

CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA, SUITE 4344 • OAKLAND, CALIFORNIA 94612-2033

Public Works Agency
Transportation Services Division

(510) 238-3466
FAX (510) 238-7415
TDD (510) 238-3254

January 26, 2016

Mr. Patrick Taylor

Via Certified and Regular Mail

Re: Notice of Intent to Suspend

Dear Mr. Taylor:

This letter is to advise you that the City intends to suspend your employment for ten (10) work days as an Engineering Technician II in the Public Works Department in accordance with:

1. Personnel Manual Rule 10—Disciplinary Actions, Appeals, and Hearings
2. Administrative Instruction 521 – Employee Discipline – Due Process
3. Administrative Instruction 523—Disciplinary Guidelines and Procedure

This action is based on your violation of:

1. Personnel Manual Rule 11, Section 11.01 – Frauds Prohibited
2. Administrative Instruction 596 - Citywide Code of Conduct – Non-Sworn Employees
3. Public Works Agency Personnel Policies and Procedures Manual—Appropriate Use of City Resources and Time (page 16)
4. Public Works Agency Personnel Policies and Procedures Manual—Access to City Facilities and Parking Garages (page 17)
5. Public Works Agency Personnel Policies and Procedures Manual – Reporting Absences (pages 17- 18)
6. SEIU Local 1021 Memorandum of Understanding, Article 10.2 and 10.6—Prior Authorization Required to Take Accrued Leave
7. SEIU Local 1021 Memorandum of Understanding, Article 14.11 - Work Effort
8. Performance Plan 2015-2016, Section I. – Attendance Standard

You were initially hired by the City of Oakland on January 18, 2005 into the position of Surveying Technician, Sr. You were promoted to Engineering Technician II effective January 2,

2008. You were laid off from that position effective April 2, 2010 and reinstated into that position effective April 18, 2011.

The proposed action is based on the following acts or omissions:

Unauthorized Use of City Resources

On May 19, 2015 it was reported that City Center West Garage access card #2255, assigned to and stored in Transportation Services Division City vehicle #3142, was missing from the vehicle. This access card is for the sole purpose of allowing City vehicle # 3142 to exit and enter City Center West Garage without paying a parking fee. City vehicles and their associated garage access cards are only authorized for use by City employees performing City business during City work hours.

Upon a review of the electronic records that record the activity of City garage access cards, it was discovered that access card # 2255 had been used to exit the City Center West Garage in the evening just after normal work hours ended and then enter the City Center West Garage the following morning just before the beginning of normal work hours on at least 46 occasions dating back to September 1, 2014, totaling \$552 in lost parking revenue for the City. Vehicle # 3142 assigned this garage access card was not signed out overnight on any of these 46 occasions. This activity suggested someone was using the garage access card in their personal vehicle to exit and enter the City Center West garage and avoid paying the garage parking fee.

Video footage from the City Center West Garage security cameras was then viewed to compare vehicles entering/exiting the garage at the same time that garage access card #2255 was used. There appeared to be a strong correlation between use of access card #2255 and a Toyota silver pickup truck, license # 8N80466 entering/exiting the garage. The City was able to identify this pick-up truck as being registered to you. There was also footage of a man appearing to be you exiting the City Center West garage within minutes of access card #2255 being used and the Toyota silver pickup truck registered to you entering the garage.

You were advised via email dated September 25, 2015 that the City was investigating unauthorized personal use of City Center West Garage Access #2255 and asked to provide a written statement as to your involvement or knowledge of this issue. You wrote: "I don't recall any incident"

On October 8, 2015 you were notified of an Administrative Investigation interview to fully investigate this matter. Your interview was originally scheduled for October 14, 2015 and then rescheduled to October 22, 2015 due to procedural concerns raised by your union representative at the beginning of the October 14th interview. While your union representative claimed he had no knowledge of the issue being investigated, the City was able to document that you had received written notice six days prior to the interview date by email and by a written letter that was also copied to your union.

On October 15, 2015 you asked to speak with me privately about the incident that lead to postponing your Administrative Investigation interview the day prior and about the issue of being investigated for use of the garage access card. During this meeting you aired your concerns about possible disciplinary action and you made the following comments that raised concerns:

- Where you grew up friends settled disputes by shooting people
- You were gravely disturbed/disappointed about pending disciplinary action
- That it was my choice to investigate the unauthorized use of the garage access card; that the issue could have been handled differently.

Based on these comments OPW engaged the City's Threat Assessment Team which met that afternoon to assess any possible threat posed by you and your comments.¹

Your Administrative Investigation interview was held on October 22, 2015 and interviewer Danny Lau provided his written report on November 19, 2015. In his Findings and Recommendations, Mr. Lau states:

- "Mr. Taylor was somewhat evasive in his answers during the interview, but in the end he admitted to utilizing the City garage access card for his personal vehicle."
- "The use of the City garage access card by Mr. Taylor is a serious and deliberate offense. I recommend that Mr. Taylor be suspended for an appropriate number of days, as determined by the Administrative staff."

Repeated Failure to Follow Work Absence Procedures

A separate but recurring issue came up involving you during the investigation of the unauthorized garage access card issue. You continue to fall short on meeting departmental leave request standards which has resulted in your taking unauthorized leave without pay four times in the past two months.

You were suspended one day in September 2013 for, among other violations, failure to report absences. your attendance has not improved.

October 15, 2015—You emailed me during your lunch break stating that you left for the day to take care of an emergency for a family member.

You were placed on unauthorized leave without pay for this afternoon.

¹ On October 16, 2015 the Threat Assessment Team issued their assessment that your comments did not violate the City's Administration Instruction 544 prohibiting violence in the workplace

October 16, 2015—You emailed me in the morning stating that you would not show up for work that day while providing no explanation. I informed you by email that your absence was unauthorized leave without pay for this day.

November 25, 2015—You left a note on my chair in the afternoon stating that you left to take care of a house repair before dark. I informed you by email that your absence was unauthorized leave without pay for this afternoon.

December 17, 2015—You failed to show up for work without notifying me. After I contacted you, you left me a voice message saying that you were attending a funeral for a friend. I informed you the next day that your absence was unauthorized leave without pay for this day.

You hold a full time position and are expected to report to work every day. All City employees are expected to keep themselves in a state of good health such that they can report to work regularly and perform the duties of their assigned positions. Employees such as yourself who routinely take unauthorized unpaid time off create staffing problems for their divisions and prevent the City from meeting performance goals and objectives. Unauthorized unpaid time off is not an acceptable attendance pattern. You have routinely been advised of this yet you continue to be on unauthorized unpaid time off. You have also routinely been advised of the availability of family medical leave (FMLA) and the City's Employee Assistance Program (EAP).

Conclusion

During your October 22, 2015 Administrative Interview you admitted to repeatedly using the City's garage access card for your own personal use. This is not only an egregious violation of City policies and procedures on the use of City resources as stated in the Public Works Policies and Procedures Manual – Use of Resources and Access to Facilities and Parking Garages sections, it also violates all policies on professional conduct, including AI 596 – Code of Conduct and the MOU Article 14 - Work Effort. In addition, it constitutes \$552 in lost revenue for the City – a violation of the Personnel Manual Rule 11 – Frauds Prohibited.

The recurring incidences of your leaving work early or not showing up for work at all without prior approval from your supervisor,

, are resulting in multiple occasions of unauthorized leave without pay. You have repeatedly been advised to correct this behavior. This behavior violates the MOU Articles 10 - Prior Authorization Required to Take Accrued Leave and 14 - Work Effort, Public Works Policies and Procedures Manual section concerning reporting absences and your Performance Plan – Attendance standard.

Based on the totality of these unacceptable and uncorrected behaviors the City is recommending a ten (10) day suspension. Please understand that further occurrences of the behaviors listed above may lead to further disciplinary action up to and including termination of employment.

