



CIVIL SERVICE COMMISSION

City of Tucson

Minutes

Keith Cubberly
Appeal of Demotion Hearing
Tucson Fire Department
September 19 – 20, 2023 & October 19, 2023

September 19, 2023 – Day One

A quorum of the Civil Service Commission (CSC) of the City of Tucson met at 9:00 AM on Tuesday, September 19, 2023, at City Hall, 255 W. Alameda in Tucson, Arizona, for the Appeal of Demotion filed by Keith Cubberly with the Tucson Fire Department (TFD). The hearing was made accessible remotely through technological means as permitted under Arizona law as well as in person.

Those present from the Civil Service Commission were Chairperson Paul Fimbres, Vice Chairperson Rebecca (Becky) Montaño, and Commission Member Eduardo (Eddie) Rios. The staff present were Donna Aversa, Legal Counsel, Suzette Yaezenko, HR Director, Elsa Quijada, HR Deputy Director, CSC Designated Secretary, and Reina Gallego, Administrative Assistant for Human Resources, Recording Secretary.

Also present were Jeffrey Jacobson, Attorney, representing Appellant Keith Cubberly; Jennifer Stash, Principal Assistant City Attorney representing the City and the Tucson Fire Department, and Charles (Chuck) Ryan, Chief/TFD Director.

This appeal was held in Open Session; however, the rule was invoked. Invoking the rule is a civil procedure that allows a party to request that a witness be prevented from hearing the testimony of other witnesses in the hearing.

The following witnesses were sworn in during the hearing:

1. Greg Hoffman
2. Eric Jakoby
3. Daniel Burke
4. Shelly Urias
5. Christopher Anderson
6. Charles “Chuck” Ryan
7. Daniel Heffelfinger
8. Gordon Clark
9. Ray Dashiell
10. Keith Cubberly

City's Exhibits Admitted

Exhibit A Tabs 1 – 6

- Tab 1 – Personnel Action Request Form
- Tab 2 – Notice of Decision (Appealable Action)
- Tab 3 – Employee’s Right to Civil Service Appeal
- Tab 4 – Notice of Intent to Discipline (non-discharge)
- Tab 5 – Notice of Intent to Discipline - Exhibit A
- Tab 6 – Appellant’s Appeal Letter



Exhibit B Tabs 1 – 10

- Tab 1 – Department Personnel File
- Tab 2 – HR Personnel File
- Tab 3 – Definition of *Just Cause*, Tucson City Code §10-3
- Tab 4 – Administrative Directive 2.02-5 Rules of Conduct
- Tab 5 – Administrative Directive TFD Administrative Manual Sec. 200 – Discipline Rules of Conduct.
- Tab 6 – TFD Discipline Matrix and Section 217
- Tab 7 – OT opportunities at PSCD
- Tab 8 – Skill Sheet for Training
- Tab 9 – Public Safety Communications Department Commissioned Fire Evaluation Forms
- Tab 10 - Discipline Review Board Memorandum (DRB) 473

Exhibit C Uniform Policy

Exhibit D Print out Dec. 28, 2021

Appellant's Exhibits Admitted

Exhibits 1 -30

- Exhibit 1 – TFD Incident Report – 1150 W. Prince Road, December 28, 2021
- Exhibit 2 – DC Burke email requesting memo dated 12-30-21.
- Exhibit 3 – Cubberly memo to DC Burke re: 2554 N. First Ave, Code Red
- Exhibit 4 – EOM Section 203 Fireground Safety
- Exhibit 5 – EOM Section 105 Command Procedures.
- Exhibit 6 – Email from BC Jakoby to Keith Cubberly, dated February 15, 2022, re: WIP.
- Exhibit 7 – Email from BC Jakoby to Petitioner dated May 5, 2022, re: WIP meeting 5-5-2022.
- Exhibit 8 – Email from BC Jakoby to Petitioner, dated May 23, 2022, re: WIP meeting, 5-16-2022.
- Exhibit 9 – Memorandum from Petitioner to Deputy Chief Burke, undated, re: Requested Comm memo.
- Exhibits 10 – 23 NOT ADMITTED
- Exhibit 24 – EOM 205 Safety PPE
- Exhibit 25 – EOM 302 Incident Priorities
- Exhibit 26 – EOM 213 Residential
- Exhibit 27 – Post Incident Analysis – Trench Rescue, Nov. 5, 2018
- Exhibit 28 – 29 CRF 1910.I34
- Exhibit 29 – Technical Rescue Field Op. Guide Edition 5 - Excerpts
- Exhibit 30 – Excerpts Technical Rescue Technician Instructor Guide



