

DRAFT MINUTES
PERSONNEL APPEALS HEARING
APPELLANT: Stephen Barton
Thursday, November 18, 2021
Closed Hearing per Appellant Request

A hearing regarding the appeal of dismissal by Stephen Barton was held at 8:30 a.m., Thursday, November 18, 2021.

INDIVIDUALS PRESENT DURING HEARING

Patrick Braatz, Personnel Appeals Board Chair
Christine Burns, Board Counsel
Jon Nielson, Personnel Appeals Board Member
James May, Personnel Appeals Board Member
Nancy van Tellingen, Personnel Appeals Board Member
Justin Pierce, Counsel for the City
Mary Cameli, Mesa Fire Chief
Stephen Barton, Appellant
Kathryn Baillie, Appellant Counsel
Tim Murphy, Witness
Mike Dunn, Witness
Rich Kochanski, Witness
Tracy Hurt, Board Secretary

The meeting was called to order at 8:30a.m. by Mr. Braatz, Appeals Board Chair.

Mr. Braatz made introductions of Board members, legal counsel, and Appellant, Mr. Barton. Mr. Braatz read the summary of minutes of the pre-hearing held on October 21, 2021. He gave the Board instructions regarding the order of the hearing and asked Ms. Hurt to be the timekeeper.

In the City's opening statement, Mr. Pierce gave an overview of the Mesa Fire Departments mission to serve with compassion, accountability respect and excellence. Mr. Pierce stated that former Fire Captain, Steve Barton demonstrated that he was unwilling to uphold the departments mission.

Mr. Pierce described the incident which occurred on April 29, 2019, as an Advanced Life Support call that was dispatched to Mr. Barton's station for a woman who was having difficulty breathing. Mr. Pierce stated that Mr. Barton did not adequately convey to his crew the seriousness of the situation based on the dispatch notes and that once arriving on scene, Mr. Barton decided he was not needed inside and instead, laid down in the driveway with leg up resting on his knee and arms behind his head in relaxed posture until he realized the seriousness of the situation when he asked his crew if this was a "381" (not patient found) and received a "not even close" response. He only assisted as the patient was being loaded into the ambulance. The patient later died at the hospital.

Mr. Pierce indicated he would be calling as witnesses:

- crew member Tim Murphy who rushed into the house to find the disturbing situation that had been described on the dispatch CAD notes;

- Battalion Chief Bill Daniell who handled the investigation of the complaint filed with Mesa Fire by a member of the ambulance service who witnessed Mr. Barton's behavior at the incident;
- Assistant Fire Chief Mike Dunn and Fire Chief Mary Cameli

Mr. Pierce further explained that while the incident on April 29, 2019, alone was enough to terminate Mr. Barton's employment; during the course of the investigation a pattern of behavior and Mr. Barton's lack of truthfulness added additional weight to the decision to terminate. He asked the Board to carefully consider the evidence that would be presented and to make a recommendation to uphold the termination.

Ms. Kathryn Baillie, representing the Appellant, Stephen Barton, began her opening statement and indicated that Mr. Barton would provide testimony of his 13-year career with the City of Mesa and expand on the statements of Tim Murphy, Joel Cleare and Aaron Dotterer regarding the condition of the home that they were dispatched to on the incident of April 29, 2019. The home was described as a hoarder house and there was a foul smell and overwhelming odor of animal feces and urine.

Ms. Baillie stated that in addition to the smell of the home, there was a very narrow path to reach the bedroom due to accumulation of furniture and other items in the home. She emphasized that the smell of the home was overwhelming and the clutter made it difficult to have all four crew members enter the home. She noted that Tim Murphy stated that it took him 10 seconds to reach and assess the patient in the home and determine that a gurney would not fit and they would need to carry her out on a chair already in the home. Once Tim Murphy and Aaron Dotterer brought the woman outside on the chair, AMR ambulance was there and helped them load her onto the gurney. Mr. Barton immediately went into the ambulance and began to render care to the patient.

Ms. Baillie said that she would call retired Fire Captain Ken Forrey who would testify that there are times that the smell of a hoarder home is so overwhelming that firefighters become sick and cannot go into the home or that they are allergic to cats and if someone opens the door and there is a cat a firefighter will stay outside. She said that not only did Mr. Barton remain outside the home, but so did Joel Cleare. As Mr. Barton told the investigators, he attempted to enter the home but at the threshold pulled his shirt over his nose and assisted the husband with moving some furniture and then walked back outside.

Ms. Baillie said that the Board would hear that Mr. Barton did lay on the ground as sometimes that happens when someone gets sick.

