

Civil Service Commission Minutes

On July 10, 2024, the Civil Service Commission of the City of Amarillo met at 8:30 am at City Hall, 601 S Buchanan, Amarillo, TX, 79101, in the City Council Chambers for a Regular Meeting.

	Present	No. Meetings Held Since Appointment	No. of Meetings Attended
Lawrence Walker, Chairperson	Yes	80	76
Lilia Escajeda, Vice Chairperson	Yes	22	18
Bill Harris	Yes	21	21

Also, in attendance were the following:
Mitchell Normand, Director of Human Resources
Bryan McWilliams, City Attorney
Alex Vannoy, HR Generalist

Call to order: Bill Harris established a quorum and called the regularly scheduled meeting of the Civil Service commission to order at 8:30am.

ITEM 2: Bill Harris opened with the public address. There were no comments from the public on agenda items.

ITEM 3.A.: Bill Harris considered approval of the Minutes for the meeting held on May 8, 2024. Motion made by Lawrence Walker to approve. Seconded by Bill Harris. All in favor, motion passed.

ITEM 3.B.: Bill Harris presented the approval of the list of new employees, step increases, transfers, promotions, demotions, bypasses, temporary assignments, and disciplinary actions. Motion made by Lawrence Walker to approve. Seconded by Bill Harris. All in favor, motion passed.

ITEM 3.C.: Bill Harris considered the appeal of Matthew Borunda's termination.

Matthew Borunda was present and stated his name to the commission. Bill Harris then gave the floor to Leslie Schmidt, Senior Assistant City Attorney, to present the case and make the City's stance. She explained that on May 9, 2024, David Sanchez, Rick Management Specialist, was notified of an after-hours vehicle incident involving Mr. Borunda. Per city policy, Mr. Borunda was taken to CareXpress for a post-incident drug and alcohol screening. Ms. Schmidt noted that the expense to the city was \$13,323.13 to repair the other vehicle that was struck during the incident. She then entered in an exhibit to the commission containing a Police report from the incident. Next, Ms. Schmidt reported that the Breath Alcohol Content (BAC) test administered by CareXpress returned negative (0), but the urine test to screen for drugs was sent to the Escreen medical laboratory and ultimately returned positive for amphetamines. She continued to explain the process, involving the chain of custody that all urine test administered by CareXpress go through. Ms. Schmidt stated that a medical doctor received the urine sample at the Escreen lab and contacted Mr. Borunda to ask if he was on any medication in which Mr. Borunda replied that he wasn't. She then stated that the Escreen laboratory did receive a call from Mr. Borunda on May 31, 2024, to relay the medications that he had been prescribed. The same medical doctor that received the urine sample and originally contacted Mr. Borunda explained that the list of medications he provided did not cause false positives for amphetamines. Ms. Schmidt then entered another exhibit to the commission containing the confirmed results from the urine analysis. She then informed the commission of the city's personnel policy regarding substance abuse (800) and the personnel rule that state causes for discipline (Section 66). She then stated the City's stance and asked that the commission deny the appeal to Matthew Borunda's termination.

Bill Harris asked that the commission be given time to review the provided information. During this time, Lawrence Walker asked if the commission could be provided with the notice of separation that was given to Matthew Borunda in which Mitchel Normand later produced.

Bill Harris then gave the floor to Matthew Borunda to present his defense. Matthew Borunda stated that at no time in his communication with the Escreen laboratory did he speak with a medical doctor, only a nurse. He

continued to explain that he did let the nurse know that he was taking medication involving this heart and was preparing for a heart transplant. He said that since the incident he had done some research into the medication that he was prescribed and believed it did cause false positives for amphetamines.

