



# CIVIL SERVICE COMMISSION

City of Tucson

Minutes

**Daniel Atkinson  
Appeal of Termination  
Tucson Police Department  
June 29, 2016**

A quorum of the Civil Service Commission of the City of Tucson met at 9:00 a.m. on Wednesday, June 29, 2016, at City Hall, 255 W. Alameda, 1<sup>st</sup> Floor Conference Room in Tucson, Arizona for an Appeal of Termination filed by Daniel Atkinson from the Tucson Police Department.

Present were Chair Max Parks, Commission Members Marion Pickens and Malcom Pavey. Staff present: Barry Corey, Legal Counsel; Kristie Nelson, HR Manager; and Armida Saufley, Executive Assistant of Human Resources as Recording Secretary.

Mr. Neil Landeen of YP&L represented Officer Atkinson; Mr. Baird Greene, Principal Assistant City Attorney, represented the Tucson Police Department. Assistant Chief Ramon Batista was also present.

Per Exhibit A, the actions and behaviors of Officer Daniel Atkinson #44793 are fully documented in the Office of Professional Standards (OPS) file #15-0760, and incorporated herein providing just cause for termination and are synopsized as follows:

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

On November 4, 2014, then Lieutenant Hall of Operations Division South met with Officer Atkinson, Detective Bogdanowich (union representative) and Sergeant Fatura, Officer Atkinson's direct supervisor at the time. During the course of this meeting, Lieutenant Hall told Officer Atkinson that his Special Duty employment privileges had been revoked and gave him a direct order that he was not allowed to work Special Duty jobs due to inadequate job performance. Lieutenant Hall additionally sent an e-mail to the special duty coordinator Sergeant Garza advising him that Officer Atkinson's Special Duty privileges had been revoked indefinitely.

On November 25, 2014 Lieutenant Hall and now retired Captain Rodriguez met Officer Atkinson. Lieutenant Hall had drafted a document with written orders in the form of conditions of continued employment (herein referred to as a CCE). The CCE states that any violation of its conditions or a suspension of any length will result in termination from employment with the City of Tucson. In addition it stated that if Officer Atkinson was to be late or tardy on any scheduled work day he must contact his immediate supervisor or in his/her absence his assigned Lieutenant prior to his scheduled start time. Officer Atkinson was to include why he was unable to arrive prior to the scheduled start



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time and the time he could be expected. This document was signed and dated by Lieutenant Hall, Captain Rodriguez and Officer Atkinson.

On April 8, 2015 Officer Atkinson was scheduled to report for duty at 0600 in the Operations Division South briefing room. Officer Atkinson's then immediate supervisor, Sergeant Cunningham was off for training. Lieutenant Parker, Officer Atkinson's assigned lieutenant, observed Officer Atkinson report for duty at 0603 hours. Lieutenant Parker did not receive any notification from Officer Atkinson that he would be late to work as required by the CCE.

At the time, and unbeknownst to his COC, on July 4, 2015 Officer Atkinson worked a Special Duty overtime position at A-Mountain and on October 3, 2015, he worked a Special Duty overtime position at the Symphonic Winds Jazz Festival at Udall Park. During his OPS interview, Officer Atkinson indicated that he signed up to work the A-Mountain position through the Special Duty office in Telestaff. Officer Atkinson also admitted that he signed up for the Jazz Festival position through the Special Duty office in Telestaff. In his interview with OPS, Officer Atkinson acknowledged that he had been ordered not to work special duty jobs. Officer Atkinson stated he had previously been allowed to work overtime positions for divisional needs and felt this allowed for him to sign up for special duty jobs. However he also admitted, that when he signed up for those overtime jobs (not special duty) it was through a sign-up sheet at his respective substation and that those jobs were not advertised as Special Duty jobs available to all members through Telestaff.

The Special Duty overtime positions worked by Officer Atkinson on July 4, 2015 and October 3, 2015 are classified as Special Duty positions and can only be signed up through the Special Duty office in Telestaff. These positions are Special Duty positions however they are paid as overtime due to the particular vendor. This is in direct contrast to Officer Atkinson signing up for overtime positions offered by his division, available only to division personnel. Officer Atkinson's decision to sign up for and work the Special Duty overtime positions is a violation of the direct order given by then Lieutenant Hall.

On November 18, 2015 then Sergeant Cunningham discovered in Telestaff that Officer Atkinson had signed up to work a Special Duty job on November 26, 2015. Sergeant Cunningham brought this to the attention of Lieutenant Parker as Officer Atkinson was still prohibited from Special Duty jobs. Sergeant Cunningham then ordered Officer Atkinson to cancel the job. Officer Atkinson failed to follow this direct order and instead waited to meet with Lieutenant Parker on November 19, 2015, to discuss his ability to



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work Special Duty positions. Officer Atkinson ultimately canceled the job after meeting with Lieutenant Parker and being ordered once again to cancel it.