- 9:01 AM – 9:09 AM The hearing was called to order and roll call was taken. Chairperson Fimbres read the Opening Statement.
- 9:10 AM – 9:34 AM Preliminary Evidentiary issues were discussed. The Appellant had objections to some of the exhibits admitted by the City.
- 9:34 AM – 9:36 AM A motion made by Chairperson Fimbres, duly seconded, to go into Executive Session for legal advice pursuant to A.R.S. §38-431.03(A)(3), was passed by a voice vote of 3-0. Chairperson Fimbres read the Executive Session disclaimer.
- 9:36 AM – 9:47 AM The Board went into Executive Session.
- 9:47 AM – 9:56 AM The Board returned to regular session and Chairperson Fimbres announced that all exhibits would be allowed. The Appellant made additional objections for the record.
- 9:56 AM – 10:01 AM Elsa Quijada read the exhibits into the record.
- 10:01 AM – 10:09 AM The City made their Opening Statement.
- 10:10 AM – 10:11 AM The Appellant stated they reserved the right to make their Opening Statement at the start of their case.
- The City called its first witness, Deputy Chief Greg Hoffman, Tucson Fire Department.
- 10:11 AM – 10:21 AM Deputy Chief Hoffman gave testimony on direct examination.
- 10:21 AM – 10:31 AM Break due to technical difficulties.
- 10:31 AM – 11:00 AM Deputy Chief Hoffman continued testimony.
- 11:00 AM - 11:23 AM Deputy Chief Hoffman gave testimony on cross examination.
- 11:23 AM – 11:34 AM Deputy Chief Hoffman gave testimony on re-direct examination. The board asked a clarifying question. The witness was excused.
- 11:35 AM – 12:05 PM Lunch Break
- The City called its second witness, Battalion Chief Eric Jakoby, Tucson Fire Department.
- 12:05 PM – 1:26 PM Battalion Chief Jakoby gave testimony on direct examination.
- 1:27 PM – 1:36 PM Break
- 1:36 PM – 2:32 PM Battalion Chief Jakoby gave testimony on cross examination.



2:32 PM – 2:32 PM A motion made by Chairperson Fimbres, duly seconded, to go into Executive Session for legal advice pursuant to A.R.S. §38-431.03(A)(3), was passed by a voice vote of 3-0. Chairperson Fimbres read the Executive Sessions disclaimer.

2:33 PM – 2:48 PM The Board went into Executive Session. Chairperson Fimbres ruled objection was overruled.

2:50 PM – 3:26 PM Battalion Chief Jakoby gave testimony on cross examination.

3:26 PM – 3:32 PM Battalion Chief Jakoby gave testimony on re-direct examination.

3:32 PM – 3:34 PM Commissioner Rios asked Chief Jakoby a clarifying question. The witness was excused.

3:34 PM – 3:37 PM Break

The City called its third witness, Deputy Chief Daniel Burke, Tucson Fire Department.

3:40 PM – 4:12 PM Deputy Chief Daniel Burke gave testimony on direct examination.

4:13 PM – 4:33 PM Deputy Chief Burke gave testimony on cross examination.

4:33 PM – 4:34 PM Chairperson Fimbres reserved re-direct of this testimony for tomorrow. Hearing adjourned for the day to reconvene at 9:00 AM, Wednesday, September 20, 2023, for day two.

September 20, 2023 – Day Two

A quorum of the Civil Service Commission of the City of Tucson met at 9:02 AM on Wednesday, September 20, 2023, at The Tucson Police Department Headquarters, 270 S. Stone in Tucson, Arizona, for day two of the Appeal of Demotion filed by Keith Cubberly with the City of Tucson Fire Department. The hearing was made accessible remotely through technological means as permitted under Arizona law and in person.