Bill Harris asked if any expert witnesses were present to which Leslie Schmidt replied that George Webster, Director of Occupational Medicine for CareXpress, was present and willing to testify. Mr. Webster then took the stand and was sworn in by Bryan McWilliams. Mr. Harris asked Mr. Webster if the medications that Matthew Borunda has provided could cause a false positive for amphetamines to which Mr. Webster stated he did not know but he was confident in the Escreen laboratory's operation and results. Ms. Schmidt asked Mr. Webster to state his title and job duties for CareXpress. Mr. Webster explain that his job as the Director of Occupational Medical is to handle Worker Compensation and Occupational Medicine information with clients and aide in administering drug and/or alcohol screens for four CareXpress facilities in the region. Ms. Schmidt then asked Mr. Webster how drug screens results are determined. He stated that although most sample results were handled at their facilities, if the testing machine could not provide confident results then the sample would be sent to the Escreen laboratory for further testing. Ms. Schmidt then asked Mr. Webster if he had received any communication regarding Mr. Borunda's drug screen results. He stated that he had received an email notifying him of the confirmed positive result and the two documented interactions that the Escreen laboratory had with Mr. Borunda regarding the drug screen and possible medications he was taking. Mr. Borunda asked Mr. Webster if this email stated that he had denied taking any medication to which Mr. Webster stated he could not remember. Ms. Schmidt stated that she could produce a copy of the email if the commission wished. Mr. Harris the commission did not need the email if the Escreen laboratory was provided with a list of medication Mr. Borunda was taking at the time of the drug screen before their final determination. At this time, there were no further questions for the witness, and Mr. Harris dismissed Mr. Webster from the stand.

Bill Harris asked if there were any other expert witnesses present to which both parties replied in the negative.

At 8:58am, the commission elected to go into executive session and were read in by Bryan McWilliams.

At 9:04am, the commission returned and resumed the meeting.

Motion made by Lawrence Walker to deny the appeal of Matthew Borunda's termination. Seconded by Bill Harris. All in favor, motion passed.

ITEM 3.D.: Bill Harris considered the appeal of Vincent Martinez's termination.

Vincent Martinez was present and stated his name to the commission. Bill Harris then gave the floor to Leslie Schmidt to present the case and make the City's stance. Ms. Schmidt proceeded to inform the commission that for active CDL drivers, the city maintained a database that randomly selects employees to take drug and alcohol screen to abide by state law. David Sanchez oversees this program and coordinates with city personnel and CareXpress to hold on site random drug and alcohol screening. She then entered an exhibit containing the notification that was provided to Mr. Ray Frausto, Mr. Martinez's direct supervisor, regarding the selection of random drug and alcohol screening for Mr. Martinez. On June 13, 2024, Mr. Frausto contacted Mr. Martinez that he had been selected for a random drug and alcohol screening. Upon arrival to the testing site, Mr. Martinez signed a form of consent for the drug and alcohol screening. Merna Mendez was the CareXpress employee that administered both screenings. The drug screen was returned with negative results, but the Blood Alcohol Content (BAC) screen resulted positive. She continued to relay that if an initial alcohol test is positive then a second test is administered to confirm the final determination. The first alcohol test resulted in a .055 BAC and fifteen minutes later the second alcohol test resulted in a .030 BAC. According to the Department of Public Safety and the City of Amarillo personnel policy (800), the limit for BAC is .020. Ms. Schmidt noted that the equipment that is used for alcohol screen is calibrated by CareXpress personnel every morning for accuracy. The same equipment that was used to administer Mr. Martinez's alcohol test was calibrated that morning and between both tests by Merna Mendez. She then entered an exhibit that contained the calibration check sheet for the equipment used on the day in question. She continued to explain that after the alcohol screening was conducted, Mr. Frausto was notified that Mr. Martinez has failed this random alcohol screening. Mr. Martinez told Mr. Frausto that he believed that something was wrong with the test before leaving the work sight without being provided with any separation documentation. This documentation was later mailed to Mr. Martinez from the Human Resources department. Again, Ms. Schmidt informed the commission of the city personnel policy regarding substance abuse (800) and the personnel rule that state causes for discipline (Section 66). She then stated the City's stance and asked that the commission deny the appeal to Vincent Martinez's termination.