You have received the following prior disciplinary actions:

- November 28, 2012 – Written Reprimand for failure to follow department policies
- August 27, 2013 Notice of Suspension for failing to follow a variety of standard work rules and procedures

Copies of the following attached documents were relied upon in making this recommendation:

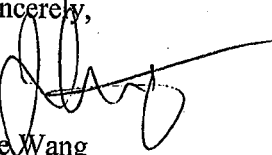
1. Personnel Manual Rule 10 - Disciplinary Actions, Appeals, and Hearings
2. Personnel Manual Rule 11, Section 11.01 – Frauds Prohibited
3. Administrative Instruction 521 – Employee Discipline – Due Process
4. Administrative Instruction 523—Disciplinary Guidelines and Procedure
5. Administrative Instruction 596 - Citywide Code of Conduct – Non-Sworn Employees
6. Public Works Agency Personnel Policies and Procedures Manual—Appropriate Use of City Resources and Time (page 16)
7. Public Works Agency Personnel Policies and Procedures Manual—Access to City Facilities and Parking Garages (page 17)
8. Public Works Agency Personnel Policies and Procedures Manual – Reporting Absences (page 18)
9. SEIU Local 1021 Memorandum of Understanding, Article 10.2 and 10.6—Prior Authorization Required to Take Accrued Leave
10. SEIU Local 1021 Memorandum of Understanding, Article 14.11 Work Effort
- 11.
12. October 8, 2015 letter to P. Taylor with copy to the union setting the date of October 14, 2015 for an Administrative interview.
13. October 19, 2015 letter to P. Taylor with copy to the union rescheduling the Administrative interview for October 22, 2015
14. October 19, 2015 emails to P. Taylor with attached Notice of Administrative interview date and time
15. P. Taylor's incident statement sheet dated September 28, 2015 re: garage access card
16. Log of Vehicle Access Card #2255 use, highlighted to point out the dates of unauthorized use
17. Date and time stamped photos of silver Toyota pick-up truck entering/exiting City Center Garage West
18. Verification of 4 min 40 sec time difference between the garage video clock and the garage ticket date stamp clock (there is a 4 min 40 second difference in time between items in attachment 16 and photos in attachment 19. The City Center West Garage manager verified the clocks are off by this amount of time.)
19. Dated photos of P. Taylor exiting City Center Garage West
20. Calculation of financial loss to the City in parking fees

21. Verification that OPD identified the silver Toyota pick-up as being registered to Patrick Taylor
22. Verification that access card # 2255 was reported as missing and blocked.
23. November 19, 2015 Administrative Investigation report signed by Danny Lau
25. Email communications for 2015 between P. Taylor and his supervisor concerning last minute time off notice of his absence
26. Memos placing you on the Attendance Management Program in January 2012 and again in November 2014
27. August 27, 2013 Notice of Suspension with attached Skelly Recommendation
28. December 2, 2015 counseling memo, subject – Attendance Standards
29. November 28, 2012 Written Reprimand

You have the right to respond in writing or orally by attending a Skelly Hearing or respond both in writing and orally to the facts contained in this letter. If you choose to respond in writing, you have until February 10, 2016 to provide written comments to Margaret O'Brien, 150 Frank Ogawa Plaza, Suite 5342, Oakland, CA 94621. If you choose to respond orally, you may meet with Ms. O'Brien on February 10, 2016 at 10:00 a.m. in her office. Please confirm your attendance at the Skelly Hearing with Ms. O'Brien by calling her at 510-238-7480 no later than February 3, 2016. You have the right to union representation or other representation of your choice at the Skelly Hearing.

If there is a request for continuance, the Skelly Hearing shall occur no later than ten (10) working days from the date the notice is sent.

Sincerely,



Joe Wang
Supervising Transportation Engineer

Attachments

copy: Mike Neary, Assistant Director
Wlad Wlassowsky, Transportation Services Manager
OPW Personnel File
Skelly Officer
Employee Relations
SEIU Local 1021 (via Fax without attachments and via Regular Mail with attachment)

CITY OF OAKLAND



250 FRANK IL OGAWA PLAZA OAKLAND, CALIFORNIA 94612-2033

Oakland Public Works Department

(510) 238-3961

FAX (510) 238-6428

TDD (510) 238-7644

May 1, 2017

Calvin Spikes

RE: Notice of Intent to Suspend

Sent Via Certified and Regular U.S. Mail

Dear Mr. Spikes:

This letter is to advise you that the City intends to suspend your employment for 5 (five) work days as a Sewer Maintenance Worker in the Oakland Public Works Department (OPW) in accordance with:

1. Personnel Manual Rule 10, Section 10.01 – Disciplinary Action
2. Administrative Instruction 521 – Employee Discipline – Due Process
3. Administrative Instruction 523 – Disciplinary Guidelines and Procedures

The proposed action is based on your violation of:

- Administrative Instruction 587 – Vehicle Accident Procedures and Accident Review Process.
- Administrative Instruction 596 – Citywide Code of Conduct – Non-Sworn
- L-1021 MOU Section 12.1.3 – Public Relations
- Public Works Agency Personnel Policies and Procedures Manual – Equipment & Supplies (page 17).
-
- Defensive Driving strategies you learned from the *Driving Safety* course you completed on June 9, 2014.

Background

In your capacity as a Sewer Maintenance Worker in the Sewer Division your duties include inspecting, cleaning, maintaining and repairing the City's sewer infrastructure. You transport personnel and

equipment to and from project sites. You operate a variety of tools and heavy equipment on a daily basis. As a Sewer Maintenance Worker you are required to maintain a valid California Class C Driver's License as a condition of employment. Your work hours are Monday through Friday from 7:00am to 3:30pm.

Stand-By

As a first responder agency, the Oakland Public Works Department (OPW) assigns employees in certain classifications to work stand-by on a rotating basis. This allows OPW to have staff available to respond to emergency or critical incident issues on a 24/7 basis without employing staff to routinely work all three shifts. The stand-by list for Sewer Services is posted in June and December of each year - so employees know in advance when they are scheduled to work stand-by. Employees working stand-by are paid 1.75% of their hourly rate for being available on-call (24 hours per day on the weekend and 16 hours per day during the work week) to work stand-by. They are paid an additional 1.50% of their hourly rate as overtime for the actual hours worked on a stand-by assignment, for a total of 3.25% of their hourly rate when they are called to a work-site while on stand-by. Stand-by shifts start at 3:30pm and end the following morning at 7:00am. Employees then work their regular day shift of 7:00am to 3:30pm. Employees are scheduled to work stand-by assignments for a week at a time beginning Friday at 3:30pm and ending the following Friday at 7:00am. Your most recent stand-by assignment began on Friday, December 9, 2016 at 3:30pm and ended on Friday, December 16, 2016 at 7:00am. For the week of December 10, 2016 through December 16, 2016 you worked/ were paid the following:

Regular Time	24 hours/ 3 days
Sick Leave	16 hours/ 2 days
Overtime Pay	42 hours/5+ days
Stand-By Pay	88 hours
Meals	8

Vehicle Collision

On Tuesday, December 13, 2016 you were working stand-by with .

The two of you responded to a call for service from 3:30pm to 6:00pm that evening concerning a heavy sewer odor at a private residence. You flushed and cleaned the sewer line of grease. You responded to your second call of the night from 6:00pm to 7:30pm concerning a sewer back-up at a private residence. You investigated and noted the line should be cleaned before the next storm. At 7:30pm the two of you responded to your third and final call of the night - a request from Fire Alarm to respond to , Oakland concerning a complaint about water coming from a clean out pipe in the rear yard of a private residence. You were driving City vehicle 4245 when you responded to this call. was driving another City vehicle (4291). It is customary to take two vehicles to a call as the vehicles carry different equipment that may be necessary depending on the problem. Stand-by employees obtain the keys to the vehicle they will drive while on stand-by at the beginning of that particular stand-by shift and generally turn them in the following morning. According to the Overtime Activity Log Sheet completed on the Armour Drive call, you found the sewer main clear. You spoke with the home owner who advised you that this overflow happens fairly regularly during heavy rains. You recommended as

follow-up that the regular day shift clean the line. You returned to the Corp Yard at 7101 Edgewater Drive, Oakland and ended this stand-by call at 9:30pm. That was the last stand-by call you received that evening.

At that time it would be customary for you to return home until/ if you received another stand-by call.

However, according to the Automatic Vehicle Locator (AVL) system attached to City vehicle 4245, the vehicle engine was started at 1:08am and ran on idle in the Corp Yard until 1:24am when the engine was turned off. The AVL then shows the engine was again turned on at 5:35am. You would have been the only employee having the keys to the vehicle since you drove it earlier that evening for your stand-by shift. You would have kept the keys in your possession in the event of another call-out. However, you did not receive another stand-by call after your return to the Corp Yard at 9:30pm the night before, so there would have been no reason for you to be in the vehicle. City employees are not authorized to sleep in City vehicle and/or on City property. Nor are they authorized to misuse City property and resources in this way.

