

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

CHRISTOPHER COX)	
)	
Plaintiff,)	CIVIL ACTION FILE NO.
)	4:23-CV-00284-WMR-WEJ
v.)	
)	
The CITY OF CALHOUN, and)	
LEONARD NESBITT, PAUL)	
WORLEY, and TERRY MILLS,)	
in their Official and Individual)	
Capacities,)	
)	
Defendants.)	

**DEFENDANTS’ AMENDED ANSWER AND
DEFENSES TO PLAINTIFF’S COMPLAINT**

COME NOW Defendants City of Calhoun (the “City”), Leonard Nesbitt, Paul Worley, and Terry Mills, in their individual and official capacities (collectively “Defendants”), by and through their undersigned attorney, file this, their Amended Answer to the Complaint filed by Christopher Cox (“Plaintiff”), and by way of said Amended Answer respectfully show the following:

FIRST DEFENSE

The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiff's damages are limited to those remedies and those amounts provided for by the statute.

THIRD DEFENSE

Plaintiff's Complaint fails to state a claim for actual damages; punitive damages; attorney's fees, interest, and costs; and any other relief prayed for or sought in the Complaint.

FOURTH DEFENSE

Plaintiff's Complaint fails to state a claim for punitive damages. Defendant City of Calhoun and Defendants sued in their official capacities are immune from liability for punitive damages.

FIFTH DEFENSE

Plaintiff has failed to mitigate his alleged damages.

SIXTH DEFENSE

Some or all claims of Plaintiff brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, are barred to the extent that they were never made the subject of a charge of discrimination with the applicable government agency within the time required by law or because the claims are not within the scope of any charge of discrimination filed by Plaintiff.

SEVENTH DEFENSE

Some or all of Plaintiff's claims are barred by the applicable statute of limitations, including the failure to file the instant lawsuit within the time period required by the applicable statute.

EIGHTH DEFENSE

All actions taken with respect to the Plaintiff were for legitimate, nondiscriminatory, and non-retaliatory reasons.

NINTH DEFENSE

The legitimate, nondiscriminatory, non-retaliatory reasons for any adverse action taken with respect to the Plaintiff were not pretexts for unlawful discrimination or retaliation.

TENTH DEFENSE

Even if Plaintiff was subject to unlawful conduct based on Plaintiff's protected class status, Defendants exercised reasonable care to prevent and correct the actions which support Plaintiff's claim and Plaintiff unreasonably failed to avail himself of preventive or corrective opportunities or to avoid harm otherwise.

ELEVENTH DEFENSE

Any adverse action taken against Plaintiff was done so in good faith without malice or reckless indifference to Plaintiff's protected rights.

TWELFTH DEFENSE

Plaintiff did not make any disclosure or engage in any other activity protected under O.C.G.A. § 45-1-4.

THIRTEENTH DEFENSE

Plaintiff has no actual or reasonable belief that he complained of or reported the possible existence of any activity constituting fraud, waste, or abuse in or relating to any state programs or operations under the jurisdiction of the City.

FOURTEENTH DEFENSE

Plaintiff has no actual or reasonable belief that he complained of any violations of any law, rule, or regulation, as defined by O.C.G.A. § 45-1-4(d).

FIFTEENTH DEFENSE

The City has not made, adopted or enforced a policy or practice of preventing disclosure of or noncompliance with any law, rule, or regulation.

SIXTEENTH DEFENSE

Any complaint made by Plaintiff was false or made with reckless disregard for its truth or falsity.

SEVENTEENTH DEFENSE

No act or omission of the Defendants, or any of them, either proximately caused or contributed to any injuries or damages allegedly incurred by Plaintiff. Therefore, Plaintiff has no right of recovery against Defendants.

EIGHTEENTH DEFENSE

Even if any adverse actions were taken against the Plaintiff for reasons related to Plaintiff's protected class status or any exercise by Plaintiff of protected rights, Plaintiff would have been subject to adverse employment actions or otherwise for reasons unrelated to any protected class status or activities, including after-acquired evidence.

NINETEENTH DEFENSE

Conduct of the Defendants named in their individual capacities did not violate any clearly established statutory or constitutional right of which a reasonable person would have known, and hence they enjoy qualified and good faith immunity.

TWENTIETH DEFENSE

The Defendants sued in their official capacities or otherwise are not liable for the individual acts of any of the Defendants.

TWENTY-FIRST DEFENSE

Defendants named in both their individual and official capacities are improperly joined as parties to the extent that they are named in their official capacities.

TWENTY-SECOND DEFENSE

Plaintiff's state law claims are barred by the doctrine of sovereign immunity.

TWENTY-THIRD DEFENSE

Plaintiff's state law claims are barred by the doctrine of official immunity.

TWENTY-FOURTH DEFENSE

Defendants Nesbitt, Worley, and Mills are immune from some or all of Plaintiff's state law claims pursuant to O.C.G.A. § 51-1-20, which provides, in part, immunity to any person serving on a local government board, authority or entity for any act or omission to act.

TWENTY-FIFTH DEFENSE

Plaintiff's state law claims are barred by the doctrine of governmental and/or discretionary immunity.

TWENTY-SIXTH DEFENSE

Some or all of Plaintiff's claims are barred by the doctrines of res judicata and/or collateral estoppel.