## **II. Violations of Department Policy and 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 procedure and policies as well as any procedures and policies established by their Commanders.*

### ***1330.25 On Duty Conduct Standards***

*Members shall be punctual in reporting for duty at the time and place designated by their supervisors...*

### ***1330.13 Insubordination Prohibited***

*No member shall be insubordinate to any superior officer or member.*

### ***1330.14 Failure to Follow an Order***

*No member shall refuse to take any properly directed action or fail to follow any lawful order or direction given by a superior officer.*

After reviewing this matter, Sergeant Tullgren wrote:

*“Ofc Atkinson failed to follow a direct order when he signed up for two special duty jobs via Telestaff without having obtained permission from his Chain of Command or having been released from his restriction to work special duty. He also failed to follow a direct order when he was ordered to cancel job on November 18, 2015, instead waiting until the 19<sup>th</sup> when he could speak with Lt Parker about that decision. His actions displayed a theme of insubordination.”*

Lieutenant Lane added:

*“On November 18, 2015 Officer Atkinson failed to follow a direct order of his then supervisor Lieutenant Cunningham to cancel the special duty job on November 26, 2015. Officer Atkinson also undermined Captain Hall’s order in that he assumed that his special duty restrictions would be rescinded before that actually occurred. This is an assumption on the part of Officer Atkinson and as explained by Captain Hall in his OIA interview the order that he not work special duty was independent of the CCE. This was inappropriate behavior on the part of Officer Atkinson and demonstrates his disingenuous attitude in abiding by the restrictions imposed on him by his superiors and is also a direct violation of Captain Hall’s order.”*

*“On April 8, 2015 Lieutenant Parker observed Officer Atkinson in the ODS sergeant’s office at 0603 hours. Lieutenant Parker did not receive any notifications from Officer Atkinson he would*



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*be late. This is a clear violation of the CCE that pertains to arriving for work on time and making notification to a supervisor if he was going to be late.”*

Captain Wilson added:

*“The violations addressed in this OIA investigation took place while Officer Atkinson was under the Conditions of Continued Employment and separately, a direct order prohibiting him from working any Special Duty jobs. The CCE is very clear and it is very clear that Officer Atkinson understands those conditions, one of which states that any violation that results in a suspension while under the contract will result in the discharge from employment from the City of Tucson. It is clear to me that Officer Atkinson not only violated General Orders but violated the Conditions of Continued Employment.”*

### **III. Prior Discipline**

Officer Atkinson’s disciplinary history in the last five years includes the following:

Sustained Type C violation on December 17, 2012 (20 hour suspension) under OPS  
case #12-0509

Sustained Type C violation on June 18, 2015 (40 hour suspension) under OPS  
case # 13-0547

Sustained Type B violation on October 4, 2013 (written reprimand) under OPS  
case # 13-0622

Preventable Type B violation on January 30, 2014 (written reprimand) under OPS  
case # 14-0011

Sustained Type C violation on September 23, 2014 (80 hour suspension) under OPS  
case # 14-0503

Sustained Type B violation on January 21, 2015 (written reprimand) under OPS  
case # 14-0715

### **Disciplinary Action**

Based upon a review of the Tucson Police Department Management, the Chief of Police has determined that Officer Atkinson violated the above listed General Orders and committed his third Type C violation in three years resulting in the maximum Level 6 sanction of a 160 hour suspension. The violations resulting in this suspension occurred while Officer Atkinson was under the provisions of the CCE. The CCE clearly indicates that any violation of it or a violation of General Orders resulting in a suspension will result in termination from employment. Officer Atkinson’s actions and the listed violations constitute just cause for Termination.



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

Witnesses present were sworn:

Ramon Batista  
Monica Prieto  
Robert Wilson  
Kevin Hall  
Daniel Atkinson

9:15 – 9:20 Exhibits entered as evidence

9:20 – 9:30 City's Opening Statement

9:30 – 9:31 Appellant's Opening Statement

**City's Exhibits Admitted**

**Exhibit A Tabs 1 – 6 Admitted with No Objection**

Tab 1 – Investigation Employee Case File History  
Tab 2 – Notice of Intent to Discharge dated April 25, 2016  
Tab 3 – Notice of Disclosure  
Tab 4 – Notice of Decision dated April 25, 2016; Attachment A  
Tab 5 – Appeal letter dated May 3, 2016  
Tab 6 – Termination Checklist