According to the AVL report for City vehicle 4245, the vehicle left the Corp Yard at 7101 Edgewater Drive on December 14, 2016 at 5:39am, drove down 66th Avenue, and stopped at 1259 65th Avenue, Oakland at 5:59am, 20 minutes after it left the Corp Yard. 1259 65th Avenue Oakland is the address of Alameda County Housing Authority property and the vehicle stopped because you ran it into a tree on this property, after broadsiding a parked private vehicle pushing it onto the sidewalk, driving the City vehicle down the sidewalk, and running over several large pipes sticking about 3 feet out of the ground that constitute the keypad entrance to the Housing Authority property. According to the Oakland Police Department (OPD) report, the City vehicle came to a final rest up against a tree on the edge of the driveway at 1327 65th Avenue, Oakland.

You wrote a statement for the OPD wherein you agree with their facts of the incident as stated above. You state in your report that you fell asleep at the wheel while driving, which is what caused the accident. You later told me that you were headed to McDonald's for coffee when the accident occurred.

It will be noted here that you were not in possession of your CA driver's license when this accident occurred. OPD identified you via a 3rd party database called CALPHOTO. You later informed your supervisor that you had lost your CA driver's license and submitted an Interim Driver License form issued by CA DMV on January 23, 2017.

Public Works Supervisor II, and I went to the scene of the accident at approximately 7:00am to investigate, take photos and assess your status. You advised both of us and the OPD officer that you were not injured, and you had no apparent injuries. While we waited for the City vehicle to be towed back to the Corp Yard I had another supervisor pick you up and drive you back to the Corp Yard with instructions that you complete the vehicle accident forms. When I returned to the Corp Yard approximately 45 minutes later you were sitting in a chair in the Ready Room sleeping. You had not completed the accident forms. I observed that you were so sleepy and unable to perform minor tasks that I offered to type out your statement and have you

sign it. You then wrote a separate statement in your own handwriting stating you were "...capable to continue on with my general shift and stand-by shift competently and safely..." That clearly was not an accurate statement. released from work.

The repair estimate for the City vehicle is \$9,624.53. The City has not as of the date of this Notice received an estimate for the repair of the vehicle you broadsided or the Housing Authority entry keypad.

Prior Vehicle Incident

On Monday July 13, 2015 at 11:10am while driving southbound on 98th Avenue near Stearns Avenue in Oakland you fell asleep at the wheel while driving City vehicle 4069. You swerved across all southbound lanes of 98th Avenue, jumped the curb at the center median, drove across the median and ended up in the northbound lanes of 98th Avenue in oncoming traffic. was riding in the passenger seat at the time. He yelled to you "Calvin, watch out" when he realized you were not in control of the vehicle. At that point you woke up and stopped the vehicle. Nobody was injured as a result of this accident and no disciplinary action was taken.

The City's AI 587 – Vehicle Accident Procedures and Accident Review Process states on page 1 "The City of Oakland requires the safe operation and use of any motor vehicle while on official City business. All drivers must follow City rules and procedures on vehicle use." Common sense would also mandate the safe operation of a vehicle while on a public street.

AI 596 – Citywide Code of Conduct – Non-Sworn, is written in a manner to convey that City employees are to perform their duties with a sense of professionalism, courtesy and respect to colleagues and the citizens of Oakland. Employee conduct while in public, on duty, and clearly identifiable as a City employee, is to be of the highest standard.

Article 12 of the SEIU Local 1021 MOU states at section 12.1.3 - Public Relations, that employees have a "special responsibility to be sensitive and responsive to their ultimate employer – the citizens..." Driving a City identified vehicle into another vehicle, down the sidewalk and into a tree in a residential neighborhood is not the public relations the City is striving for.

The Public Works Agency Personnel Policies and Procedures Manual – Equipment & Supplies section states "Use of City-owned...vehicles is strictly limited to official City business..." and "City vehicles are for official use only..." Sleeping in a City vehicle

does not constitute 'official City business.' Waste of vehicle fuel while running the vehicle on idle is also not 'official City business.' Using a City vehicle to get coffee at McDonald's is not 'official City business.'

In 2014 you completed a safe driving course that included sections on 'Safe and effective Driving', 'Driver Condition', 'Avoiding Collisions', and 'Safe Driving Tips'.

You have violated all of these standards, and failed to employ general common sense that would tell anyone not to operate heavy equipment of any kind when you are clearly not capable of doing so in a safe manner. When you could barely keep your eyes open you wrote a statement that you were able to return to work and drive a City vehicle. This demonstrates a severe lapse in judgement. You misused City property by staying in a City vehicle in the middle of the night when you live 3.2 miles away. You caused almost \$10,000 in damage to the vehicle that the City must pay in repair costs, plus whatever costs are eventually identified for the damage to the vehicle you broadsided and the Housing Authority property. Finally, you put yourself, your colleagues and the general public in danger of great harm.

In 2016 you attended a staff meeting where we discussed PWA Administrative Instructions and you acknowledged receipt of AI 596 and the OPW Policies and Procedures Manual by signing an acknowledgement form on February 12, 2016.

You have no prior disciplinary actions; however your dangerous, thoughtless actions, lack of proper judgement and amount of property damage to the City warrant a higher level of discipline.

Copies of the following attached documents were relied on, in making this recommendation:


1. Personnel Manual Rule 10, Section 10.01 – Disciplinary Action
2. Administrative Instruction 521 – Employee Discipline – Due Process
3. Administrative Instruction 523 – Disciplinary Guidelines and Procedures
4. Administrative Instruction 587 – Vehicle Accident Procedures and Accident Review Process
5. Administrative Instruction 596 – Citywide Code of Conduct – Non-Sworn
6. L-1021 MOU Section 12.1.3 – Public Relations
7. Public Works Agency Personnel Policies and Procedures Manual – Equipment & Supplies and Vehicle Safety and Employee Responsibilities sections

8. Sewer Maintenance Worker Class Specification
10. Certificate verifying you completed the *Driving Safety* course on June 9, 2014 and course curriculum
11. Your timesheet for the week December 10 – 16, 2016
12. City of Oakland Stand-By Standard Operating Procedures
13. Stand-By Overtime List for the period June 24, 2016 to December 23, 2016
14. Overtime Activity Sheets (3) for December 13, 2016
15. Verification of the distance between the Corp Yard at 7101 Edgewater Drive, Oakland and your residence at
16. AVL log for vehicle 4245 for December 13 and 14, 2016
17. OPD report of the vehicle accident (7 pages)
18. Supervisor's incident statement sheet based on my observations and interactions with you on December 14, 2016
19. City of Oakland Accident Vehicle Report for City Attorney – one with your illegible hand writing and another completed by me
20. Your written statement that you were capable of working
21. Your Interim Driver's License dated January 27, 2017
22. Photos of the accident scene (8)
24. Quality Auto Service estimate to repair the City vehicle (4 pages)
25. Statements concerning similar 2015 incident (6 pages)
26. Acknowledgement Form acknowledging receipt of City policies

You have the right to respond in writing or respond orally by attending a Skelly hearing or respond both orally and in writing, to the facts contained in this letter. If you choose to respond in writing, you have until May 12, 2017 to provide comments to Skelly Officer Margaret O'Brien. Please confirm your attendance at the Skelly hearing with Ms. O'Brien by calling her at 510-238-7480. You have the right to union representation or other representation of your choice at the Skelly Hearing.

If there is a request for continuance, the Skelly meeting shall occur no later than fifteen (15) working days from the date the notice was sent.

Sincerely,



David Lonestar
Public Works Supervisor II

Copy: Jason Mitchell, Assistant Director
Tyree Jackson, Operation Manager
Margaret O'Brien, Skelly Officer
Allyson Cook, Employee Relations
Public Works – Personnel File
SEIU Local 1021 or IFPTE Local 21 (sent via email without attachments and Regular Mail with attachments)

CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA OAKLAND, CALIFORNIA 94612-2033

Oakland Public Works Department
Bureau of Engineering and Construction

(510) 238-3961
FAX (510) 238-6428
TDD (510) 238-7644

March 27, 2015

Mr. Kevin Brown

Via Certified Mail and U.S. Mail

RE: Notice of Intent to Terminate

Dear Mr. Brown:

This letter is to advise you that the City intends to terminate your employment as an Assistant Engineer II in the Oakland Public Works Department in accordance with:

1. Personnel Manual Rule 10, Section 10.01 – Disciplinary Action
2. Administrative Instruction 521 – Employee Discipline – Due Process Requirements
3. Administrative Instruction 523 – Disciplinary Guidelines and Procedures

This action is based upon your violation of:

1. Administrative Instruction 71 - Equal Employment Opportunity / Anti-Discrimination / Non-Harassment Policy and Complaint Procedure
2. Administrative Instruction 596 – Citywide Code of Conduct – Non-sworn Employees
3. Public Works Agency Personnel Policies and Procedures Manual, particularly sections titled 'Working Together' and 'Workplace Harassment'

Failure to comply and fulfill the requirements of:

You were hired by the Oakland Public Works Department as a part-time Engineering Intern effective July 19, 1982 and transferred from part-time to regular employment as a Junior Civil Engineer effective January 31, 1983. Your current job title is Assistant Engineer II. In this position you design, plan and review street, drainage, sewer, traffic and other public works systems, and ensure compliance with all applicable codes on your projects.