TWENTY-SEVENTH DEFENSE

Plaintiff has unclean hands.

TWENTY-EIGHTH DEFENSE

Plaintiff has failed to allege that a custom, policy, or accepted practice of the City was the proximate cause of any deprivation of federal rights.

TWENTY-NINTH DEFENSE

The City cannot be held vicariously liable for actions taken by Defendants Nesbitt, Worley, and/or Mills under 42 U.S.C. § 1983.

THIRTIETH DEFENSE

Plaintiff's conspiracy claim is barred by the intra-corporate conspiracy doctrine.

THIRTY-FIRST DEFENSE

To the extent as may be shown by the evidence through discovery or at trial, the injuries and damages allegedly sustained by Plaintiff resulted solely from the voluntary and intentional conduct of Plaintiff, and not from any conduct of Defendants.

THIRTY-SECOND DEFENSE

Plaintiff engaged in no protected speech as a private citizen on a matter of public concern.

THIRTY-THIRD DEFENSE

At all times relevant to this action, Plaintiff spoke only within the course and scope of his official and/or professional job duties.

THIRTY-FOURTH DEFENSE

Defendants reserve the right to assert any additional affirmative defenses allowed by Rule 8 depending upon any evidence discovered in pursuit of this litigation.

THIRTY-FIFTH DEFENSE

For answer to the respective paragraphs of the Complaint, Defendants show as follows:

PRELIMINARY STATEMENT

1. Defendants admit that Plaintiff purports to bring an action for employment discrimination and retaliation pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C § 2000e, *et seq.* (“Title VII”), the United States Constitution under 42 U.S.C. § 1983, and the Georgia Whistleblower Act, O.C.G.A. § 45-1-4. Defendants deny that Plaintiff is entitled to such relief and deny the remaining allegations pled in paragraph 1 of the Complaint.

PARTIES

2. Defendants admit the allegations pled in paragraph 2 of the Complaint.

3. Defendants admit the allegations pled in paragraph 3 of the Complaint.

4. Defendants admit the allegations pled in paragraph 4 of the Complaint.

5. Defendants admit Defendant Leonard Nesbitt is the City of Calhoun Fire Department Chief, is a citizen and resident of City of Calhoun, Georgia, and can be served with process at 103 Jones Road, Calhoun, Georgia 30701. Defendants further admit that Plaintiff seeks to establish personal jurisdiction over Defendant Leonard Nesbitt. Defendants deny the remaining allegations pled in paragraph 5 of the Complaint.

6. Defendants admit Defendant Paul Worley is the City of Calhoun City Administrator, is a citizen and resident of City of Calhoun, Georgia, and can be served with process at 190 Aspen Drive NE, Calhoun, Georgia 30701. Defendants

further admit that Plaintiff seeks to establish personal jurisdiction over Defendant Paul Worley. Defendants deny the remaining allegations pled in paragraph 6 of the Complaint.

7. Defendants admit that Defendant Terry Mills is the City of Calhoun Fire Department Deputy Chief, is a citizen and resident of Resaca, Georgia, and can be served with process at 985 Resaca Lafayette Rd NW, Resaca, Georgia 30735. Defendants further admit that Plaintiff seeks to establish personal jurisdiction over Defendant Terry Mills. Defendants deny the remaining allegations pled in paragraph 7 of the Complaint.

JURISDICTION AND VENUE

8. Defendants incorporate by reference their responses to paragraphs 1 through 7 of the Complaint as though set forth specifically herein.

9. Defendants admit that Plaintiff purports to bring this action under Title VII, the United States Constitution via 42 U.S.C. § 1983, and the Georgia Whistleblower Act, O.C.G.A. § 45-1-4. Defendants deny that Plaintiff is entitled to any relief under any of these statutes or under any theory at law or in equity. Defendants deny the remaining allegations pled in paragraph 9 of the Complaint.

10. Defendants admit that Plaintiff seeks to establish subject matter jurisdiction in this Court. Defendants deny the remaining allegations pled in paragraph 10 of the Complaint.

11. Defendants admit that venue is proper. Defendants deny the remaining allegations pled in paragraph 11 of the Complaint.

FACTUAL ALLEGATIONS

12. Defendants incorporate by reference their responses to paragraphs 1 through 11 of the Complaint as though set forth specifically herein.

13. Defendants admit that Plaintiff worked as a firefighter for the City of Dalton prior to his employment with the City of Calhoun Fire Department. Defendants are without knowledge or information sufficient to admit or deny the remaining allegations pled in paragraph 13 of the Complaint.

14. Defendants admit the allegations pled in paragraph 14 of the Complaint.

15. Defendants admit the allegations pled in paragraph 15 of the Complaint.

16. Defendants admit that Plaintiff was one of several employees responsible for Georgia Search and Rescue training and was a training officer with the City of Calhoun Fire Department. Defendants deny the remaining allegations pled in paragraph 16 of the Complaint.

17. Defendants admit the City of Calhoun Fire Department follows proper Fire Department procedure. Defendants are without knowledge or information sufficient to admit or deny the allegations regarding Plaintiff's conversations with unidentified Fire Department employees. Defendants deny the remaining allegations pled in paragraph 17 of the Complaint.

