

MINUTES
PERSONNEL APPEALS HEARING
APPELLANT: John Urquijo
Wednesday, April 5, 2023
Open Hearing per Appellant Request

A hearing regarding the appeal of dismissal by John Urquijo was held at 8:30 a.m., Wednesday, April 5, 2023, at Mesa City Plaza, Suite 650.

INDIVIDUALS PRESENT DURING HEARING

Patrick Braatz, Personnel Appeals Board Chair
Craig Freeman, Personnel Appeals Board Member
Jim Hill, Personnel Appeals Board Member
James May, Personnel Appeals Board Member
Nancy van Tellingen, Personnel Appeals Board Member
Christine Burns, Board Counsel
Lauren Lowe, Counsel for the City
Geoffrey Balon, Counsel for the City
Scott Bouchie, Energy & Sustainability Department Director
John Urquijo, Appellant
Philip Austin, Counsel for the Appellant
Carlos Duarte, Witness
Charles (Eddie) Gollihar, Witness
Steve Elmer, Witness
Joe Montez, Witness
Frank McRae, Witness
Jeremy Bettancourt, Expert Witness
Michael Quinones, Witness
Perla Mancillas, Witness
Emilio Magdaleno, Witness
Jesus (Chewey) Saenz
Tracy Hurt, Board Secretary

The meeting was called to order at 8:31a.m. by Mr. Braatz, Appeals Board Chair.

Mr. Braatz made introductions of the Board members, Craig Freeman, Jim Hill, James May, Nancy van Tellingen and Board Counsel, Christine Burns; Counsel in attendance for the City, Lauren Lowe and Geoffrey Balon; the Appellant John Urquijo and Appellant Counsel, Philip Austin.

Mr. Braatz read the minutes of the pre-hearing held on January 25, 2023, gave the Board instructions regarding the order of the hearing and their ability to provide the Board Chair questions to be asked of the witnesses and asked Ms. Lowe to begin her opening statement.

In the City's opening statement, Ms. Lowe asked the Board to focus on safety and responsibility. She stated that in the Energy Resources Department, safety is particularly important in the gas system unit in which Mr. Urquijo worked. She noted that Mr. Urquijo had multiple safety violation incidents and discipline related to those incidents. There were six safety incidents involving a City vehicle operated by Mr. Urquijo. Prior incidents included backing into a post, nearly hitting a school

bus, citizen report of erratic driving, hitting a grocery cart, and striking a parked vehicle. In addition, in 2018 he failed to follow proper purge procedures which resulted in a gas outage for 119 homes which could have resulted in serious harm had a spark ignited the gas. He received two (2) written reprimands, three (3) suspensions, three (3) disciplinary probations, and a demotion from Gas System Inspector. The incident on January 8, 2021, was the latest in a long string of similar incidents that showed a pattern of carelessness. The final incident in which Mr. Urquijo drove behind a backhoe in an active work zone causing a collision which resulted in the Energy Resources Director, Frank McRae, making the decision to dismiss Mr. Urquijo for just cause given his disciplinary history and continued careless behavior.

In the Appellant's opening statement, Mr. Austin asked the Board to assess the evidence presented and determine whether the City of Mesa had cause to terminate the employment of Mr. Urquijo. He noted that the definition of arbitrary and capricious are those decisions that are held to be unreasonable and taken in disregard of the facts and circumstances. Mr. Austin stated that the evidence provided would show that Mr. Urquijo did not violate the City's policies and procedures, yet others did and that was the cause of the accident on January 8, 2021.

The City called the following witnesses: Carlos Duarte, Steve Elmer, Charles (Eddie) Gollihar, Joe Montez, Frank McRae and Scott Bouchie. These witnesses testified that Mr. Urquijo violated the standards of the Smith Driving protocol which includes making eye contact with coworkers, being sure you are seen and giving yourself an "out" should it be needed. They testified that Mr. Urquijo's decision to enter the work zone of the backhoe operator without ensuring his presence was known showed a lack of standard safety protocol. In addition, Mr. McRae and Mr. Bouchie testified regarding the prior safety incidents and related discipline which had failed to change Mr. Urquijo's pattern of liability that the City could not allow to put citizens and City employees at risk.

