



CIVIL SERVICE COMMISSION

City of Tucson

Minutes

**Thomas Figueroa
Appeal of Termination
Parks & Recreation Department
June 6, 2016**

A quorum of the Civil Service Commission of the City of Tucson met at 9:00 a.m. on Monday, June 6, 2016, at the Community Resources Center, Sentinel Building, 320 S. Commerce Loop Park in Tucson, Arizona for an Appeal of Termination filed by Thomas Figueroa from the Parks & Recreation Department.

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

Ms. Sheri Van Horsen and Mr. Michael Katz, AFSCME Local 449, represented Mr. Figueroa; Mr. Baird Greene, Principal Assistant City Attorney, represented the Parks & Recreation Department. Director Fred Gray was also present.

I. Actions Mr. Figueroa knew or reasonably should have known would result in disciplinary action.

On March 24, 2016, a lead groundskeeper and co-worker had contact with Mr. Figueroa at approximately 7:45 a.m. During their interaction with Mr. Figueroa they observed that he smelled of alcohol, his eyes were red and glossy, and he was acting in an obnoxious manner, which is not Mr. Figueroa's normal demeanor. These observations were brought to the attention of Parks Area Supervisor, Manny Mendez. Mr. Mendez and Jolene Hansen, Departmental Management Assistant, met with you at Rudy Garcia Park Maintenance Compound, located at 5001 S. Nogales Hwy. at 8:50 a.m.

Mr. Mendez asked Mr. Figueroa if he was feeling okay, and he responded, "Yes I am just fine." Mr. Mendez asked once again, "Are you sure you are okay?" and Mr. Figueroa responded, "Yes". When asked if he had been drinking, he admitted to having some drinks the night before. When asked approximately what time he stopped drinking, his response was, "about 8 p.m."

While speaking with Mr. Figueroa, Mr. Mendez immediately observed that his breath and body smelled of alcohol. Mr. Mendez also documented other observations, for example, Mr. Figueroa had red, glassy eyes, a delayed response when answering questions, verbally loud, easily irritated when asked questions, exhibited slurred speech and seemed confused.



Based on his observations, Mr. Mendez asked Mr. Figueroa if he was willing to go in and drop (be tested for drugs and alcohol). His response was, "Yes. I have nothing to hide." Mr. Mendez indicated that he was going to take Mr. Figueroa in for alcohol /drug testing, and he again agreed. Mr. Mendez drove Mr. Figueroa to U.S. Healthworks at 1661 W. Grant Rd. at approximately 9:05 a.m. and remained on site during the drug and alcohol testing. The observations he noted remained consistent while he was present with Mr. Figueroa. The resulting clinic tests came back positive for alcohol, with the first alcohol screening test at 9:28 a.m. measuring at .143 and the second alcohol confirmation test at 9:44 a.m. measuring at .128.

II. Prior Training, Counseling and Discipline

February 10, 2015 – Confirmation of Receipt of various Administrative Directives, including A.D. 2.05-5, Rules of Conduct and A.D. 2.02-22, Drug and Alcohol Use: Impaired Employees, Physical Evaluations and Applicant Testing. Mr. Figueroa's signature on this document indicated that he had received and understood that he had to abide by these directives.

July 20, 2015 – Memorandum of Counseling for Work Judgment and Break Time Abuse.

September 24, 2015 –Memorandum of Counseling for Work Judgment and Loss of City Property after losing your keys.

September 2015 and October 2014: In Mr. Figueroa's two previous performance evaluations, he received Below Standard marks and narrative remarks regarding patterns of unscheduled leave use.

III. Disregard for City of Tucson Administrative Directives :

Administrative Directive 2.02-22 Drug and Alcohol Use: Impaired Employees Physical Evaluations; Applicant Testing

V. Policy Regarding Alcohol or Other Intoxicants

A. City employees shall not:

1. Report to work with an alcohol concentration of .04 percent or higher or under the influence of other intoxicants;



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4. While on duty or on call, have an alcohol concentration of .04 percent or higher or be under the influence of other intoxicants.

Administrative Directive 2.02-5 Rules of Conduct

II. Policy

10. Perform a full day's work in an efficient manner in accordance with the methods and standards required by the City.
11. Conduct themselves in a manner, on and off duty, that:
 - a. Does not compromise their ability, or that of other employees, to perform assigned work and/or duties in an efficient, non-discriminatory and professional manner;
 - c. Does not cause the City or department to question the employee's reliability, judgment or trustworthiness in carrying out assigned responsibilities.
19. Not report for duty or work under the influence of alcohol. On or off duty possession, use, or sale of controlled substances without a prescription is prohibited (see "Drug and Alcohol Use; Impaired Employees; Physical Evaluations; Applicant Testing AD 2.02-22).
22. Adhere to those provisions of the City Charter, City Ordinances, City Administrative Directives, Department rules and regulations, and Civil Service Commission Rules that relate to their employment with the City.

IV. Disciplinary Action:

Pursuant to Tucson Code §10-3, Definitions, Just Cause - conduct, while either on or off duty, tending to cause discredit to the city or the department that affects its ability to perform its mission, or the city or the department to question an employee's reliability, judgment, and trustworthiness in carrying out assigned responsibilities, violation of the ordinances of the mayor and council, the rules and regulations of the commission, administrative directive of the city manager, and the rules and regulations of the department in which an employee is employed; intoxication on duty; and violation of the city's directives on drug and alcohol use shall constitute just cause for discipline up to and including termination.