18. Defendants admit the City of Calhoun Fire Department performs fire prevention and inspections throughout the community. Defendants are without knowledge or information sufficient to admit or deny the remaining allegations pled in paragraph 18 of the Complaint.

19. Defendants deny the allegations pled in paragraph 19 of the Complaint.

20. Defendants deny the allegations pled in paragraph 20 of the Complaint.

21. Defendants admit that Battalion Chief Todd Holbert and Plaintiff met with a business owner on one occasion regarding a complaint involving Defendant Deputy Chief Mills. Defendants deny the remaining allegations pled in paragraph 21 of the Complaint.

22. Defendants admit that Plaintiff discussed a complaint involving Defendant Deputy Chief Mills with Defendant Chief Nesbitt. Defendants are without knowledge or information sufficient to admit or deny the remaining allegations pled in paragraph 22 of the Complaint.

23. Defendants deny the allegations pled in paragraph 23 of the Complaint.

24. Defendants deny the allegations pled in paragraph 24 of the Complaint.

25. Defendants are without knowledge or information sufficient to admit or deny the allegations regarding Plaintiff's conversations with unidentified firefighters. Defendants deny the remaining allegations pled in paragraph 25 of the Complaint.

26. Defendants deny the allegations pled in paragraph 26 of the Complaint.

27. Defendants are without knowledge or information sufficient to admit or deny the allegations pled in paragraph 27 of the Complaint.

28. Defendants are without knowledge or information sufficient to admit or deny the allegations pled in paragraph 28 of the Complaint.

29. Defendants are without knowledge or information sufficient to admit or deny the allegations pled in paragraph 29 of the Complaint.

30. Defendants deny the allegations pled in paragraph 30 of the Complaint.

31. Defendants are without knowledge or information sufficient to admit or deny the allegations pled in paragraph 31 of the Complaint.

32. Defendants are without knowledge or information sufficient to admit or deny the allegations pled in paragraph 32 of the Complaint.

33. Defendants are without knowledge or information sufficient to admit or deny the allegations pled in paragraph 33 of the Complaint.

34. Defendants are without knowledge or information sufficient to admit or deny the allegations pled in paragraph 34 of the Complaint.

35. Defendants are without knowledge or information sufficient to admit or deny the allegations pled in paragraph 35 of the Complaint.

36. Defendants are without knowledge or information sufficient to admit or deny the allegations pled in paragraph 36 of the Complaint.

37. Defendants show that this paragraph contains a legal conclusion to which no response is required; however, to the extent a response is required, Defendants deny the legal conclusion and deny the remaining allegations pled in paragraph 37 of the Complaint.

38. Defendants show that this paragraph contains a legal conclusion to which no response is required; however, to the extent a response is required, Defendants deny the legal conclusion and deny the remaining allegations pled in paragraph 38 of the Complaint.

39. Defendants deny the allegations pled in paragraph 39 of the Complaint.

40. Defendants admit that plaintiff made a complaint about Roger Smith to Defendant Paul Worley on December 2, 2022 and that Defendant Worley is Defendant Chief Nesbitt's supervisor. Defendants deny the remaining allegations pled in paragraph 40 of the Complaint.

41. Defendants deny the allegations pled in paragraph 41 of the Complaint.

42. Defendants deny the allegations pled in paragraph 42 of the Complaint.

43. Defendants show the allegations in paragraph 43 of the Complaint refer to a document the contents of which speak for themselves. Defendants admit the City's non-harassment policy contains a reporting procedure. Defendants deny the remaining allegations pled in paragraph 43 of the complaint.

44. Defendants deny the allegations pled in paragraph 44 of the Complaint.

45. Defendants deny the allegations pled in paragraph 45 of the Complaint.

46. Defendants admit Plaintiff was terminated on December 12, 2022.

Defendants deny the remaining allegations pled in paragraph 46 of the Complaint.

47. Defendants deny the allegations pled in paragraph 47 of the Complaint.

48. Defendants deny the allegations pled in paragraph 48 of the Complaint.

49. Defendants deny the allegations pled in paragraph 49 of the Complaint.

50. Defendants admit Defendant Chief Nesbitt met and spoke with a man regarding a complaint involving his daughter and Mr. Smith. Defendants deny the remaining allegations pled in paragraph 50 of the Complaint.

51. Defendants deny the allegations pled in paragraph 51 of the Complaint.

52. Defendants admit the allegations pled in paragraph 52 of the Complaint.

53. Defendants deny the allegations pled in paragraph 53 of the Complaint.

54. Defendants deny the allegations pled in paragraph 54 of the Complaint.

55. Defendants are without knowledge or information sufficient to admit or deny the allegations pled in paragraph 55 of the Complaint.

56. Defendants deny the allegations pled in paragraph 56 of the Complaint.

57. Defendants deny the allegations pled in paragraph 57 of the Complaint.

58. Defendants deny the allegations pled in paragraph 58 of the Complaint.

59. Defendants deny the allegations pled in paragraph 59 of the Complaint.

60. Defendants deny the allegations pled in paragraph 60 of the Complaint.

61. Defendants deny the allegations pled in paragraph 61 of the Complaint.

62. Defendants deny the allegations pled in paragraph 62 of the Complaint.

63. Defendants admit that Plaintiff appealed his termination on December 16, 2022; that a hearing was held on Plaintiff's appeal on January 18, 2023; and that the evidence in the record included text messages. Defendants deny the remaining allegations pled in paragraph 63 of the Complaint.