Present were Chairperson Paul Fimbres, Vice Chairperson Rebecca (Becky) Montañó, and Commission Member Eduardo (Eddie) Rios. Staff present: Donna Aversa, Legal Counsel; Suzette Yaezenko, HR Director, Elsa Quijada, HR Deputy Director, CSC Secretary, and Reina Gallego, Administrative Assistant for Human Resources, Recording Secretary.

Also, present were Jeffrey Jacobson, Attorney, representing Appellant Keith Cubberly; Jennifer Stash, Principal Assistant City Attorney representing the City and the Tucson Fire Department, and Charles (Chuck) Ryan, Chief/TFD Director.



9:02 AM – 9:09 AM Deputy Chief Burke gave testimony on re-direct. The witness was excused.

The City called its fourth witness, Ms. Shelly Urias, Human Resources Manager.

9:10 AM – 9:19 AM Ms. Urias gave testimony on direct examination.

9:19 AM – 9:29 AM Ms. Urias gave testimony on cross examination. The witness was excused.

9:30 AM – 9:33 AM The Board discussed with the parties involved, the possibility of a third day for the hearing and inquired on the parties' availability.

The City called its fifth witness, Assistant Chief Christopher Anderson, Tucson Fire Department.

9:34 AM – 10:10 AM Assistant Chief Anderson gave testimony on direct examination.

10:10 AM – 10:21 AM Break

10:21 AM – 10:26 AM Assistant Chief Anderson continued testimony on direct examination.

10:26 AM – 11:10 AM Assistant Chief Anderson gave testimony on cross examination.

11:10 AM – 11:20 AM Break

11:20 AM – 11:27 AM Assistant Chief Anderson continued testimony on cross examination.

11:27 AM – 11:39 AM Assistant Chief Anderson gave testimony on re-direct examination. The Board asked clarifying questions. The witness was dismissed.

11:40 AM – 11:47 AM Appellant raised two objections which were discussed. Chairperson Fimbres overruled both objections.

The City called its sixth witness, Fire Chief Charles "Chuck" Ryan, Tucson Fire Department.

11:47 AM – 12:25 PM Chief Ryan gave testimony on direct examination.

12:25 PM – 1:15 PM Lunch Break

1:15 PM – 1:26 PM The City entered into the Record its Exhibit C with no objections.

1:26 PM – 1:36 PM Break due to technical difficulties.



1:36 PM - 1:38 PM	Chief Ryan continued testimony on direct examination.
1:38 PM – 2:04 PM	Chief Ryan gave testimony on cross examination.
2:04 PM – 2:20 PM	Chief Ryan gave testimony on re-direct examination. The Board asked clarifying questions. The witness was excused.

2:20 PM The City concluded its case.

The Appellant called the first witness, Carrie Clark, Paramedic, Tucson Fire Department.

2:26 PM – 2:39 PM	Ms. Clark gave testimony on direct examination. The City did not have any questions. The Board asked clarifying questions. The witness was excused.
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2:40 PM – 2:52 PM Break

The Appellant called the second witness, Capt. Daniel Heffelfinger, Tucson Fire Department.

2:52 PM– 3:27 PM	Capt. Heffelfinger gave testimony on direct examination.
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3:27 PM – 3:35 PM Break

3:35 PM– 3:52 PM	Capt. Heffelfinger gave testimony on cross-examination.
3:52 PM – 3:56 PM	Capt. Heffelfinger gave testimony on re-direct examination.
3:56 PM – 4:16 PM	The board asked clarifying questions. The witness was excused.

4:16 PM – 4:18 PM At this time, the Board set the hearing to continue on Wednesday, September 27, 2023, at 9:00 AM. Hearing adjourned.

October 19, 2023 – Day Three

A quorum of the Civil Service Commission of the City of Tucson met at 9:02 AM on Thursday, October 19, 2023, at City Hall, 255 W. Alameda in Tucson, Arizona, for day three of the Appeal of Demotion filed by Keith Cubberly with the City of Tucson Fire Department. The hearing was made accessible remotely through technological means as permitted under Arizona law and in person.