This proposed action is based on the following acts or omissions, as documented on our records, with regard to recent and past violations of Administrative Instruction 71 - Equal Employment Opportunity / Anti-Discrimination / Non-Harassment Policy and Complaint Procedure (AI 71):

July 2012 - shortly after [redacted] was hired, you asked her if anyone told her to stay away from you, suggesting to her that someone in the office had referred to you as a stalker. In response, [redacted] told you she found you creepy.

June 2014 - [redacted] rearranged her cubical wall. When you asked why she was doing that she responded with: "to keep you away and not come near me."

Between June 2014 and August 2014 - you frequented [redacted] cubicle fairly regularly after she told you to keep away and not come near her. When she looked at you standing in her doorway, you would say: "I know I'm not supposed to be in here but I'm just dropping off your mail" or you would whisper a compliment.

August, 2014 - [redacted] told you to stop leering at her, following her around the office, and talking to her or talking to others about her.

August 2014 - [redacted] continued to feel uncomfortable with your behavior and actions toward her, which she described at the time as creepy, leering behavior and ongoing unwanted attention from you that was not related to any work projects or issues. She requested, and her supervisor, [redacted] agreed to move her cubicle assignment so that she would not be sitting near where you sit and [redacted] agreed at that time to not assign the two of you to the same projects.

August 2014 - As Principal Civil Engineer and manager of the work group in which both you and [redacted] work, I had a conversation with you about your contact with [redacted]. In that conversation I advised you to limit your contact with [redacted] to project work only.

These warnings proved ineffective in altering your behavior, and on November 25, 2014 [redacted] reported your unwanted attention to OPW HR

December 2, 2014 - [redacted] filed a complaint alleging sexual harassment by you. In this complaint [redacted] described your ongoing behavior towards her that involved leering; repeatedly walking by her cubicle; telling others that she was depressed or bi-polar; commenting on her weight, make-up and clothing; making the comment "If I was your age, oh boy"; opening doors for her but then positioning yourself between the door and the space for her to walk through; staring from behind or around corners as she walked through the corridors; asking others where she was if she was absent from the office; and in general being very present in her work environment although the two of you do not work on the same projects.

This complaint was investigated by the City's Equal Opportunity Programs Division (EOPD). By letter to you dated February 26, 2015 you received their investigative findings affirming a violation of the City's Administrative Instruction 71 - Equal Employment Opportunity/Anti-Discrimination / Non-Harassment Policy and Complaint Procedure. Specifically,

EOPD found a violation of AI 71 with regard to inappropriate leering and staring, and insufficient evidence for a finding of gender-based verbal comment discrimination.

OPW takes such findings seriously and has reviewed these findings in light of the City's Administrative Instructions listed above and other related issues in your personnel file.

With regard to EOPD's findings:

Allegation 1: Was Complainant () subjected to inappropriate leering and staring in violation of City Policy, Administrative Instruction 71?

Determination: AI 71 Policy violation as found.

As to this determination, the City of Oakland has a commitment as well as an obligation, as set forth in AI 71, to maintain a workplace free of discriminatory and harassing conduct based on protected status. According to AI 71: "The City of Oakland is committed to equal employment opportunity and to ensuring that all employees have a work environment that is free of conduct that could be considered discriminatory or harassing based on an employee's protected status" The City will not allow anyone, including any supervisor, co-worker, vendor, client or customer, to unlawfully harass or discriminate against City employees or applicants for employment. The City will take prompt and effective remedial action upon discovery of such conduct." (AI 71, II.A.)

Further, AI 71 describes harassing conduct as: 'Physical conduct: Unwanted touching, leering, prolonged staring, assault, violence, impeding or blocking movement, or any physical interference with normal work or movement, as well as defacement of a person's property.' (AI 71, III.A.1.)

Allegation 2: Was Complainant subjected to inappropriate gender-based *verbal* comments in violation of City Policy, Administrative Instruction 71?

Determination: Insufficient evidence resulted in being unable to determine if AI 71 Policy was violated.

As to this determination, AI 71 states: "The City of Oakland prohibits not only unlawful harassment, but also any conduct that is unprofessional, disrespectful, or inappropriate based on a protected status/characteristic, whether or not it rises to the level of legally prohibited harassment.... This policy therefore covers activities that are inappropriate in a work environment, whether or not they are sufficiently severe, persistent or pervasive to constitute unlawful harassment. (AI 71 II.C.4)

Consistent with AI 71, OPW has considered the pervasive nature of your conduct over the course of many years in reaching the decision to issue this discipline. A review of your personnel record with the City shows a behavior that has persisted for years. In March 2002 you served a 3-day suspension for a claim of sexual harassment against you that was sustained by the City's EOPD office and you received a mandate that you take sexual harassment training. In December 2002

you served another 3-day suspension for a second claim of sexual harassment against you that was sustained by the City's EOPD office. Furthermore, the recent EOPD investigation revealed that you made several women in the workplace uncomfortable, in violation of the City's policies including AI 71, and therefore created a hostile work environment. You failed to remedy your inappropriate, unprofessional conduct despite training and counseling arising out of the previous complaints.

In addition you have received the following disciplinary actions:

- September 26, 2007 Notice of 1-day Suspension for violating professional conflict of interest codes
- March 5, 2010 written reprimand for unprofessional conduct and misuse of City time.

Your behavior violates AI 7; is inappropriate, unprofessional and disrespectful and it will not be tolerated. Lesser levels of discipline do not seem to have altered your behavior as relates to AI 71 requirements.

Copies of the following attached documents were relied upon in making this recommendation:

1. Personnel Manual Rule 10, Section 10.01 – Disciplinary Action
2. Administrative Instruction 521 – Employee Discipline – Due Process Requirements
3. Administrative Instruction 523 – Disciplinary Guidelines and Procedures
4. Administrative Instruction 71 - Equal Employment Opportunity / Anti-Discrimination / Non-Harassment Policy and Complaint Procedure
5. Administrative Instruction 596 – Citywide Code of Conduct – Non-sworn Employees
6. Public Works Agency Personnel Policies and Procedures Manual
7. \
8. Class specification for Assistant Engineer II
9. Acknowledgement Form for City of Oakland Policies and Procedures, signed by Kevin Brown on July 22, 2010
10. February 10, 2002 letter to you from EOPD sustaining a sexual harassment complaint filed on 12/11/01, with attached witness statements
11. March 22, 2002 Notice of 3-day Suspension and mandate that you take sexual harassment training
12. EOPD Complaint Investigation Summary concerning July 1, 2002 allegations of sexual harassment by you
13. September 11, 2002 letter to you from EOPD sustaining a sexual harassment complaint filed on July 1, 2002
14. December 3, 2002 Notice of 3-day Suspension
15. September 26, 2007 Notice of 1-day Suspension for violating professional conflict of interest codes
16. March 5, 2010 written reprimand for unprofessional conduct and misuse of City time.
17. \
18. February 26, 2015 EOPD Confidential Report of Investigation

19. EOPD's letter to you dated February 26, 2015 with their investigative findings

You have the right to respond to the facts contained in this letter. You may respond in writing and/or respond orally by attending a Skelly Hearing. If you choose to respond in writing, you have until the close of business on Wednesday, April 8, 2015 to provide written comments to Ms. Margaret O'Brien. If you wish to respond orally, you may meet with Ms. O'Brien on **Wednesday, April 8, 2015 at 2:00 PM** in her office located at 150 Frank Ogawa Plaza, 5th Floor. You have the right to request union representation or other representation of your choice at the Skelly Hearing. Please confirm your attendance at the Skelly Hearing with Ms. O'Brien by calling her at (510) 238-7480 by the close of business on Friday, April 3, 2015.