64. Defendants admit the hearing examiner denied Plaintiff's appeal and affirmed Plaintiff's termination. A true and correct copy of the hearing examiner's decision is attached hereto as Exhibit A. Defendants deny the remaining allegations pled in paragraph 64 of the Complaint.

FIRST CLAIM FOR RELIEF

Alleged Discrimination and Harassment Based on Sex in Violation of Title VII, 42 U.S.C. § 2000e, *et seq.* (as to Defendant The City of Calhoun)

65. Defendants incorporate by reference their responses to paragraphs 1 through 64 of the Complaint as though set forth specifically herein.

66. Defendants show that this paragraph contains a legal conclusion to which no response is required; however, to the extent a response is required, Defendants admit that the City employed Plaintiff. Defendants deny the remaining allegations pled in paragraph 66 of the Complaint.

67. Defendants show that this paragraph contains a legal conclusion to which no response is required; however, to the extent a response is required, Defendants

admit that the City employed Plaintiff. Defendants deny the remaining allegations pled in paragraph 67 of the Complaint.

68. Defendants show that this paragraph contains a legal conclusion to which no response is required; however, to the extent a response is required, Defendants admit Plaintiff filed EEOC Charge of Discrimination No. 410-2023-08338. Defendants further show that the document attached as Exhibit 1 to the Complaint speaks for itself. Defendants are without knowledge or information sufficient to admit or deny the remaining allegations pled in paragraph 68 of the Complaint.

69. Defendants are without knowledge or information sufficient to admit or deny the allegations pled in paragraph 69 of the Complaint.

70. Defendants show that this paragraph refers to a statute the content of which speaks for itself. Defendants deny the remaining allegations pled in paragraph 70 of the Complaint.

71. Defendants deny the allegations pled in paragraph 71 of the Complaint.

72. Defendants deny the allegations pled in paragraph 72 of the Complaint.

73. Defendants deny the allegations pled in paragraph 73 of the Complaint.

74. Defendants deny the allegations pled in paragraph 74 of the Complaint.

75. Defendants deny the allegations pled in paragraph 75 of the Complaint.

76. Defendants admit the City terminated Plaintiff's employment. Defendants deny the remaining allegations pled in paragraph 76 of the Complaint.

77. Defendants deny the allegations pled in paragraph 77 of the Complaint.

78. Defendants deny the allegations pled in paragraph 78 of the Complaint.

79. Defendants deny the allegations pled in paragraph 79 of the Complaint.

SECOND CLAIM FOR RELIEF

**Alleged Retaliation in Violation of Title VII, 42 U.S.C. § 2000e, *et seq.*
(as to Defendant City of Calhoun)**

80. Defendants incorporate by reference their responses to paragraphs 1 through 79 of the Complaint as though set forth specifically herein.

81. Defendants show that this paragraph refers to a statute the content of which speaks for itself. Defendants deny the remaining allegations pled in paragraph 81 of the Complaint.

82. Defendants deny the allegations pled in paragraph 82 of the Complaint.

83. Defendants deny the allegations pled in paragraph 83 of the Complaint.

84. Defendants deny the allegations pled in paragraph 84 of the Complaint.

85. Defendants admit the City terminated Plaintiff's employment. Defendants deny the remaining allegations pled in paragraph 85 of the Complaint.

86. Defendants deny the allegations pled in paragraph 86 of the Complaint.

87. Defendants admit the City terminated Plaintiff's employment. Defendants deny the remaining allegations pled in paragraph 87 of the Complaint.

88. Defendants admit the City terminated Plaintiff's employment. Defendants deny the remaining allegations pled in paragraph 88 of the Complaint.

89. Defendants deny the allegations pled in paragraph 89 of the Complaint.

90. Defendants deny the allegations pled in paragraph 90 of the Complaint.

91. Defendants deny the allegations pled in paragraph 91 of the Complaint.

THIRD CLAIM FOR RELIEF

Alleged Violation of First and Fourteenth Amendments to the Constitution and under 42 U.S.C. § 1983 (as to Defendants City of Calhoun, Chief Nesbitt, and City Administrator Worley)

92. Defendants incorporate by reference their responses to paragraphs 1 through 91 of the Complaint as though set forth specifically herein.

93. Defendants deny the allegations pled in paragraph 93 of the Complaint.

94. Defendants admit the City terminated Plaintiff's employment. Defendants deny the remaining allegations pled in paragraph 94 of the Complaint.

95. Defendants deny the allegations pled in paragraph 95 of the Complaint.

96. Defendants deny the allegations pled in paragraph 96 of the Complaint.

97. Defendants admit Plaintiff's appeal was denied. Defendants deny the remaining allegations pled in paragraph 97 of the Complaint.

98. Defendants deny the allegations pled in paragraph 98 of the Complaint.

99. Defendants deny the allegations pled in paragraph 99 of the Complaint.

FOURTH CLAIM FOR RELIEF

Alleged Violation of the Georgia Whistleblower Act, O.C.G.A. § 45-1-4 (as to Defendants City of Calhoun, Chief Nesbitt, and City Administrator Worley)

100. Defendants incorporate by reference their responses to paragraphs 1

through 99 of the Complaint as though set forth specifically herein.

