rib.

- II. Violations of Department Policy and General Orders.

The investigation of OIA #14-0503 established that Officer Atkinson was in violation of Tucson Police Department policy. A review conducted by Officer Atkinson's Chain of Command has determined that Officer Atkinson violated the following General Orders:



1330.2 Obedience to General Orders, Procedures and Policies Required

All members shall observe and obey all laws, City Administrative Directives, Department General Orders, Department procedures and policies, as well as any procedures and policies established by their Commanders.

General Orders, Section 2112.3 Transporting Prisoners

The prisoner will be transported in a screened unit, handcuffed and restrained by use of a seatbelt or other restraining device in a manner that will prevent injury to the prisoner and the officer. Officers transporting prisoners will seat the prisoner or situate themselves in order to monitor the activities of the prisoner.

General Orders, Section 1330.7 General Standards of Expected Conduct

Members shall not engage in any conduct, whether on or off duty, which is unbecoming or detrimental to their duties, position or the Department. All members shall conduct their private and professional lives in such a manner as to avoid adverse reflection upon the Department or themselves as members of the Department.

Lieutenant Hall stated the following, *"The escape of a handcuffed prisoner from a uniformed officer in a marked patrol car, absent mitigating factors beyond the control of the officer, is absolutely an act that reflects unfavorably upon the department to the degree that the community may call into question the competency and professionalism of the agency and its membership as a whole."*

III. Prior Discipline

Officer Atkinson's disciplinary history contains the following:

- Sustained Type C/Level 4 20-hour suspension for a violation of General Order 1330.2 that occurred on November 10, 2012. Under OIA #12-0509, it was determined Officer Atkinson had police equipment stolen from his vehicle
- Sustained Aggravated Type C/Level 5 60-hour suspension for a violation of General Order 1330.2 that occurred on August 30, 2013. Under OIA #13-0547, it was determined Officer Atkinson had reported for duty while under the influence of alcohol



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- Sustained Type B/Level 2 Written Reprimand for a violation of General Order 1330.25A that occurred on October 3, 2013. Under OIA #13-0622 Officer Atkinson was disciplined for tardiness
 - Sustained Type A/Level 2 Written Reprimand for a violation of General Order 1330.24 that occurred on December 20, 2013. Under OIA #14-0011 Officer Atkinson lost his BC-26 Key

IV. Disciplinary Action

Based on a review of the Tucson Police Department management, the Chief of Police has determined Officer Atkinson committed a Type C/Level 6 violation with the presumptive sanction imposed. Due to Officer Atkinson's actions in this matter, the listed violations constitute just cause for suspending Officer Atkinson from duty without pay for a total of 80 hours. The listed violations constitute just cause for an 80 hour suspension from duty.

This appeal was held in Open Session; however, the rule was invoked.

Witnesses present were sworn:

Roberto Villasenor
Daniel Atkinson
Nancy Fatura

9:20 – 9:32 Ms. Korn's opening statement

9:32 – 9:36 Mr. Pang's opening statement

9:36 – 9:45 Ms. Korn moved to admit City's Exhibits; Appellant's Exhibits also entered into the record as follows:

City's Exhibits Admitted

Exhibit A Tabs 1 – 4 Admitted with No Objection

Tab 1 – Attachment A dated November 5, 2014

Tab 2 – Notice of Intent to Discipline dated November 15, 2014

Tab 3 – PARF dated November 30, 2014

Tab 4 – Request for appeal dated December 23, 2014

Exhibit B Tabs 1 – 9 Admitted with No Objection

Tab 1 – TPD Office of Internal Affairs File #14-0503



Tab 2 – Ofc. Daniel Atkinson, Personnel Report re: Prisoner Jumping from My Moving Vehicle dated July 27, 2014

Tab 3 – Sgt. Nancy Fatura Personnel Report re: OIA #14-0503

Tab 4 – Lt. Kevin Hall Personnel Report re: OIA #14-0503

Tab 5 – TPD General Orders, Arrest Policies, §2112.3, Transporting Prisoners

Tab 6 – TPD General Orders, Arrest Policies, §2162, Prisoner Handling Procedures

Tab 7 – TPD Discipline Matrix

Tab 8 – Tucson City Code Section 10-3, definition of "Just Cause"

Tab 9 – Tucson Police Department Job Description: Police Officer

Exhibit C Tabs 1 – 20 Admitted with No Objection

Tab 1 – Attachment A dated January 23, 2013 Re: Office of Internal Affairs File #12-0509, Stolen Taser, 20-hour Suspension

Tab 2 – Lt. Tim Gilder Personnel Report dated December 11, 2012 Re: Office of Internal Affairs File #12-0509, Stolen Taser

Tab 3 – Cpt. George Rodriguez Personnel Report dated December 13, 2012 Re: Office of Internal Affairs File #12-0509, Stolen Taser

Tab 4 – Sgt. Marcy Cox Personnel Report dated January 23, 2013 Re: Unreported Vacation and Incomplete Paperwork

