

Entered - 04/26/00 - sb
CL00L0234 - DIANNE C. MITCHELL

00- *R* -1828

CLAIM OF: **TIM MILLER,**
through his attorney,
William J. McKenney
Two Midtown Plaza, Suite 1680
1349 West Peachtree Street
Atlanta, Georgia 30309-2920

For damages alleged to have been sustained as a result of a work reassignment on February 17, 2000 at 675 Ponce de Leon Avenue.

THIS ADVERSED REPORT IS APPROVED

BY: *Rosalind Rubens Newell*
ROSALIND RUBENS NEWELL
DEPUTY CITY ATTORNEY
CONSENT AGENDA

ADVISED REPORT
COM. *Public Safety*
11/14/00
Clara...
Michael...
...
...

ADVERSED BY NOV 20 2000
CITY CLERK

CERTIFIED
NOV 20 2000
ATLANTA CITY COUNCIL PRESIDENT
Robert...

CERTIFIED
NOV 20 2000
Rosalind Douglas Johnson
MUNICIPAL CLERK



OFFICE OF MUNICIPAL CLERK

RHONDA DAUPHIN JOHNSON, CMC
MUNICIPAL CLERK

55 TRINITY AVENUE, S.W.
SECOND FLOOR, EAST
SUITE 2700
ATLANTA, GEORGIA 30335
(404) 330-6033
FAX (404) 658-6103

November 28, 2000

William J. McKenney
Two Midtown Plaza
Suite 1680
1349 West Peachtree Street
Atlanta, GA 30309-2920

00-R-1828

RE: Tim Miller

Dear Attorney McKenney:

I sincerely regret that your client has been adversely affected by the circumstances raised in his/her claim for damages against the City of Atlanta. Your time and patience in this matter has been greatly appreciated.

However, I must notify you that the Atlanta City Council Adopted an Adverse Report on your client's claim at its regular meeting on November 20, 2000. In consultation with the City's Law Department, who conducted an investigation of the situation, the Council has determined that the City cannot accept responsibility for this matter and therefore cannot pay this claim.

If you desire any further information, please contact the **City Attorney's Office/Claims Division** at (404) 330-6400.

Yours very truly,

Rhonda Dauphin Johnson, CMC
Municipal Clerk

cc: **Claims Division/Law Department**

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 00L0234

Date: November 2, 2000

Claimant /Victim TIM MILLER
BY: (Atty) William J. McKenney
Address: Two Midtown, Plaza, Suite 1680, 1349 West Peachtree Street, Atlanta, Georgia 30309
Subrogation: Claim for Property damage \$ 1,962.00 Bodily Injury \$
Date of Notice: 04/24/00 Method: Written, proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 02/17/00 Place: 675 Ponce de Leon Avenue
Department Fire Services Division:
Employee involved Disciplinary Action:

NATURE OF CLAIM: The claimant alleges that he lost income due to a work reassignment after he was reinstated by the Civil Services Board. The investigation determined that the claimant's did not change when he was reinstated and that the Fire Chief has the exclusive right to make assignments that are in the best interest of the department.

INVESTIGATION:

Statements: City employee Claimant Others Written Oral
Pictures Diagrams Reports: Police Dept Report Other
Traffic citations issued: City Driver Claimant Driver
Citation disposition: City Driver Claimant Driver

BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial
Improper Notice More than Six Months Other X Damages reasonable
City not involved Offer rejected Compromise settlement
Repair/replacement by Ins. Co. Repair/replacement by City Forces
Claimant Negligent City Negligent Joint Claim Abandoned

Respectfully submitted,

[Signature]
INVESTIGATOR - DIANNE C. MITCHELL

RECOMMENDATION:

Pay \$ Adverse X Account charged: 1A01 2J01 2H01
Claims Manager: [Signature] Concur/date 11-02-00
Committee Action: Council Action

Dianne

WILLIAM J. MCKENNEY (GA & NY)
JEROME J. FROELICH, JR. (GA & NJ)

OF COUNSEL

DAVID M. KUPSKY (GA & PA)

MCKENNEY & FROELICH
ATTORNEYS AT LAW
TWO MIDTOWN PLAZA
SUITE 1680
1349 WEST PEACHTREE STREET
ATLANTA, GEORGIA 30309-2920

Mitchell
04/24/00
TELEPHONE
(404) 881-1111
FACSIMILE
(404) 881-8040
E-MAIL
MCKFROE@AOL.COM

April 17, 2000

The Honorable William Campbell
Mayor, City of Atlanta
55 Trinity Avenue, S.W.
Atlanta, Georgia 30335

ENTERED - 04/26/00 - tew
00L0234 - DIANNE C. MITCHELL

NOTICE OF CLAIM

O.C.G.A. § 36-33-5 and O.C.G.A. § 51-12-14

Date: 12/29/99

Atlanta Fire Department

Dear Mayor Campbell:

Please be advised that I have been retained by Fire Medic Tim Miller who was reinstated to his former position with the Atlanta Fire Department by Order of the Atlanta Civil Service Board dated 12/29/99. The Fire Department was required to reinstate the employee to the position he held prior to his improper termination with all accrued benefits and salary.

The City ignored the Order of the Civil Service Board for 50 days but, finally on 2/17/00 reinstated the employee only after a demand letter was sent to Chief Minor by the employee's attorney.