101. Defendants deny the allegations pled in paragraph 101 of the Complaint.

102. Defendants admit the City terminated Plaintiff's employment.
Defendants deny the remaining allegations pled in paragraph 102 of the Complaint.

103. Defendants deny the allegations pled in paragraph 103 of the Complaint.

FIFTH CLAIM FOR RELIEF

Alleged Civil Conspiracy (as to Defendants Chief Nesbitt, City Administrator Worley and Deputy Chief Mills)

104. Defendants incorporate by reference their responses to paragraphs 1 through 103 of the Complaint as though set forth specifically herein.

105. Defendants deny the allegations pled in paragraph 105 of the Complaint.

106. Defendants admit the City terminated Plaintiff's employment.
Defendants deny the remaining allegations pled in paragraph 106 of the Complaint.

107. Defendants admit the City terminated Plaintiff's employment.
Defendants deny the remaining allegations pled in paragraph 107 of the Complaint.

108. Defendants deny the allegations pled in paragraph 108 of the Complaint.

109. Defendants admit the City terminated Plaintiff's employment.
Defendants deny the remaining allegations pled in paragraph 109 of the Complaint.

110. Defendants deny the allegations pled in paragraph 110 of the Complaint.

PRAYER FOR RELIEF

111. Defendants deny Plaintiff is entitled to any of the relief set forth in the

requests in unnumbered “Prayer for Relief” section of the Complaint, including the relief sought in subsections (a) through (g), and deny that Plaintiff is entitled to any relief whatsoever under any theory at law or in equity. Defendants deny the remaining allegations pled in the unnumbered “Prayer for Relief” section of the Complaint.

112. Any allegations in the Complaint not heretofore answered, qualified, or denied are here and now denied as though set forth specifically and denied.

WHEREFORE, having fully answered Plaintiff’s Complaint, Defendants pray for the following relief:

- (a) Dismiss with prejudice Plaintiff’s Complaint;
- (b) Enter judgment in favor of Defendants and against Plaintiff;
- (c) Award Defendants their reasonable attorney’s fees, costs, and expenses pursuant to applicable law; and
- (d) Award any and all other relief to Defendants that this Court may deem necessary and proper.

This 26th day of February 2024.

Respectfully Submitted,

FREEMAN MATHIS & GARY, LLP

/s/ Michael M. Hill

Michael M. Hill

Georgia Bar No. 770486

100 Galleria Parkway, Suite 1600

Atlanta, Georgia 30339-5948

T: (770) 818-0000

F: (770) 937-9960

E: mhill@fmglaw.com

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the within and foregoing **DEFENDANTS' AMENDED ANSWER AND DEFENSES TO PLAINTIFF'S COMPLAINT** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following counsel of record:

I. Gregory Hodges
William J. Hunter
R. Benjamin Lingle
Oliver Maner, LLC
P.O. Box 10186
Savannah, GA 31412

Trisha Earls
The Hawkins Firm, LLC
235 Peachtree Street, NE, Ste. 400
Atlanta, GA 30303

This 26th day of February, 2024.

FREEMAN MATHIS & GARY, LLP

/s/ Michael M. Hill

Michael M. Hill
Georgia Bar No. 770486
100 Galleria Parkway, Suite 1600
Atlanta, Georgia 30339-5948
T: (770) 818-0000
F: (770) 937-9960
E: mhill@fmglaw.com

Counsel for Defendants

Exhibit A

THE CITY OF CALHOUN, GEORGIA
IN RE: CHRISTOPHER COX
DISCIPLINARY APPEAL DETERMINATION

DECISION OF EXAMINER

I. PROCEDURAL BACKGROUND

Pursuant to a Resolution of the Mayor and Council of the City of Calhoun, Georgia, executed on January 9, 2023, William Robert Thompson, Jr., Esq., was appointed Examiner, hereinafter referred to as “the Examiner”, pursuant to the personnel policies of the City of Calhoun for purposes of making a determination as to the above referenced Appeal.

All parties convened for the Hearing on January 18, 2023, at the Depot Community Room located at 109 S. King Street, Calhoun, Georgia 30701. Appearing on behalf of the City of Calhoun, hereinafter referred to as “the City”, was George P. Govignon, City Attorney. Appearing on behalf of Christopher Cox, hereinafter referred to as “Cox”, was Gregory Hodges, Esq. of the firm Oliver Maner, LLP. This appeal relates to adverse employment action taken against Cox on December 12, 2022, at which time Cox was dismissed from employment by the City of Calhoun. Cox was provided written notice of his termination and the grounds therefor and he was apprised of his right to appeal on December 12, 2022.

On December 16, 2022, Cox exercised his right to appeal in writing, which was provided to the City by hand delivery and email to the City Administrator, Paul Worley, hereinafter referred to as “Worley”. The City followed up on the Notice of Appeal to Cox by providing an Appeal Notice on December 22, 2022, by Certified Mail. In addition to five specific allegations of alleged misconduct, this Notice provided the basis under which the Hearing on January 18 was conducted.