Tab 5 – Sgt. Marcy Cox Memorandum dated February 14, 2013 Re: Tardiness

Tab 6 – Lt. Tim Gilder dated September 25, 2013 Personnel Performance Report Re: Failure to Attend Meetings

Tab 7 – Lt. Tim Gilder dated September 25, 2013 Memorandum of Understanding

Tab 8 – Capt. Greg Roberts Memorandum dated October 7, 2013 Re: Ofc. Daniel Atkinson #44793 Reassignment

Tab 9 – Written Reprimand dated October 21, 2013 Re: Office of Internal Affairs File #13-0622, Tardiness

Tab 10 – Cpt. Greg Roberts Personnel Report dated October 4, 2013 Re: Office of Internal Affairs File #13-0622

Tab 11 – Lt. Tim Gilder Personnel Report dated October 4, 2013 Re: Office of Internal Affairs File #13-0622

Tab 12 – Attachment A Re: Office of Internal Affairs File #13-0547 Responding to SWAT Callout, 60-hour Suspension

Tab 13 – Lt. Tim Gilder Personnel Report dated December 6, 2013 Re: Office of Internal Affairs File #13-0547

Tab 14 – Cpt. Greg Roberts Personnel Report dated December 9, 2013 Re: Office of Internal Affairs File #13-0547

Tab 15 – Cpt. George Rodriguez Memorandum dated November 4, 2013 Re: Ofc. Daniel Atkinson #44793

Tab 16 – Sgt. Ben Frie dated November 17, 2013 Personnel Report Re: Ofc. Atkinson



Tab 17 – Written Reprimand dated January 1, 2014 Re: Office of Internal Affairs File #140-0011, BC26 Key

Tab 18 – Sgt. Ben Frie Personnel Report dated January 25, 2014 Re: Office of Internal Affairs File #140-0011, BC26 Key

Tab 19 – Ofc. Moreno Alberto Case Summary Report dated December 20, 2013 Re: Office of Internal Affairs File #140-0011, BC26 Key

Tab 20 – Conditions of Continued Employment dated November 25, 2014

Appellant's Exhibit Admitted

Exhibit 1 Tabs 1, 2, 3, 5 Admitted No Objection

Tab 1 – Internal Affairs File #14-0503

Tab 2 – Attachment A

Tab 3 – PARF

Tab 4 – Not Admitted into Evidence

Tab 5 – TPD General Orders 1300 Code of Conduct

City called first witness, Sgt. Nancy Futura

9:45 – 10:16 Sgt. Futura gave testimony

10:16 – 10:30 Sgt. Futura was cross examined

10:30 – 10:42 Sgt. Futura gave testimony on redirect; the Commission asked clarifying questions and witness was excused

10:43 – 10:53 Break

City called second witness, Lt. Kevin Hall

10:54 – 11:16 Lt. Hall was sworn and gave testimony

11:16 – 11:38 Lt. Hall was cross examined; the Commission asked clarifying questions and witness was excused

11:38 – 11:43 Break

City called third witness, Cpt. George Rodriguez

11:43 – 12:12 Cpt. Rodriguez was sworn and gave testimony

12:12 – 12:16 Cpt. Rodriguez was cross examined and witness was excused

12:20 – 1:12 Lunch Break

City called fourth Witness, Police Chief Roberto Villasenor

1:12 – 1:26 Chief Villasenor gave testimony

1:26 – 1:36 Chief Villasenor was cross examined; the Commission asked clarifying questions and witness was excused



1:37 City Rests

Appellant called first Witness, Ofc. Anthony Sandoval

- 1:38 – 1:53 Ofc. Anthony Sandoval was sworn and gave testimony
- 1:53 – 2:03 Ofc. Sandoval was cross examined
- 2:03 – 2:13 Ofc. Sandoval gave testimony on redirect; the Commission asked clarifying questions and witness was excused

2:13 – 2:14 Break

Appellant called second Witness, Ofc. Daniel Atkinson

- 2:18 – 2:42 Ofc. Atkinson gave testimony
- 2:42 – 3:05 Ofc. Atkinson was cross examined; City moved to admit City's Exhibit D
City's Exhibit D Admitted with No Objection
Email from Frank Flocco to Officer Atkinson Subject: Grievance
G-2014-03 forwarded to Julianne Hughes as FYI

2:51 Appellant Rests

- 2:51 – 3:05 Commission asked clarifying questions of Ofc. Atkinson
- 3:05 – 3:13 City Closing Argument
- 3:13 – 3:17 Appellant Closing Argument
- 3:17 – 3:19 Rebuttal Argument
- 3:20 – 3:30 Civil Service Commission Deliberations

In open session, at the conclusion of closing statements, based on the testimony presented and the exhibits admitted into evidence, Commissioner Parks made a motion to deny the appeal of Daniel Atkinson and uphold the suspension for the reason that there was just cause for the disciplinary action imposed. Commissioner Pavey seconded the motion. The vote was unanimous.

Hearing Adjourned at 3:30 p.m.


Arnold Elias, Chair
Civil Service Commission

4/20/15
Date