If there is a request for continuance, the Skelly Hearing shall occur no later than fifteen (15) working days from the date of this notice.

Sincerely,


Gus Amirzehni
Principal Civil Engineer

copy: Mike Neary, Assistant Director
Jimmy Mach, Supervising Civil Engineer
City Attorney
Official Personnel File
Employee Relations
OPW-HR file
IFPTE Local 21 (via email without attachments and via Regular Mail with attachments)
Skelly Officer



Oakland Public Works Department
Bureau of Facilities and Environment
Keep Oakland Clean and Beautiful

Memorandum

To: Timothy Glasper, Street Sweeper Operator
From: Dexter English, Public Works Supervisor II *DE*
Date: November 14, 2014
Re: Written Reprimand for incident occurring on November 13, 2014

On Thursday, November 13, 2014 around 11:25am I asked you to come to my office. After you arrived, I stated the purpose of the meeting was to discuss your unacceptable behavior towards me on Wednesday, October 29, 2014, and to issue you a counseling memo for the disrespectful and insubordinate behavior that occurred that date.

Before I could begin the counseling discussion you immediately stopped me from talking, saying you needed a union representative. I attempted to tell you that a counseling session and memo documenting that session are not discipline, and as such do not trigger Weingarten Rights. However, before I could finish my statement, you walked out of my office and called Terry Meadows, Local 1021 Field Representative. During that conversation, in a loud voice and standing in the corridor outside my office, you once again engaged in disrespectful and insubordinate behavior; specifically you called me a "big baby", said that I was out of control, and said that I was harassing you.

Several minutes later I went to _____ office to report your continued disrespectful and insubordinate behavior. Shortly thereafter you followed me into _____ office, telling him that you wanted to file a harassment claim against me and that you were going to call Renee Mayne, Employee Relations Director. After some conversation on the matter you told _____ that you would refrain from filing a harassment complaint against me, refrain from repeatedly calling Terry Meadows, and refrain from calling Renee Mayne if I withdrew the counseling memo. _____ did not agree to your request.

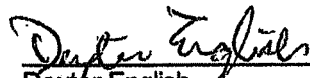
Your actions described above represent continued insubordinate, inappropriate and disrespectful behavior. This behavior is unacceptable and in violation of several City and Departmental policies. Please review the attached documents related to professional behavior, personal conduct and insubordination. (Administrative Instruction 596 - Citywide Code of Conduct, Public Works Policy and Procedures Manual, and your Performance Plan) Specifically, AI 596 states: "All City employees are to refrain from rude, disrespectful, abusive and/or professionally inappropriate treatment of other employees or the public. Employees shall not scream, yell or use profanity at each other or the public." In addition, your Performance Plan requires that you conduct yourself in a professional manner at all times.

Timothy Glasper
Written Reprimand
November 14, 2014
2 | Page

Your insubordinate, inappropriate and disrespectful behavior is expected to cease immediately. It is my expectation that you adjust your behavior while at work to be consistent with good judgment practices and the attached City and Department rules and requirements.

If at any time you are unsure as to what constitutes insubordinate, inappropriate and disrespectful behavior please consult with me. It is my desire to assist you in correcting this unacceptable behavior.

As a result of the above situation, this memo will serve as a written reprimand, a copy of which will be placed in your official Personnel File. Further actions of this nature could result in progressive discipline, up to and including termination of your employment with the City.



Dexter English
Public Works Supervisor II – OPW
Keep Oakland Clean and Beautiful Division

Attachments: AI 596 – Citywide Code of Conduct
Public Works Personnel Policy and Procedures Manual - Workplace
Professionalism and Communication section

cc: Susan Kattchee – Assistant Director
Frank Foster – Public Works Operations Manager
Robert Newman – Public Works Supervisor II
Joseph Knight – Public Works Supervisor I
Official Personnel File
OPW Personnel File
Sonia Lara - Employee Relations

On August 21, 2014 a citizen called in a complaint to the OPW Call Center. The complainant stated that at around 10:15am that morning he witnessed two City employees park their City vehicle, vehicle # 4316 with the logo 'Street Cleaning and Graffiti', on Park Avenue just below San Pablo Avenue in Emeryville, enter the IHOP restaurant on Park Avenue, and be seated at a table.

Based on this information, the City reviewed the vehicle assignment sheet and determined that you and [redacted] were assigned to vehicle # 4316 on August 21, 2014.

The City also reviewed the Automatic Vehicle Locator (AVL) log for vehicle # 4316 for the date of August 21, 2014. The AVL log revealed that vehicle #4316 was stopped at 1121 Park Avenue in Emeryville from 10:15am until 11:01am that day – 46 minutes. This address is across the street from an IHOP restaurant.

In your September 2, 2014 signed statement concerning this matter, you wrote: "I can't recall my activities on Thursday two weeks ago."

On November 18, 2014 you were interviewed as part of an Administrative Investigation into this complaint, and in your interview you again stated that you could not recall what you did on the day of August 21, 2014. During this interview you were represented by SEIU Local 1021 Field Representative Terry Meadows and shop steward Felipe Cuevas.

These actions of being out of your work area, out of the City of Oakland, entering a restaurant at 10:15 a.m. which is not your approved lunch or break time, and staying at that location for a total of 46 minutes violates a variety of City rules and regulations that require all City employees to exhibit a code of conduct that results in the "delivery of effective, courteous, and responsible service" to the citizens of Oakland (AI 596). In addition, you violated the OPW Departmental Policies and Procedures that spell out very clearly when you are to take your lunch and break periods and the proper use of City time and resources, including equipment.

You were suspended in September 2012 for similar acts of sitting in your City vehicle on a City street for extended periods of time being non-productive.

In accordance with the City's Personnel Manual, Rule 10, all persons holding positions in the Classified Civil Service shall be subject to disciplinary action for misconduct, incompetence, or failure to perform their duties under, or observe the rules and regulations of, the department in which they work.

In her February 18, 2015 recommendation, Skelly Officer Yvonne Hudson-Harmon wrote: "In light of the information provided in the Skelly packet and the decision by Mr. Wright to cancel his Skelly Hearing, it is recommended that the proposed disciplinary action be sustained."

I concur with the Skelly Officer's recommendation. You are suspended for three (3) workdays on **Tuesday, March 24, 2015, Wednesday, March 25, 2015 and Thursday, March 26, 2015.** You are to return to work on your regular start time on **Friday, March 27, 2015.**

You are hereby notified that pursuant to the Memorandum of Understanding between the City of Oakland and SEIU Local 1021, you may file a grievance regarding this action. Alternatively, you may submit your appeal directly to the Secretary of the Civil Service Board in accordance with Section 10.03 of the Personnel Manual.

Sincerely,



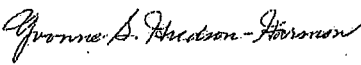
Brooke A. Levin
Director of Public Works

Attachment: Skelly Officer Recommendation

copy: Susan Kattchee, Assistant Director
Frank Foster, Operations Manager
Official Personnel File
Employee Relations
OPW-HR file
SEIU Local 1021

CITY OF OAKLAND
OFFICE OF THE CITY ATTORNEY
MEMORANDUM

TO: Dexter English
Public Works Supervisor II

FROM: Yvonne Hudson-Harmon 
Legal Administrative Services Manager

DATE: February 18, 2015

RE: **Skelly Officer Recommendation in the Matter of the January 23, 2015
Notice of Intent to Suspend Daryl Wright**

On Tuesday, February 17, 2015, a Skelly Hearing was scheduled regarding the Notice of Intent to Suspend Daryl Wright, Street Maintenance Leader in the Public Works Department.

The Notice of intent proposes three work days suspension based on the following charges:

1. Violation of Administrative Instruction 596-Citywide Code of Conduct – Non-sworn Employees.
2. Public Works Agency Personnel Policies and Procedures Manual, Sections titled Customer Service (page 12), Hours of Work-Start and End Time (page 15), Rest and Lunch Periods (page 15), Appropriate Use of City Resources and Time (page 15), Specific Protocols on Use of City Resources and Time (page 16), Equipment and Supplies (page 17), When You Are Out of the Office/Away From Your Designated Work Location (page 18).
3. MOU between the City of Oakland and SEIU, Local 1021 Article 12.1-Hours of Work

Failure to comply and fulfill the requirements of:

SEIU Local 1021 representative, Tim Glasper, contacted me prior to the planned start time of the meeting and informed me that Mr. Wright did not have anything to

present and therefore did not wish to meet. Based on this information, the Skelly Hearing was cancelled.