Witnesses presented for the appeal were Worley; Calhoun City Fire Chief, Lenny Nesbitt, hereinafter referred to as “Nesbitt”; Assistant Calhoun Fire Chief, Terry Mills, hereinafter referred to as “Mills”; and, Calhoun Chief of Police, Tony Pyle, hereinafter referred to as “Chief Pyle”. The City provided a number of documents which were admitted for consideration and the defense was allowed to submit a number of documents to be considered by the Examiner. All documents submitted were reviewed and the Hearing was transcribed and copies of all of the documents considered will be included with that record.

In addition to the testimony and documentary evidence submitted, at the close of evidence the Examiner requested both parties to submit a Letter Brief of Law relating to the parties’ contentions concerning the applicability of O.C.G.A. § 45-1-4 and the relation of the facts to the burden-shifting analysis of McDonnell Douglas Corp v Green, 411 U.S. 792, 93 S.Ct. 1817 (1973). The parties were requested to submit their Letter Briefs by Thursday, January 26, 2023.

II. FINDING OF FACTS

The instant Appeal cannot be resolved without taking into consideration adverse employment action also taken against another employee of the Calhoun City Fire Department at approximately the same time. That employee was Roger Smith, hereinafter referred to as “Smith”, a Battalion Chief of the Calhoun Fire Department. Smith was originally disciplined and after a renewed investigation provided evidence of additional improprieties, Smith was given the opportunity to either be fired or resign his position with the City of Calhoun Fire Department. Up until that time he had had an ongoing employment relationship with the City for more than 30 years. Smith resigned rather than being dismissed from employment.

The allegations against Smith relate to sexual impropriety with a 17-year-old female employed at a local restaurant. Even though the original complaint about Smith was anonymous, later investigation identified the family. In addition, text messages between the girl and Smith

were eventually disclosed and were later provided to the City and are attached to Cox's written Notice of Appeal. Rather than detail the evidence, the evidence clearly establishes that Smith's conduct was inappropriate, although not charged as illegal by the Calhoun Police Department upon its investigation. Adding to that, Smith's dishonesty with representatives of the City amply supports the adverse employment action taken against him. Cox's basic position is that Cox's actions relating to the incident with Smith is Whistleblower activity protected by O.C.G.A. § 45-1-4, Title VII of the Civil Rights Act of 1964, as well as various federal and state constitutional provisions. In other words, the City of Calhoun's adverse employment action is based upon a pretext because of Cox's disclosures about Smith.

The City does not dispute the basic allegations as they relate to Smith; however, it maintains that the employment action taken against Cox was still appropriate and relies on the five counts of detailed improprieties outlined in the City's Appeal Hearing Notice of December 23, 2022. In summary, the City makes three basic allegations in support of its action to terminate Cox's employment. The first relates to violating the proper chain of command; second, that in addition to allegations made relating to Smith as outlined above, Cox made allegations of a coverup against Nesbitt and Mills; and third, Cox failed to appropriately fulfill his duties by deliberately or negligently disregarding requests concerning training shortcomings at the City of Calhoun Fire Department.

Taken in totality, this situation appears to have arisen because no party was given timely and/or complete information. First, the original complaint to the Calhoun Fire Department was through a third person, *i.e.*, Courtney Taylor, Gordon County EMS Director, and was anonymous. This original information was provided to Nesbitt about six weeks prior to the beginning of the disclosures by Cox. Nesbitt keeps a daily log which outlined his attempts to deal with the allegations. Mills was tasked with talking with Smith and the original conversation with Smith

led Smith to provide unverifiable and deceptive responses to Mills. At that point the investigation languished due to its informal and anonymous nature.

Unfortunately, Cox did not testify at the Hearing on January 18, 2023, and presented no witnesses to testify on his behalf. Therefore, the only evidence directly presented on Cox's behalf were the documents admitted into evidence which included Cox's Appeal statement. According to Cox's written statement, he was contacted by a "woman", later identified as Tammy Evans. It appears that Cox was informed of similar allegations to what had been previously disclosed by Courtney Taylor; however, instead of the allegations being anonymous, Cox had the name and telephone number of the complainant and was assumably not requested to keep the allegations anonymous. In addition, Cox reports that he was familiar with the complainant, and he knew that the complainant was related to the ex-wife of Smith, so he assumed it was a domestic dispute. Most importantly, Cox disclosed in his written Appeal that he made no attempt to determine whether any of the information he was provided was accurate. Finally, Cox was told by the complainant that an allegation had been previously made but that the officials at the fire department had taken no action.

Cox reports that he was disfavored by Nesbitt for reporting prior sexual conduct by Mills. In addition, he claimed that Nesbitt failed to address a general pattern of preying on women. As a final justification, Cox claimed that his disfavor also related to his filing an unrelated Grievance in August. Despite Cox's assertions, Nesbitt's testimony did not seem to support Cox's allegations of bias and prejudice. This lack of bias and prejudice also comes through the testimony presented by Mills. The prior incident relating to Mills went back to 2016 and adverse action was taken against Mills. From the testimony presented, there is little connection between the old allegations against Mills and Smith's subsequently exposed conduct. From the testimony, the Grievance filed by Cox is not unrelated to these issues.

The City of Calhoun Fire Department has a large number of long-serving employees. As the Department is small and there is little turnover, there is little opportunity for advancement within the Department. There are only three Battalion Chiefs in the Department and Cox's Grievance comes about because of an open Battalion Chief position for one of the Department's shifts. Prior to the formal application process, Cox was dissuaded from seeking that advancement. There were several reasons in the testimony provided, but the basic gist of the testimony was that Cox had alienated most of the men working that shift and his promotion would have decreased the camaraderie in the Department. This stems at least partially from Cox's training schedules prior to the position coming open. For whatever reason, Cox chose not to apply for the position and Smith was appointed as the Battalion Chief.