Present were Chairperson Paul Fimbres, Commission Members Rebecca (Becky) Montañó, and Eduardo (Eddie) Rios. Staff present: Donna Aversa, Legal Counsel; Suzette Yaezenko, HR Director, Elsa Quijada, HR Deputy Director, CSC Secretary, and Reina Gallego, Administrative Assistant for Human Resources, Recording Secretary.

Also present were Jeffrey Jacobson, Attorney, representing Appellant Keith Cubberly; Jennifer



Stash, Principal Assistant City Attorney representing the City and the Tucson Fire Department, and Charles (Chuck) Ryan, Chief/TFD Director.

9:01 AM – 9:17 AM A Motion to Dismiss was argued.

9:17 AM A motion made by Chairperson Fimbres, duly seconded, to go into Executive Session for legal advice pursuant to A.R.S. §38-431.03(A)(3) and was passed by a voice vote of 3-0. The Board returned to regular session at 9:28 AM, at which time Mr. Fimbres read the executive session disclaimer. The Board determined that it would take the motion under advisement and rule at the conclusion of testimony.

The Appellant called its third witness, Taylor Parrish.

9:31 AM – 9:57 AM Mr. Parrish gave testimony on direct examination.

9:57 AM – 9:58 AM Mr. Parrish gave testimony on cross examination. The witness was excused.

The Appellant called its fourth witness, Battalion Chief Gordon Clark. Tucson Fire Department

10:00 AM – 10:14 AM Battalion Chief Clark gave testimony on direct examination.

10:14 AM – 10:16 AM Battalion Chief Clark gave testimony on cross examination.

10:16 AM – 10:17 AM Battalion Chief Clark gave testimony on re-direct examination. The witness was excused.

The Appellant called its fifth witness, Captain Ray Dashiell, Tucson Fire Department.

10:18 AM – 10:29 AM Capt. Dashiell gave testimony on direct examination.

10:29 AM – 10:30 AM Capt. Dashiell gave testimony on cross examination. The witness was excused.

10:30 AM – 10:39 AM Break

The Appellant called its 6th witness, Keith Cubberly.

10:39 AM – 11:33 AM Mr. Cubberly gave testimony on direct examination.

11:33 AM – 12:19 PM Lunch Break

12:19 PM – 1:34 PM Mr. Cubberly continued with testimony on direct examination.

1:34 PM – 1:43 PM Break

1:43 PM – 2:16 PM Mr. Cubberly continued with testimony on direct examination.




- 2:16 PM – 2:22 PM Break
- 2:22 PM – 3:32 PM Mr. Cubberly gave testimony on cross examination.
- 3:33 PM – 3:43 PM Mr. Cubberly gave testimony on re-direct examination. The witness was excused.
- 3:42 PM – 3:50 PM Break
- 3:50 PM – 3:54 PM The City made its closing statement.
- 3:54 PM – 4:08 PM The Appellant made its closing statement.
- 4:08 PM – 4:19 PM The City made its rebuttal statement.
- 4:19 PM A motion was made by Chairperson Fimbres, duly seconded, to go into Executive Session for legal advice pursuant to A.R.S. §38-431.03(A)(3) and was passed by a voice vote of 3-0. The Board returned to regular session at 4:28 PM, at which time Mr. Fimbres read the executive session disclaimer.
- 4:29 PM Civil Service Commission Deliberations

In open session, based on the testimony presented and the exhibits admitted into evidence, a motion by Chairperson Fimbres, duly seconded, to deny the appeal demotion for Keith Cubberly, and affirm the disciplinary action. The Commission found that the Appellant knew, or should have known, that his conduct could lead to disciplinary action. The appeal of Keith Cubberly was denied, and disciplinary action imposed upon him be affirmed for the reason that there was just cause for the discipline imposed. The vote was 3-0.

The Chairperson directed the attorney for the Commission to work with the Chairperson to finalize the Commission's written decision.

The Hearing adjourned at 4:35 PM.


Paul Fimbres, Chairperson
Civil Service Commission

JAN 24, 2024
Date