Bill Harris then gave the floor to Vincent Martinez to present his defense. Mr. Martinez recalled that after he

was notified by his supervisor that he had been selected for a random drug and alcohol screening, that he went to notify his coworkers of his ensuing absence and sprayed B12 acetone which is used daily in his work area. He noted had only had a few beers the night before and no alcohol since. He stated that he had spoken with an Amarillo Police Officer that had informed him that acetone can cause false positives for alcohol. During the screening, he recalled that Ms. Merna Mendez administered the test and said that something was wrong. She then asked him if he had used Listerine or smoked tobacco to which he replied yes. She told him to wait 15 minutes, and they would take another test. After the second alcohol test resulted with another BAC reading over the legal limit, Mr. Martinez was notified that he was to be terminated but did not leave the worksite without permission.

Lawrence Walker asked if Vincent Martinez would like to call any witnesses and Mr. Martinez indicated that he would like his direct supervisor, Ray Frausto, to take the stand. Mr. Martinez asked Mr. Frausto if, on the morning in question, if he seemed intoxicated. Mr. Frausto responded by saying they he did not witness anything irregular about Mr. Martinez but was not specifically looking for signs of intoxication. Leslie Schmidt asked Mr. Frausto if Mr. Martinez had mentioned anything about the B12 acetone or another chemical he had recently been exposed to in which Mr. Frausto responded no. She also asked him if Mr. Martinez had spoken with him about the test after the results were given. He said that Mr. Martinez had indicated that he believed that the equipment was not correctly calibrated or otherwise something wrong with it.

Bill Harris asked if either party would like to call upon another witness. Leslie Schmidt called Merna Mendez of CareXpress to the stand. Bryan McWilliams then sworn in Ms. Mendez. Ms. Schmidt asked Ms. Mendez to state her name, position, and job duties. Ms. Mendez explained that she was the Back Office Lead for CareXpress, a position she had held since 2015 and routinely administered drug and/or alcohol screenings for clients. She noted that she had been certified to administer drug and alcohol screening as well as train other to do so since 2008. Ms. Schmidt asked Ms. Mendez if she remembered administering the alcohol screening in question involving Vincent Martinez to which she replied yes. She then asked her to recount the process that occurred for this specific alcohol screening. She recalled calling Mr. Martinez's name and administering the initial test that resulted in a BAC of .055. She then asked him if he had any alcohol recently to which he said he did have a few beers the night before but nothing else. While waiting to perform the standard follow up test, he asked her why they had to wait. She replied that if any products like Listerine were used and trigger an initial positive BAC, that by the second test they would be out of their system. She continued to explain that before every test, the equipment is cleared of any alcohol that may skew BAC results. After ensuring the equipment was performing correctly, she administered another alcohol test for Mr. Martinez. This test resulted in a BAC of .030. Ms. Schmidt then asked Ms. Mendez how the calibration of this equipment works. She replied that this equipment is calibrated within .005 of .035 every morning by other certified professional or herself. She noted that in this instance, she personally had calibrated the equipment that morning and in between the two alcohol test given to Mr. Martinez with accurate readings each time. Ms. Schmidt asked Ms. Mendez if she had any other information that she would like to provide to the commission. Ms. Mendez informed the commission that during the alcohol screening Mr. Martinez mentioned acetone, but she explained that their equipment is designed to differentiate between acetone and alcohol. Ms. Schmidt then asked Ms. Mendez if she could think of any reason that there was such a drop in BAC between the two tests. Ms. Mendez responded by saying she believed this was because of the force in which he blew. She explained he blew considerably harder for the initial alcohol test than he did for the subsequent test which can cause BAC results to be higher. At this time, the witness was passed to Mr. Martinez for questioning. Mr. Martinez asked Ms. Mendez if she had said something was wrong after they received the results from the first alcohol test to which she replied no. He then asked her she was certified to administer drug and alcohol screening to which she replied yes. He continued to ask why these random screenings were not held at a CareXpress facility. She explained that for clients with larger workforces they perform onsite drug and alcohol screening as part of their contract. He asked her if he had blown hard enough during his second alcohol test. She replied that although it was slower than the initial test, he had blown till it clicked signaling that it was a sufficient test. At this time, there were no further questions for the witness, and Mr. Harris dismissed Ms. Mendez from the stand.