After Smith's promotion to Battalion Chief, Cox filed his Grievance with the City. The Grievance was considered pursuant to the City's guidelines and dismissed. The basic reason for the dismissal was straightforward. Cox had not applied for the promotion and was, therefore, not considered so it is hard to object to a procedure through which Cox chose to not voluntarily participate. Cox's position is that his Grievance was about procedure. This explanation appears to be disingenuous. Cox clearly has issues with his superiors and has harbored those negative feelings for years. This Examiner can only conclude that this also manifests itself in Cox's dealing with other members in the Department.

It does not appear to be disputed that the normal chain of command in the City of Calhoun Fire Department would have been for Cox to go to Mills or Nesbitt with the information he had received from the complainant. Cox did neither. The testimony provided from several sources indicated that Cox had gone around the chain of command on numerous occasions and Cox had been warned to discontinue that practice. Instead, Cox states, "I followed the chain of command under the circumstances and based on the allegations at issue." Only by reporting his information

to Worley did Cox feel that he could meet his obligation to see that the information was appropriately disclosed to the City. Therefore, on December 2, 2022, Cox went into the Office of Worley and disclosed the third-party complaint he had received concerning a 17-year female and Smith. It is obvious that Cox was not aware of Courtney Taylor and made no attempt to inquire of his supervisors whether they had received a complaint. Apparently, Cox did not have access to any text messages or recordings; however, that information came into his possession assumably after additional contact with the complainant after December 2, 2022. Cox's basic allegations were two-fold. First, Smith had engaged in inappropriate sexual activity with a minor and possibly on City of Fire Department grounds. In addition, Smith was possibly engaged in inappropriate activity relating to pornographic activity over the internet, *i.e.*, photographs. The second allegation was that Mills and Nesbitt were involved in a coverup relating to Smith's activities. When the Examiner compares Cox's written statement with the testimony that Worley provided, it is clear that Cox's disclosures to Worley embellished the information that he had to the point to where Cox's actual disclosure was one of affirmative and inappropriate, and possible criminal, activity on behalf of Nesbitt and Mills. I emphasize again, Cox's reported statement indicated that he made no attempt to determine whether the information he had received from the complainant was accurate in any way.

Upon receiving Cox's disclosures on December 2, Worley immediately contacted the Calhoun Police Department and through the Chief Pyle and a long-time investigator Annette Printup, a criminal investigation was conducted. The name and telephone number Cox gave was provided to law enforcement for the investigation. Their investigation concluded, and Chief Pyle testified, that the complaints failed to rise to the level of chargeable criminal conduct on behalf of Smith; however, the investigation did disclose inappropriate activity by Smith. This led the City to initiate disciplinary action against Smith and that action was short of termination. The other

part of the investigation was whether or not his allegations against his superiors rose to the level of a coverup and/or criminal activity. This part of the investigation showed that Cox's superiors were not only not guilty of any criminal activity, but they were also not guilty of engaging in any type of coverup for Smith. After hearing all of the evidence, the reasons for Cox's false allegations against his superiors start to become obvious. This begins with Cox's distrust of his superiors as disclosed in his Appeal statement. Added to this, Cox was not aware of Courtney Taylor or how the original complaint made its way to the City Fire Department. Further, Cox made no attempt to determine if the information he received from the complainant was accurate. In other words, there is a significant difference between telling a superior of a complaint and making affirmative allegations against your superiors when you have made no attempt to determine the truth of what you have been told.

Between December 2, the date Cox made the complaint to Worley, and December 12, Cox came into possession of text messages relating to Smith's affair and brought the text messages with him to Worley's office on December 12, 2022. On December 12, 2022, due to the nature of Cox's false allegations against his superiors and the other allegations outlined in his Appeal Notice, the City had already decided to terminate his employment. At that meeting, Cox was formally terminated and was told to clean out his office at the City Fire Department and to turn over all items of City property. One of those items was Cox's City-provided cell phone, which Cox had wiped clean before it was surrendered. As he left his termination meeting, he left a copy of the text messages at Worley's office. After Cox's termination, a review of the text messages left with Worley caused a further investigation of Smith's conduct. After the investigation into Smith's text messages, he was ultimately brought back to Worley's office and was given the option of voluntarily resigning or termination of his employment. Smith chose voluntary resignation.

By combining all the testimony, it appears that Cox's performance and relations with the personnel of the Calhoun Fire Department were contradictory. There appears to be no question that Cox has experience and has extensive knowledge and credentials dealing with the training of firefighters in a municipal fire department. On the other hand, Cox has ongoing issues with his superiors and with the rank and file within the Department dealing with his attitude and performance of his training responsibilities.