However, instead of reinstating Mr. Miller to the fire medic position he previously held at Station 23 and where he could utilize his medical training and experience, the fire department arbitrarily and as a means of retaliation reinstated Mr. Miller to the training division where there was no position for a fire medic.

Consequently, Mr. Miller has been penalized for exercising his appeal rights and successfully reversing the fire department by the following actions:

- 1) As a Fire Medic at Station 23, Mr. Miller prior to 9/02/99 worked 24 hours "on" and 48 hours "off," and was paid \$16.809 per hour for a 53 hour work week with the right to work overtime at the rate of time and half.

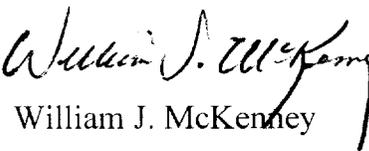
Mayor Campbell
April 17, 2000
Page 2

- 2) After reinstatement, Mr. Miller who was assigned to "training" is now employed 40 hours per week with a 40 hour work week, with no overtime or an opportunity to work a second shift, and without the opportunity to use his life saving skills learned by virtue of his 23 years of employment. Additionally, his prior rate of \$16.0891 has been reduced to \$16.083 per hour. Therefore, Mr. Miller is losing a base salary of \$218.40 per week based upon a Range 15 and step 10 classification which does not include the normal overtime which is allocated at Station 23.

At this time Mr. Miller has lost \$1,962.00 (again not including overtime.) It is therefore, the intent and purpose of this letter to inform you of this situation and allow the City 30 days from receipt of this certified letter to correct this inequity by 1) reinstating Mr. Miller to Station 23 as a fire medic, at the correct base salary; 2) reimbursing the employee for the base salary lost as a result of his assignment to "training"; and 3) reimbursing Mr. Miller for overtime shifts which he would have worked but for the actions of the fire department.

Additionally, pursuant to O.C.G.A. § 51-12-14, you have 30 days in which to pay this claim without penalty or interest, after which time legal action shall be commenced seeking additional damages and attorney's fees. In the event a judgment is obtained in an amount not less than \$2,617.20 interest shall accrue at the statutory rate from the date of making hereof.

Sincerely,


William J. McKenney

WJM/evg

Certified Mail Z 848 650 955

cc: Tim Miller

00- R-1828

RCS# 2401
11/20/00
2:00 PM

Atlanta City Council
Regular Session

CONSENT

Pages: 1-18

00-R-1849
(Morris Voted NAY)

ADOPT

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 0

SEE ATTACHED LISTING OF
ITEMS ADOPTED/ADVERSED
ON CONSENT AGENDA

Y McCarty	Y Dorsey	Y Moore	Y Thomas
Y Starnes	Y Woolard	Y Martin	Y Emmons
NV Bond	Y Morris	Y Maddox	NV Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

ITEM (S) REMOVED FROM
CONSENT AGENDA
00-O-1111
00-R-1693
00-R-1694
00-R-1695
00-R-1696
00-R-1697
00-R-1804
00-R-1835

CONSENT

11/20/00 Council Meeting		
ITEMS ADOPTED ON CONSENT AGENDA	ITEMS ADOPTED ON CONSENT AGENDA	ITEMS ADVERSED ON CONSENT AGENDA
1. 00-O-1690 2. 00-O-1691 3. 00-O-1692 4. 00-O-1845 5. 00-O-1864 6. 00-O-0728 7. 00-R-1702 8. 00-R-1703 9. 00-R-1705 10. 00-R-1707 11. 00-R-1850 12. 00-R-1865 13. 00-R-1851 14. 00-R-1873 15. 00-R-1622 16. 00-R-1623 17. 00-R-1699 18. 00-R-1775* 19. 00-R-1776* 20. 00-R-1777* 21. 00-R-1782 22. 00-R-1687 23. 00-R-1668 24. 00-R-1786 25. 00-R-1789 26. 00-R-1799 27. 00-R-1800 28. 00-R-1813 29. 00-R-1814	30. 00-R-1815 31. 00-R-1849# 32. 00-R-1858 33. 00-R-1862 34. 00-R-1787* 35. 00-R-1790 36. 00-R-1791 37. 00-R-1794 38. 00-R-1798 39. 00-R-1861 40. 00-R-1686 41. 00-R-1843 42. 00-R-1869 43. 00-R-1870 44. 00-R-0973 45. 00-R-0816 46. 00-R-1803 47. 00-R-1805 48. 00-R-1806 49. 00-R-1807 50. 00-R-1808 51. 00-R-1809 52. 00-R-1810 53. 00-R-1811 54. 00-R-1812	55. 00-R-1816 56. 00-R-1817 57. 00-R-1818 58. 00-R-1819 59. 00-R-1820 60. 00-R-1821 61. 00-R-1822 62. 00-R-1823 63. 00-R-1824 64. 00-R-1825 65. 00-R-1826 66. 00-R-1827 67. 00-R-1828 68. 00-R-1829 69. 00-R-1830 70. 00-R-1831 71. 00-R-1832 72. 00-R-1833 73. 00-R-1834 74. 00-R-1836 75. 00-R-1837 76. 00-R-1838 77. 00-R-1839 78. 00-R-1840 79. 00-R-1841 80. 00-R-1842 * President Pitts recused himself. # Lee Morris not voting.