Mr. Figueroa's reporting to work, and remaining at his work while under the influence of alcohol is behavior which he knew, or should have known would result in disciplinary action. Based on the above detailed information, Mr. Figueroa's employment with the City of Tucson is terminated.

This appeal was held in Open Session; however the Rule was invoked

Witnesses present were sworn:

Fred Gray
Jolene Hansen
Manuel Mendez
Thomas Figueroa

9:15 – 9:35 Exhibits Entered into Evidence

During the hearing, the Commission went into Executive Session for legal advice from Legal Counsel Barry Corey pursuant to A.R.S. §38-431.03(A)(3).

At 9:35 a.m. Commissioner Elias made a motion to go into Executive Session, the motion was seconded by Commissioner Pavey and the Civil Service Commission went into Executive Session. The Commission resumed the open meeting at 9:50 a.m.

10:00 – 10:05 City's opening statement

10:05 – 10:20 Appellant's opening statement

City's Exhibits Admitted

Exhibit A Tabs 1 – 4 Admitted with No Objection

- Tab 1 – Notice of Intent to Discharge dated April 5, 2016
- Tab 2 – Notice of Decision dated April 12, 2016; and related Attachment A
- Tab 3 – Memorandum re: Imposed Leave dated March 25, 2016
- Tab 4 – PARF effective March 25, 2016; PARF effective April 12, 2016
- Tab 5 – Request for appeal dated April 13, 2016

Exhibit B Tabs 1 – 7 Admitted with No Objection

- Tab 1 – Memorandum from Central Safety Services evidencing "positive for alcohol"
- Tab 2 – Confirmations of Receipt of various Administrative Directives; City of Tucson New Employee Welcome & Orientation Checklist
- Tab 3 – Memorandum of Counseling dated September 14, 2015
- Tab 4 – Memorandum of Counseling dated July 16, 2015
- Tab 5 – Job Performance Evaluation dated 6/5/15



Tab 6 – Job Performance Evaluation dated 6/5/14

Tab 7 – Job Performance Evaluation dated 12/5/06

Exhibit C Tabs 1 – 10, 12 – 14 Admitted with No Objection

Tab 1 – Tucson City Code 10-3 Just Cause defined

Tab 2 – Rules of Conduct 2.02-5

Tab 3 – Drug and Alcohol Use; Impaired Employees Physical Evaluations; Applicant Testing 2.02-22

Tab 4 – CSS Reasonable Suspicion Checklist

Tab 5 – Alcohol Testing Form

Tab 6 – US Healthworks Drug Test Details

Tab 7 – Statement of Paul Lopez, Tucson Parks and Recreation

Tab 8 – Rules of Conduct for Employees Therapeutics February 10, 2015

Tab 9 – Transcript of Manuel Mendez

Tab 10 – Transcript of Jolene Hansen

Tab 11 – Not Admitted into Evidence

Tab 12 – US Healthworks EBT Calibration Log March 11 – March 25, 2016

Tab 13 – Human Resources Personnel File

Tab 14 – Golf and Parks and Recreation Personnel File

Appellant's Exhibit Admitted

Exhibit 1 – 3 Not entered into Evidence

Exhibit 4 – Training Records for Manuel Mendez; Administrative Directive 2.02-22, Drug and Alcohol Use

City called first witness, Manuel Mendez

10:20 – 10:50 Mr. Mendez gave testimony

10:50 – 11:00 Break

11:00 – 11:05 Mr. Mendez was cross examined

11:05 – 11:30 Mr. Mendez gave testimony on redirect; the Commission asked clarifying questions and witness was excused

City called second witness, Jolene Hansen

11:35 – 11:50 Ms. Hansen gave testimony

11:50 – 11:55 Ms. Hansen was cross examined and witness was excused

12:00 – 1:00 Lunch Break

City called third witness, Fred Gray



Minutes of: Thomas Figueroa
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Date: June 6, 2016

1:00 – 1:25 Mr. Gray gave testimony
1:25 – 1:45 Mr. Gray was cross examined; the Commission asked clarifying questions and witness was excused

1:45 City Rests

Appellant called first witness, Thomas Figueroa

1:45 – 1:50 Mr. Figueroa gave testimony
1:50 – 2:10 Mr. Figueroa was cross examined; the Commission asked clarifying questions and witness was excused

2:10 Appellant Rests

2:10 – 2:20 Break

2:20 – 2:30 City Closing Argument

2:30 – 2:35 Appellant Closing Argument

At 2:40 p.m. Commissioner Elias made a motion to go into Executive Session, the motion was seconded by Commissioner Pavey and the Civil Service Commission went into Executive Session. The Commission resumed the open meeting at 2:50 p.m.

2:50 – 3:00 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 find that the Appellant knew or should have known that his conduct could lead to disciplinary action and that the appeal of Thomas Figueroa be denied and that the disciplinary action imposed upon him be affirmed for the reason that there was just cause for the discipline imposed. Commissioner Elias seconded the motion. The vote was 2-1 with Commissioner Pavey dissenting.

Hearing Adjourned at 3:00 p.m.



Max Parks, Chair
Civil Service Commission

07/19/16

Date