Ms. Baillie stated that the reference to a "Code 381" would be explained as it is used to convey that there was no contact with a patient or for a "lift assist" when a patient has fallen and needs assistance getting up. She noted that on the April 29, 2019, call Mr. Barton asked his crew if it was a "Code 381" because he did not immediately see the patient on the chair. Once he realized there was a patient he immediately began to assist.

Ms. Baillie refuted the statement that every person on the scene saw Mr. Barton on the ground. She stated that only Joel Cleare who was outside with Mr. Barton, and the two AMR paramedics saw him on the ground. No one asked Mr. Barton if he was ok. They were focused on the patient as expected. Once the patient was loaded into the ambulance, Mr. Barton went into the ambulance to assist and try to get an IV into the

patient. He was very caring for the patient, but unfortunately at the hospital she did die through no fault of Mr. Barton.

Ms. Baillie asked the Board to pay close attention to the interview transcripts. She would be calling Battalion Chief and former supervisor of Stephen Barton, Rich Kochanski to testify that he never experienced any unprofessional behavior from Mr. Barton during his supervision of him. She stated that Mr. Barton's termination was excessive and that he wants to return to the Mesa Fire Department.

Interview summaries here

Closing statements:

Mr. Pierce presented the City's closing statement. He reminded the Board to consider the testimonies presented earlier and not just Mr. Barton's. Mr. Pierce asked if anyone pulled up to a scene like the incident on April 29, 2019 and saw Mr. Barton lying on the ground would they have confidence Mr. Barton had taken their call seriously; and if a reporter was sitting here today what would the headline be for Mesa Fire Department. He stated that Mr. Barton lied to his chain of command and did not take responsibility for his actions. Mr. Barton knew the call was an Advanced Life Support, yet he still asked if it was a "381" – no patient found and he has not been telling the truth from the beginning. The Fire Chiefs looked at the entire incident and spend a lot of time investigating it. There has been no accountability from Mr. Barton and this is an unreasonable risk for the citizens of Mesa.

Mr. Pierce stated that the Board should agree with the assessment of the Fire Department Chiefs who have over 100 years of combined experience in service and that Mr. Barton's termination was for cause.

Ms. Baillie presented her closing statement. She stated that although the City's counsel presented an emotional closing, the Board should use logic and not emotion when considering the evidence. It should be logical in regard to the policies of the Fire Department. Past practices of discipline at the Fire department are not consistent with this termination. Termination is the 5th level of discipline and another Fire Captain who did not successfully complete corrective action, including disciplinary probation, for a serious incident was given a demotion and retained his employment. The Corrective Action Plan was given to Mr. Barton while he was on Administrative Leave and he was terminated one month later. He was not given time to correct any issues. Is he not salvageable after thirteen years with the Fire department? The incident on April 29, 2019, was a load and go and Mr. Barton's action did not affect the patient's care. Joel Cleare also stayed outside the house.

Ms. Baillie stated that the City wanted the Board to believe that Steve Barton was lying and tried to paint a picture of him as uncaring for less than a minute of laying down when feeling ill to support their claim for termination. The City did not have historical disciplinary documentation and taking his career away for less than a minute of lying down was emotional and not logical. She asked that the Board reinstate Mr. Barton to allow him to continue his career with the City of Mesa.

Mr. Pierce provided final comments and said that Mr. Barton was not truthful and wanted the Board to feel sorry for him. Mr. Pierce asked the Board to focus on the totality of the

evidence not just the items Mr. Barton chose to focus on. He stated that it would be an unreasonable risk to the citizens of Mesa and the Mesa Fire Department to reinstate Mr. Barton.

Chair Braatz and the Board entered to Executive Session at 8:27pm. The Appellant, Appellant's Counsel and City's Counsel were in attendance at the Executive Session.

Mr. Braatz instructed the Board to base its decision solely on the evidence it received at the hearing.

After discussion among the Board, Mr. Braatz reconvened open session for vote at 8:40pm.

Board member Jim Hill motioned to vote on reinstatement without back pay and benefits with demotion to firefighter.

Board Chair, Patrick Braatz asked the Board to vote on the recommendation options as follows:

Vote to uphold the City's termination:

Jim Hill – No

Jon Neilson – Yes

Nancy Van Tellingen – Yes

James May – No

Patrick Braatz – No

Vote to reinstate with all back pay and benefits:

Jim Hill – No

Jon Neilson – No

Nancy Van Tellingen – No

James May – Yes

Patrick Braatz – No

Vote to recommend a lesser penalty – reinstate without back pay and benefits with demotion to firefighter

Jim Hill – Yes

Jon Neilson – Yes

Nancy Van Tellingen – Yes

James May – No

Patrick Braatz – Yes

Board Chair Patrick Bratz adjourned the hearing at 8:47pm