**Exhibit B Tabs 1 – 23 Admitted with No Objection**

Tab 1 – Investigation Employee Case File History  
Tab 2 – Authorization for Internal Investigation  
Tab 3 – Statement of Ofc. Dan Atkinson  
Tab 4 – Special Duty records for October 3, 2015 and July 4, 2015  
Tab 5 – Statement of Sgt. Garza  
Tab 6 – Undated Personnel Report by Ofc. Atkinson re: 7/21/15 tardiness  
Tab 7 – Personnel Report by Ofc. Atkinson dated 12/2/15  
Tab 8 – Memorandum from Sgt. Cunningham to Ofc. Atkinson dated 12/2/15 re: Questions re: Working off Duty on 10/3/15  
Tab 9 – Memorandum dated 12/3/15 re: Ofc. Atkinson Working off Duty believed to be by Sgt. Cunningham  
Tab 10 – Undated and untitled Memorandum believed to be a chronology by Sgt. Cunningham  
Tab 11 – Statement of Lt. Alisa Cunningham  
Tab 12 – Statement of Det. Bogdanowich  
Tab 13 – Statement of Sgt. Nancy Fatura



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- Tab 14 – Statement of Cpt. Hall
  - Tab 15 – Memorandum dated 11/24/15 from Lt. Parker to Ofc. Atkinson re: Conditions of Continued Employment
  - Tab 16 – Undated and untitled Memorandum believed to be a chronology by Lt. Parker
  - Tab 17 – Memorandum of 10/14/15 from Lt. Parker to Cpt. Wilson re: Atkinson
  - Tab 18 – Memorandum of 4/9/15 from Lt. Parker to Lt. Johnson re: Atkinson
  - Tab 19 – Statement of Lt. Brian Parker 1/20/16; and 12/30/15
  - Tab 20 – Notices of Administrative Internal Investigation
  - Tab 21 – Investigation Summary Report
  - Tab 22 – Email dated 11/4/14 from Lt. Hall to Sgt. Garza; Email dated 1/12/15 from Lt. Hall to Ofc. Atkinson
  - Tab 23 – Conditions of Employment; Addendum 1 Conditions of Continued Employment

**Exhibit C Tabs 1 – 8 Admitted with No Objection**

- Tab 1 – Personnel Report of Cpt. Robert J. Wilson
- Tab 2 – Personnel Report of Lt. Lane
- Tab 3 – Personnel Report of Sgt. Tullgren
- Tab 4 – GO 1330.2 Obedience to General Orders, Procedures and Policies Required;  
GO 1330.13 Insubordination Prohibited  
GO 1330.14 Failure to Follow an Order  
GO 1330.25 On Duty Conduct Standards
- Tab 5 – Tucson City Code Chapter 10, Section 10-3, Just Cause defined
- Tab 6 – TPD Discipline Matrix
- Tab 7 – HR File Daniel Atkinson
- Tab 8 – TPD HR File Daniel Atkinson

**Appellant's Exhibit Admitted**

None

City called first witness, Captain Kevin Hall

9:32 – 9:50 Cpt. Hall gave testimony; the Commission asked clarifying questions and witness was excused

9:50 – 9:55 Break

City called second witness, Sergeant Monica Prieto

9:55 – 10:15 Sgt. Prieto gave testimony  
10:15 – 10:22 Sgt. Prieto was cross examined  
10:22 – 10:30 Sgt. Prieto gave testimony on redirect; the Commission asked clarifying questions and witness was excused



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City called third witness, Captain Robert Wilson

10:31 – 10:50 Cpt. Wilson gave testimony

10:50 – 11:00 Cpt. Wilson was cross examined; the Commission asked clarifying questions and witness was excused

11:00 – 11:05 Break

City called fourth witness, Assistant Chief Ramon Batista

11:05 – 11:15 AC Batista gave testimony

11:15 – 11:20 AC Batista was cross examined; the Commission asked clarifying questions and witness was excused

11:20 City Rests

Appellant called first witness, Officer Daniel Atkinson

11:20 – 12:20 Ofc. Atkinson gave testimony

12:00 Appellant Rests

12:00 – 1:00 Lunch Break

1:00 – 1:15 City Closing Argument

1:15 – 1:23 Appellant Closing Argument

1:23 – 1:30 Rebuttal Argument

1:30 – 1:50 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 Pickens made a motion to find the Appellant knew or should have known that his conduct could lead to disciplinary action and that the appeal of Daniel Atkinson 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 Pavey seconded the motion. The vote was unanimous, 3-0.

Hearing Adjourned at 1:50 p.m.



Max Parks, Chair  
Civil Service Commission

07/19/16

Date