Recommendation

In light of the information provided in the Skelly packet and the decision by Mr. Wright to cancel his Skelly Hearing, it is recommended that the proposed disciplinary action be sustained.

c: Employee Relations

CITY OF OAKLAND



CITY HALL • 1 FRANK H. OGAWA PLAZA, 3rd FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Administrator
John A. Flores
Interim City Administrator

(510) 238-3301
Fax (510) 238-2223

June 9, 2015

Mr. Michael Jones

Via Certified Mail and U.S. Mail

RE: Notice of Termination

Dear Mr. Jones:

This letter is to advise you that the City of Oakland is terminating your employment as a Public Works Maintenance Worker for Oakland Public Works (OPW) for the following reasons:

1. Personnel Manual Rule 10, Section 10.01 – Disciplinary Action;
2. Administrative Instruction 521 – Employee Discipline – Due Process Requirements; and
3. Administrative Instruction 523 – Disciplinary Guidelines and Procedures.

By your actions you violated the following:

1. Administrative Instruction 544 – Managing Violence in the Workplace;
2. Administrative Instruction 577 – City of Oakland Policy Regarding Alcohol and Drug Use;
3. Administrative Instruction 596 – Citywide Code of Conduct – Non-sworn Employees; and
4. Public Works Agency Personnel Policies and Procedures Manual in its entirety, Sections titled Working Together, Appropriate Use of City Resources and Time, Equipment and Supplies, Reporting Absences, Workplace Harassment, Personal Business Leave, Alcohol and Drug Abuse, and Vehicle Safety and Employee Responsibility.

You also failed to comply and fulfill the requirements of:

1. 2014-15 Employee Performance Plan – Attendance, Accountability, and Professional Conduct standards.

The action is based on the following acts or omission as documented in the Notice of Intent that the City provided to you and further summarizes here:

1. April 24, 2014 – You failed to follow proper procedures for requesting time off work, copies of these procedures you acknowledged receiving in writing on February 28, 2014. Therefore, you were in an unauthorized leave status on that afternoon.
2. June 28, 2014 – On your day off work, you took without permission or authority (in effect stole) City vehicles 4822 and 4947 from the City lot at 5050 Coliseum Way, Oakland, California and used these City vehicles for personal business. The City alleges you previously duplicated the keys to these two vehicles or otherwise obtained the keys in an unauthorized manner that enabled you to steal the vehicles.
3. June 28, 2014 – You disabled the Automatic Vehicle Locator (AVL) system on City vehicle 4947 to ensure the vehicle, and therefore your actions, could not be traced by GPS.
4. July 3, 2014 – You made a threat of bodily harm to a security guard in relation to the unauthorized use of the vehicles noted above that left the guard fearful for his safety.
5. September 16, 2014 – You again took without permission or authority City vehicle 4947 and used the vehicle for personal business, drank alcoholic beverages while driving that vehicle, and then abandoned that vehicle on a city street.

OPW conducted an Administrative Investigation in November 2014. As part of that investigation, you, two Street Maintenance Leaders, and four OPW supervisors were interviewed. At your interview, which occurred on November 18, 2014, you were represented by SEIU Local 1021 Field Representative Terry Meadows and shop steward Felipe Cuevas.


In response to the Notice of Intent to Terminate your employment, you participated in two Skelly interviews with Skelly Officer, Deborah Grant. On May 12, 2015, Ms. Grant wrote and concluded that "[b]ased on the above findings and conformance with Administrative Instruction 523, this office concurs with the department's recommendation to terminate Michael Jones from employment with the City of Oakland."

After carefully reviewing all of the information in this matter, I concur with the recommendation to terminate your employment in light of your unauthorized use of two City vehicles on April 24, 2014, the tampering and disabling of the AVL System on a City vehicle, threatening violence on a City Contractor employee and the unauthorized use of a City vehicle again on September 16, 2014. Any one of these incidents alone, coupled with your apparent untruthfulness during the administrative investigation and Skelly hearing, would be support for your termination. The cumulative effect of each of the incidents simply bolsters the termination decision. You have been given sufficient notice to the rules, policies and directives and yet have demonstrated a

disregard for those rules. You are terminated effective close of business day Friday, June 19, 2015.

You are hereby notified that pursuant to the Memorandum of Understanding between the City of Oakland and SEIU Local 1021 that you may file a grievance regarding this action. Alternatively, you may submit your appeal directly to the Secretary of the Civil Service Board in accordance with Section 10.03 of the Personnel Manual

Sincerely,


John A. Flores
Interim City Administrator

ATTACHMENTS: Skelly Officer Report

cc:

Susan Kattchee, Assistant Director
Frank Foster, Operations Manager
Official Personnel File
OPW-HR file
Employee Relations
SEIU Local 1021 (via email without attachments and via U.S. Mail with attachments)



150 FRANK OGAWA PLAZA • 2ND FLOOR • OAKLAND, CALIFORNIA 94612

Department of Human Resources Management
Risk & Benefits Division

Deborah Grant, Risk Manager

(510) 238-7660
FAX: (510) 238-2275
TDD: (510) 238-3724
DIRECT: (510) 238-7165

May 12, 2015

Brooke Levin
Oakland Public Works
250 Frank Ogawa Plaza, 4th Floor
Oakland, CA 94612

Re: Skelly Hearing Findings – Notice of Intent to Terminate for Michael Jones

Dear Ms. Levin:

On February 25 and March 23, 2015, I had the opportunity to meet with Mr. Michael Jones, Public Works Maintenance Worker for Oakland Public Works (OPW). The purpose of our meeting was to engage in the Skelly Hearing process relevant to a Notice of Intent (NOI) to Terminate, dated January 27, 2015 (and revised on March 9, 2015) and to provide Mr. Jones with a skelly appeal process related to the incident(s) subject of the proposed disciplinary action.

Mr. Jones arrived on time for our scheduled meeting set for February 25, 2015 at 11:00 AM with his union representatives, Harry Baptiste, Lis Fiekowsky and Arlene Taylor. A second skelly meeting was held on March 23, 2015 at 2 PM, which was attended by Harry Baptiste, Timothy Glasper and a SEIU Union staff member.

A revised notice of intent, issued on March 9, 2015, was considered due to the department not providing all the documentation relied upon for the proposed action. It was determined, in order to provide fair consideration of the allegations, a revised notice of intent could be submitted and Mr. Jones would be afforded an opportunity to provide additional evidence based on the department's allegations and documentation.

In the revised Notice of Intent letter, dated March 9, 2015, to Mr. Jones, OPW recommends that he be terminated from employment with the City of Oakland for the following violations:

1. Administrative Instruction 544 – Managing Violence in the Workplace
2. Administrative Instruction 577 – City of Oakland Policy Regarding Alcohol and Drug Use
3. Administrative Instruction 596 – Citywide Code of Conduct – Non-sworn Employees
4. Public Works Agency Personnel Policies and Procedures Manual, in its entirety, but particularly sections titled Working Together, Appropriate Use of City Resources and Time, Equipment and Supplies, Reporting Absences, Workplace Harassment, Personal Business Leave, Alcohol and Drug Abuse and Vehicle Safety and Employee Responsibility
5. 2014-15 Employee Performance Plan – Attendance, Accountability and Professional Conduct standards

Background

The proposed discipline in this matter is based on multiple incidents that will be discussed separately below.

1. April 24, 2014 – Unauthorized Time Off

The department alleges Mr. Jones left work during his normal shift without proper authorization. Mr. Jones caused his co-workers to return him to the corporation yard at mid-day under the pretext that he had been authorized to leave work that afternoon by his direct supervisor. Mr. Jones' supervisor advises that his leaving work early on April 24, 2014 was unauthorized. Mr. Jones' supervisor asserts that Mr. Jones had discussed his needing to take time off in the future and that he would advise him of the dates as he became aware of them.

During the skelly meeting, Mr. Jones indicated that he was not feeling well on the date in question and asked to be dropped off early. He indicated that he had left messages for his supervisor and manager indicating he was not feeling well. He then left work presuming authority.

It should be noted that this explanation differs significantly from the explanation provided by Mr. Jones in his written statement of May 2, 2015, in which he states that he informed his supervisor that he had to take care of some personal, court related business and needed to take the afternoon off. The written statement was included in the revised skelly packet. Based on the divergent explanations, it does not appear that Mr. Jones obtained proper authorization to leave work early on April 24th and his time is appropriately recorded as unauthorized leave. The inconsistent explanations are troubling since it appears that Mr. Jones is not being truthful. It is appropriate for the department to consider this action for potential discipline both for leaving his job early without authorization and lack of truthfulness.