The Appellant's counsel called the following witness: Jeremy Bettancourt, John Urquijo, Michael Quinones, Emilio Magdaleno, Perla Mancillas, and Jesus (Chewey) Saenz. Mr. Bettancourt testified as a paid expert witness to provide his opinion on the incident based on his experience as a safety engineering manager at a private building company. Mr. Bettancourt stated that he felt that the backhoe area should have been marked as a work zone. Mr. Urquijo testified that he believed he had made eye contact with the backhoe operator (Carlos Duarte) prior to passing behind the backhoe and that in his experience the entire subdivision was the "work zone" and he did not enter Mr. Duarte's area without following proper procedure. Mr. Urquijo also testified that he did not believe the City conducted an appropriate investigation into the incident and that there was personal bias against him by Mr. Gollihar due to his reporting of a gas leak incident that he felt Mr. Gollihar did not want to hold a crew accountable for. Mr. Quinones and Mr. Magdaleno both testified based on their experience working with Mr. Urquijo and Mr. Gollihar as prior City employees. Ms. Mancillas testified regarding her role in the Energy Resources department as the Management Assistant II who processes disciplinary documents. Mr. Saenz testified that as a gas systems crew leader he was tasked with responding to the incident and taking photographs and statements from all parties at the scene by his supervisor, Eddie Gollihar.

Mr. Balon presented the City's closing statement asking that the Board consider the rules which state that they should consider whether the discipline was proven by the preponderance of evidence not to have been arbitrary and capricious but was taken with cause. He asked that they consider the testimony regarding the proper procedures of the Smith Driver training. He noted Mr. Urquijo's

history of discipline which showed a pattern of safety violations, his failure to be sure that he was seen and to have an “out” before driving behind the backhoe on that day, and the fact that the City could not continue the risk Mr. Urquijo had shown to be a pattern of behavior and not a conspiracy against him.

Mr. Austin presented the Appellant’s closing statement asserting that the City did not prove that the termination was made with just cause and if not for the incident that occurred on January 8, 2021, Mr. Urquijo would not have been terminated. He stated that Mr. Quinones, Mr. Magdaleno, and Mr. Saenz testified that they believed the entire subdivision would be considered a work zone which contradicts the statement that Mr. Urquijo entered the work zone of the backhoe operator, Mr. Duarte, improperly. Mr. Austin asserted that Mr. Duarte and his spotter, Mr. Elmer, were at fault for the accident and that Mr. Urquijo was a victim of retaliation and bias by Gas System Supervisor, Charles Gollihar. Mr. Austin asked that the Board recommend reinstatement of Mr. Urquijo.

Mr. Balon provided the City’s final closing statement and reiterated Mr. Urquijo’s pattern of reckless and careless behavior. He noted that Mr. Urquijo could have prevented the accident if he had properly applied the principles of the City’s training. Mr. Balon asked that the Board uphold the termination.

Mr. Braatz thanked both parties for their presentations and gave instruction to the Board members on the process that would follow:

The Board would go into Executive Session to deliberate and if Mr. Urquijo and his counsel and the City’s counsel, Ms. Lowe and Mr. Balon attended the Executive Session they may not make any additional statements or comments to the Board.

Mr. Braatz noted that neither the Board nor the Secretary shall notify anyone of the Board’s determination before notification to the parties. He reminded the Board that the standard of proof is whether the preponderance of the evidence establishes the facts underlying the disciplinary action and if so, whether the discipline was arbitrarily imposed or taken without cause. He instructed the Board to base its decision solely on the evidence it received at this hearing.

After the Board has discussed and considered the matter it shall return to open session and render its vote. The Board may recommend any of the following:

- uphold the City’s action
- reinstate the employee with all back pay and benefits
- or make recommendations for a lesser penalty

Within five days of taking this vote, the Board Chair will provide the Board Secretary the advisory opinion to be submitted to the City Manager.

The Board entered Executive Session for deliberation.

After deliberation, the Board returned to open session to vote on a recommendation. The Board voted as follows:

Nancy van Tellingen:	Voted to uphold the termination
Jim Hill:	Voted to uphold the termination
James May:	Voted to uphold the termination
Craig Freeman:	Voted to uphold the termination
Patrick Braatz:	Voted to uphold the termination

The hearing was adjourned at 6:25pm.