Leslie Schmidt then called George Webster to the stand. Mr. Webster had previously been sworn in by Bryan McWilliams. Again, Ms. Schmidt asked Mr. Webster to state his name, position, and job duties for CareXpress. Mr. Webster informed the commission that he was the Director of Occupational Medical for four CareXpress facilities in the region and handles information, contracts, or other matters regarding workers compensation and occupational medicine for clients. Ms. Schmidt then asked Mr. Webster if he could speak to the qualification of Merna Mendez. He answered by saying he had worked with Ms. Mendez for 7 years and oversaw the certification records for the CareXpress professionals that administer drug and/or alcohol screening. Ms. Schmidt asked if he had any information regarding the distinction of acetone and alcohol to which he replied no. She also asked if he could explain why Mr. Martinez's second alcohol test was so much lower than the initial test. He answered by affirming the explanation given by Ms. Mendez regarding the blow

force that is used when performing the test. Ms. Schmidt had no further questions for Mr. Webster and passed the witness to Vincent Martinez. Mr. Martinez asked Mr. Webster if he had blown hard enough for the testing equipment to 'click' to which Mr. Webster replied yes. Mr. Martinez had no further question for Mr. Webster. Bill Harris asked Mr. Webster what results he would expect if another alcohol test was administered 15 minutes after the second test, considering the difference between the first and second test that were given. He answered saying that it could continue to drop in BAC but not necessarily to a point below the defined limit. Mr. Martinez asked Mr. Webster if he believed that a third alcohol test would result in a BAC under .020 to which Mr. Webster replied he did not know. Mr. Martinez asked why he was not tested a third time to which Mr. Webster answered by explaining that, per their normal process, to receive a final result they only test two times. At this time, there were no further questions for the witness, and Mr. Harris dismissed Ms. Webster from the stand.

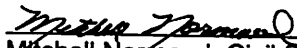
Bill Harris asked if either party had any more witnesses to call to which Leslie Schmidt said she would like to call David Sanchez to the stand. Mr. Sanchez took the stand and was sworn in by Bryan McWilliams. Ms. Schmidt asked Mr. Sanchez to state his name, position, and job duties. He informed the commission that he was the Risk Management Specialist for the City of Amarillo, a position he had held for 19 years, and oversaw worker compensation, on duty drug and/or alcohol screenings, and other risk management matters. Ms. Schmidt asked Mr. Sanchez if he recalled the morning in question to which he replied yes. She then asked if he had smelled alcohol on Mr. Martinez that morning. He answered by saying he had not initially smelled any alcohol but he did later when he pulled him aside after the second position alcohol test. He continued to explain the process the city uses to randomly select active CDL drivers for these drug and alcohol screenings. Ms. Schmidt asked Mr. Sanchez if there were any other employees that had a problem with the random drug and alcohol screening that morning to which he replied no. Ms. Schmidt had no further questions for Mr. Sanchez and passed the witness to Vincent Martinez. Mr. Martinez asked Mr. Sanchez if he had smelled any alcohol on him when he shook his hand that morning before the test. Mr. Sanchez answered by saying that he only briefly walked by Mr. Martinez to shake his hand, but he did not initially smell alcohol on him. Only after the second positive BAC result did Mr. Sanchez smell alcohol on Mr. Martinez. Mr. Harris asked Mr. Sanchez if he could confirm that if acetone could cause false positive results for alcohol tests to which he replied he could not. At this time, there were no further questions for the witness, and Mr. Harris dismissed Ms. Sanchez from the stand.

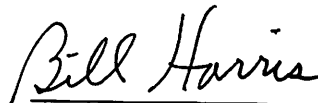
Bill Harris asked if there were any additional questions from either party. At 10:00am, the commission elected to go into executive session and were read in by Bryan Williams.

At 10:02, the commission returned and resumed the meeting.

Motion made by Lawrence Walker to deny the appeal of Vincent Martinez's termination. Seconded by Bill Harris. All in favor, motion passed.

There were no other items or discussions. Bill Harris moved to adjourn at 10:03am.


Mitchell Normand, Civil Service Director

 Bill Harris, VICE CHAIR
Lilia Escajeda, Chairwoman