2. June 28, 2014 - Unauthorized Use of Two City Vehicles

The department alleges that Mr. Jones, without proper authority, took two City vehicles on his regularly scheduled day off and used them for his personal gain. Mr. Jones was identified as the driver of one of the "stolen" vehicles (#4822) by two separate sources, Mr. Jones' direct supervisor and a contracted security guard. It is presumed that Mr. Jones participated in the unauthorized use of a second OPW vehicle (#4947) on that same day. Both vehicles were taken from the City equipment yard, using key duplicates that were apparently illegally made, as the City's duplicate sets of keys for these vehicles were both secured at the time the vehicles were taken. Both vehicles were returned to the City yard with similar discarded items, debris in the truck bed. As such, it appears that Mr. Jones was involved in the theft of both vehicles on that day.

During the skelly meeting of February 25, Mr. Jones did not deny specifically that he took vehicle. He stated that the City had no proof that he took the vehicle. Similarly, during his administrative interview, when asked if he entered a City building on the day in question, he stated that he did not recall and that if he did, it would have been for a different purpose that to obtain keys to drive vehicle. It appears that Mr. Jones did not deny using the City vehicles without authorization, and offered no evidence disputing the allegations. He simply stated that the department had no proof he was responsible for the theft of the vehicles. Two separate eye witnesses however dispute his perspective. During the March 23rd skelly meeting, he further asserts that his supervisor did not positively identify Mr. Jones as the driver of the vehicle observed on the road in East Oakland. This is based on a written statement where he stated his view of the truck driver was obstructed by another vehicle, but he is "85 - 90% sure it was Michael Jones". He however did not counter the statement of the contracted security guard who also identified Mr. Jones as having taken the vehicles out of the yard without authorization. While Mr. Jones denies taking the vehicles out of the yard without authorization, it is troubling that he has chosen to offer not evidence of his non-involvement and instead relies on the supposed lack of "proof" that he violated the City's rules regarding the use of City property for non-City business purposes.

3. June 28, 2014 - Tampering and Disabling the AVL System on City Vehicles

During the course of the unauthorized use of Vehicle # 4947, the AVL (an installed GPS vehicle locator device) for the vehicle was tampered with, resulting in the connector wires being cut. The department asserts this tampering took place while the vehicle was in the unauthorized possession of Mr. Jones, as the recording of the vehicle's location was disrupted during the period it was stolen. The final recorded location for the vehicle was at a private school address in San Leandro, a location any City vehicle would not be authorized to service.

Mr. Jones asserts that the City offered no evidence that he was involved in the theft and vandalism of City vehicles on this date. He offered no other evidence to refute the allegations. While Mr. Jones is claiming no proof of his unauthorized use and the vandalism/tampering of City property, he is being coy by seeking "proof" that he did tamper with the City equipment. Again, based upon his behavior his assertions are not credible and it appears that he did in fact damage City equipment and thus not only violated city rules but also cause the City to incur expenses to address the damage.

4. July 3, 2014 - Threatening Violence on a City Contractor's Employee

On July 3, 2014, the City received an unsolicited complaint from its security vendor, Cypress Security that Michael Jones threatened to harm the security guard that was on duty on June 28th, if the guard identified him as the person who stole the two vehicles. The description of the threat was specific to when he would attempt to harm the guard, should the guard "snitch" on him about the theft of the two vehicles.

Mr. Jones' written statement simply states that he does not remember what he said to the guard, implying that he did have a conversation with the guard. He later asserts, during the admin interview and the skelly meetings that he did not say anything to the guard that was threatening in nature. It is bad enough that Mr. Jones used City vehicles without authorization, and tampered and damaged City equipment, but then to attempt to cover-up these violations of City policy by threatening witnesses is unacceptable. The very fact that he went to the extent of threatening witnesses is indicative of his desire to conceal his violations and thus he has simultaneously exposed his untruthful statements.

5. September 16, 2014 - Unauthorized Use of City Vehicle

The department alleges that Mr. Jones, without proper authority, took City vehicle #4947 on his regularly scheduled day off (September 13, 2014) and abandoned it on a City street with a load of debris. The truck was discovered by a City employee on September 16, 2014, who reported it to Oakland Police Department for processing. When discovered, the truck bed was full of debris, and an empty beer bottle was in the back seat of the vehicle. While onsite, recovering the vehicle, the on-site supervisor observed Mr. Jones driving past the location where the truck had been abandoned. The department asserts that Mr. Jones was involved in the theft of the vehicle and had knowledge of its location as evidenced by his driving past the location when it was being recovered by the department.

Mr. Jones asserted that he was not involved in the theft of the vehicle and by his mere driving in the vicinity of the vehicle does not prove his involvement. Again, if Mr. Jones is to be believed, it is an incredible coincidence that he happened to be driving on the street where a City vehicle was abandoned, as it was not a major transportation artery in that neighborhood.

It should be noted that throughout both skelly meetings, Mr. Jones alleged the disciplinary actions were proposed in retaliation of a personal relationship he had with his ex-wife, who is the daughter of _____ is a Public Works Supervisor II and while not his direct supervisor, is the supervisor of Mr. Jones' supervisor, _____ does not typically have direct contact with Mr. Jones or provide direct supervision. While Mr. Jones could not provide evidence that _____ attempted to sway the outcome of the proposed action, it appears that _____ placement as _____ over the unit that Mr. Jones works in may have been in violation of Ordinance 12908 if Mr. Jones was related to _____ when the two were related. This is because Ordinance 12908 defines supervision as having "authority, direction, control or influence, including being in the same chain of command and participation in decisions about Terms and Conditions of Employment of one or more other employees".

Findings

The department established that Mr. Jones did violate City rules and performance expectations on items 1 through 4. Through the evidence provided by written statements and observations of credible personnel, it appears that Mr. Jones' left work without property authorization on April 24, 2014 and was directly involved in the theft of the two City vehicles on June 28th, the subsequent vandalism resulting in the wires to the AVL system being severed and the making of threatening comments to a co-worker of the guard that observed Mr. Jones driving the stolen vehicle on June 28th.

The department did not provide sufficient evidence to support their fifth allegation, alleging Mr. Jones stole a city vehicle on September 13, 2014. However, given his questionable assertions in the previous cases above wherein Mr. Jones used City vehicles without authorization, the veracity of his statements regarding this incident is problematic.

Mr. Jones was not truthful during the administrative interviews or during the skelly meetings, in that he provided inconsistent explanations for his actions on multiple occasions. The department recommends termination of employment for the alleged misconduct. The City has zero tolerance for confirmed instances of threats of violence by City employees. Mr. Jones has received one prior disciplinary action resulting in a one-day suspension as imposed in a letter dated April 5, 2013. The circumstance of his prior discipline involved his making threatening comments toward another co-worker. During the investigation of that incident, Mr. Jones was found to be untruthful in reporting his involvement or actions in the incident. These findings reflect similar behavior for which Mr. Jones in being disciplined in this case.

While progressive discipline should be sufficient to encourage the employee to improve and prevent a recurrence of undesirable behavior and/or performance issues, it should also be commensurate with the severity of the deficiencies subject to the discipline and supported by the evidence. Given Mr. Jones' prior disciplinary history and the magnitude

Skelly Finding - M. Jones
May 12, 2015

6

of the incidents proved by the department, the recommended discipline is an appropriate action. Prior attempts to correct Mr. Jones' behavior have not been effective. He has demonstrated an apparent devolvement of his ability to act responsibly in the public trust. Therefore the proposed action is appropriate.

Recommendations

Based on the above findings and in conformance with Administrative Instruction 523, this office concurs with the department's recommendation to terminate Michael Jones from employment with the City of Oakland.

Sincerely,



DEBORAH GRANT
Risk Manager

C: S. Roundfield, CAO-ER
Y. Lopez, PWA-HR

CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA OAKLAND, CALIFORNIA 94612-2033

Oakland Public Works Department

(510) 238-3961
FAX (510) 238-6428
TDD (510) 238-7644

November 2, 2016

Michael Brooks
492 Hale Avenue
Oakland, CA 94603

Sent Via Certified Mail and Regular Mail

Subject: Notice of Intent to Terminate

Dear Mr. Brooks:

This letter is to advise you that the City intends to terminate your employment as a Sewer Maintenance Worker in the Oakland Public Works Department (OPW), Bureau of Infrastructure and Operations in accordance with:

1. Personnel Manual Rule 10, Section 10.01 – Disciplinary Action
2. Administrative Instruction 521 – Employee Discipline – Due Process
3. Administrative Instruction 523 – Disciplinary Guidelines and Procedures

This action is based upon your violation of:

1. Administrative Instruction 528 – Employee Loss of Required CA Driver's License
2. Class specification for Sewer Maintenance Worker

Background

You have been employed by the City of Oakland since July 12, 2010 as a Sewer Maintenance Worker. As a Sewer Maintenance Worker you perform various sewer maintenance duties such as inspecting, cleaning and repairing sewer lines; testing sewer conduits; assisting in inspecting and cleaning lift stations and using tools and equipment to perform heavy manual labor. You work at various locations throughout the City of Oakland. Accordingly, your position as a Sewer Maintenance Worker requires that you maintain a valid California Driver license, Class C, as a condition of employment.

The City's Administrative Instruction (AI) 528 - Employee Loss of Required California Driver's License provides the City's policy and procedure in addressing loss of a required driver's license. AI 528 requires that an employee whose license has been suspended, revoked or expired shall have his/her employment status reviewed on a case-by-case basis and appropriate action shall be taken against the employee based on the pertinent facts and job history of that employee.

Loss of Your Required Driver's License

On September 29, 2016 the City of Oakland was notified that your driver's license was suspended effective September 22, 2016. You were not at work on September 29, 2016; you have not reported to work since June 23, 2016. Because of your on-going, unprotected work absences and failure to maintain contact with me, we did not discuss the status of your driver's license until October 6, 2016. When I spoke with you on October 6, 2016, you advised me that you were not aware that your driver's license had been suspended. You stated that you would look into this matter as soon as possible and get back to me. We did not receive a response from you for several weeks.

In accordance with AI 528, the City has two days to investigate the suspension of an employee's required driver's license before taking further action. In response to our investigation, you were sent a letter via US mail on October 7, 2016 advising that you had until October 14, 2016 to provide proof that you had a valid or restricted driver's license or to request an unpaid leave of absence. Included with the letter was a copy of AI 528 and the form to submit to request an unpaid leave of absence. Indeed, you are aware of AI 528 and have been provided copies of AI 528 in the past as are all OPW employees. You even acknowledged receipt of AI 528 on May 8, 2014.

The deadline by which you had to request a leave of absence expired, however; you contacted me on October 17, 2016 to report that your driver's license was suspended.

You also stated that you did not know for how long the suspension would last. Importantly, during that call, you never requested an unpaid leave of absence. You claimed you would send some paperwork to my City email address that afternoon, but I never received that paperwork. Additionally, on Friday, October 28, 2016 you advised me by telephone that you would come to my office on Monday, October 31, 2016 to submit a request for an unpaid leave of absence. You did not submit that request for unpaid leave of absence on October 31, 2016 and you did not contact me to discuss this issue. Thus, you have not formally requested a leave of absence in accordance with AI 528. Regardless, the City will not grant you a leave of absence due to the fact that your license was suspended in November 2012, less than seven years ago.

More specifically, your CA driver's license was suspended effective November 14, 2012. At that time you were employed by the City as Sewer Maintenance Worker and were required to maintain a valid CA Class C driver's license as a condition of employment. However, in November 2012 you were on an extended leave of absence due to an on-the-job injury. Upon

your return to work on December 10, 2013 you were advised of your license suspension. Because you were not able to obtain a valid or restricted license, the City recommended termination of your employment based on AI 528. However, in accordance with the policy as stated in AI 528, specifically that you were not in a disciplinary track and had not had your driver's license suspended within the last seven years, you were approved for an unpaid leave of absence. You were able to obtain a valid driver's license within your approved unpaid leave of absence and returned to work on May 1, 2014.

In accordance with AI 528, loss of a required driver's license twice within seven years is cause for automatic termination of employment. Please see section VI(3)(b) of AI 528.

Additional Pertinent Facts - Attendance Issues

Despite repeated reminders that you must report your absences every day (or less frequently if you provide a doctor's slip placing you off work for an extended period),

you have failed to provide such documentation or keep me apprised of your work status. Since June 24, 2016, you have not provided documentation of your work absences and not been in contact with me for the following periods:

- Aug 3 – 11, 2016 (7 workdays)
- Aug 20 – 23, 2016 (2 workdays)
- Sept 8 – 14, 2016 (5 workdays)
- Sept 17 – 29, 2016 (9 workdays)
- October 13, 2016 – present (the city acknowledges contact from you on October 17 and October 28 concerning your suspended driver's license, but you have provided no proof of medical need to be off work since October 13 or any information about a return to work date.)

. Since October 13, 2016, the City does not have documentation to support a medical need for you to be off work.

Additional Pertinent Facts – Job Abandonment

According to the Oakland Civil Service Rules, Section 9.08 – Separation Due to Absence Without Leave an employee is considered to have abandoned their position if they do not contact the City or report to work in excess of five workdays. Your absences meet that standard for the periods August 3 – 11 and September 17 – 29, and October 18 - 27, as you did not contact the City or report to work on those dates.

Prior Disciplinary Action

On December 30, 2013 you received a Notice of Intent to Terminate (NOI) your employment based on loss of required driver's license. That NOI was held in abeyance pending your ability to obtain a valid driver's license within your approved 130 day leave of absence without pay. You did obtain a valid driver's license within your leave period and you returned to work.

In summary:

- You have not reported to work since June 23, 2016 – 4 months ago. In addition, many of the unapproved days off violate your Attendance Management Program and the Civil Service Rules.

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As stated previously, the City is taking no action in response to these approved, protected days off.

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- You have, on three separate occasions since August 2016, met the City's definition of job abandonment by failing to maintain contact with me for more than five workdays

concerning your intentions with regard to your employment with the City. As of the date of this letter, the City does not know why you are off work and when you plan to return to work. This alone may be grounds for action per the Civil Service Rules.

- Your driver's license has been suspended since September 22, 2016. You do not know the length of the suspension and did not timely apply for a leave of absence. Moreover, the City refuses to grant you a leave of absence, and instead, proceeds with your termination since your license has been suspended twice in less than seven years.

Copies of the following attached documents were relied on in making this recommendation:

1. Personnel Manual Section 10 - Disciplinary Actions, Appeals and Hearings
2. Administrative Instruction 521 - Employee Discipline-Due Process
3. Administrative Instruction 523 - Disciplinary Guidelines and Procedures
4. Administrative Instruction 528 - Loss of Required Driver's License
5. Administrative Instruction 538 - Attendance Management Program
6. Civil Service Rule Section 9.08 - Separation Due to Absence Without Leave
7. Class Specification - Sewer Maintenance Worker
- 8.
- 9.
- 10.
11. Employer Pull Notice Driver Record form for Michael Brooks dated September 29, 2016
- 12.
- 13.
14. Letter to Michael Brooks from Yolanda Lopez dated October 7, 2016 concerning AI 528 violations and possible action.
15. Acknowledgement Form - City of Oakland Policies and Procedures signed by Michael Brooks on May 8, 2014
- 16.
17. Notice of Intent to Terminate and Abeyance of Notice of Intent to Terminate for loss of required driver's license - both dated December 30, 2013.

You have the right to respond to the facts contained in this letter. You may respond in writing and/or orally by attending a Skelly Hearing. If you choose to respond in writing, you have until the close of business on November 16, 2016 to provide written comments to Deb Grant. If you wish to respond orally, you may meet with Deb Grant on Wednesday, November 16, 2016 at 1:30 PM in her office located at 150 Frank H. Ogawa Plaza, Suite 3332, Oakland, CA. You have the right to request union representation or other representation of your choice at the Skelly

Date: November 2, 2016
Re: Notice of Intent to Terminate

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Hearing. Please confirm your attendance at the Skelly Hearing with Deb Grant by calling her at 510-238-7165.

If there is a request for continuance, the meeting shall occur no later than fifteen (15) working days from the date the notice was sent.

Sincerely,



Miguel Guzman
Public Works Supervisor I

Attachments

cc: Deb Grant, Skelly Officer
Jason Mitchell, Assistant Director
Tyree Jackson, Public Works Operations Manager
Kenneth Patton, Public Works Supervisor II
Yolanda Lopez, Support Services Manager
Official Personnel File
OPW Personnel File
Employee Relations
SEIU Local 1021 (sent via email without attachments and Regular Mail with attachments)