Count Four and Count Five of the City's Appeal Hearing Notice make allegations that Cox committed acts of incompetence or dereliction of duty relating to his duties with the Calhoun Fire Department. Those actions were failing to provide training information as well as responding to requests from his supervisor relating to training records. These requests related to an upcoming ISO (Insurance Services Office) Audit of the City of Calhoun. In fact, the actual Audit was to take place the date after the scheduled Hearing, or January 19, 2023. The facts presented by the City were a combination of an email from Mills to Cox on December 1, 2022, combined with Mills' testimony that Cox had failed to respond to the email or to provide any of the requested information from the date of the email until the date of Cox's termination on December 12, 2022. Cox responds to this allegation in his written Appeal by indicating that no request was made and that a meeting was set up for December 16, 2022, to go over the relevant information and that, therefore, these grounds of termination were simply a pretext.

The conflict in the evidence is easy to resolve as the email was actually admitted into evidence as Exhibit 7; therefore, the City's position is accurate that information was requested and not provided. In addition, Cox's position in his Appeal is incorrect when he alleged that a meeting was to take place on December 16th to simply go over his documentation, when, in fact the email makes it clear that the December 16 deadline is to identify missing information, assumably in time to prepare for the upcoming Audit. However, what remains is the importance of this issue to the

decision to terminate Cox or whether it is just a pretext. ISO ratings are important for insurance rating purposes and have a direct impact upon a community's insurance cost structure. For that reason, they are treated as significant events and a lot of time and effort goes into providing enough proof to ISO to obtain the best rating justifiable. So, the issue is important and relevant to Cox's job performance and the City's decision to terminate his employment. All that being said, the Examiner finds that these justifications in and of themselves probably don't justify the City's decision but, combined with the allegations made against Cox's superiors, it clearly presents a picture in which the City's actions are not pretextual.

It is difficult to judge people's motivations and seldom do those motivations present themselves through any form of direct evidence. Circumstantial evidence is generally the only method through which those motivations can be discerned. The present case is no different. It looks as if Cox took his Whistleblower complaint one step too far. The original complaint against Smith was well-founded and made on December 2, 2022. The text messages that came into his possession sometime before December 12, 2022, confirmed the disclosures and gave weight to his allegations that ultimately led to Smith's resignation. Cox brought those text messages to his meeting with Worley on December 12, but Cox had also prepared for another alternative. At some point prior to that meeting, Cox took his work-provided cell telephone and wiped it clean of information. On the one hand, Cox appears to be supporting his position of being a Whistleblower; on the other hand, it appears he is trying to protect himself from any adverse action based upon the allegations that he made against his superiors were simply not truthful. Because the work phone no longer has any information on it, it makes it appear that Cox was never truly a good-faith Whistleblower. Ultimately, Cox overreached and tried to destroy three people. The first, Smith, destroyed himself. However, Cox's attempt to go after Nesbitt and Mills largely led to his own dismissal. Because he had to embellish his Whistleblower complaint

beyond what he had been told, and the disclosure he made to Worley appears to be motivated by more than just a desire to be of assistance to his employer, he has brought about the end of his own career with the City of Calhoun.

Ultimately, the Examiner finds that Cox was terminated for a combination of three basic reasons: The first relates to violating the appropriate chain of command; second, that in addition to allegations made relating to Smith as outlined above, Cox made false allegations of coverup and potentially criminal allegations against Nesbitt and Mills; and third, Cox failed to appropriately fulfill his duties by deliberately or negligently disregarding requests concerning training shortcomings at the City of Calhoun Fire Department. These reasons are outlined in Counts One through Five of the Appeal Notice dated December 23, 2022.

III. FINDINGS OF LAW

I. Whistleblower's Claims Pursuant to O.C.G.A. § 45-1-4 and the application of McDonnell Douglas Corp v. Green

After considering the evidence, the Examiner asked the parties to brief the issue of the Whistleblower's Statute, O.C.G.A. § 45-1-1 et seq., and the burden shifting analysis outlined in McDonnell Douglas Corp v Green, 411 U.S. 792, 93 S.Ct. 1817 (1973). The Examiner will now address the legal issues as they apply to the instant facts. Cox takes the position that the Whistleblowers Statute applies and, therefore, no burden shifting analysis is necessary mandating a ruling in favor of Cox. The City takes the position that there are several independent grounds of termination, either eliminating Cox's status as a Whistleblower or, after applying the burden shifting analysis, Cox's termination is still justified and not simply a pretext for his improper termination. As discussed below, this Examiner determines that the City's position is accurate. The basic reason for that position is that there are not one Whistleblower complaints but two. The

first Whistleblower complaint is that Smith, a Battalion Chief for the City of Calhoun, is engaged in an inappropriate relationship with a young girl under 18 years of age. The second Whistleblower complaint is that Cox alleged that Nesbitt and Mills were knowledgeable about the complaints made against Smith and were involved in a coverup of Smith's activities. This second complaint was false and made with reckless disregard of whether or not these allegations were true. This reckless disregard ultimately deprives Cox of the whistleblower protections he claims under Georgia law or federal employment law statute or precedent.

The Whistleblower Statute, O.C.G.A. § 45-1-4, seeks to protect most government employees while making good faith complaints relating to claims of fraud, waste or abuse and relating to government activities. However, the protections of the Whistleblower Statute are not absolute. O.C.G.A. § 45-1-4(d)(2) makes an exception for disclosures that are knowingly false or made with a reckless disregard of their falsity.

Both sides have made significant recitations to both Georgia and Federal Authority. The Examiner has chosen not to include most of that Authority due to the difference in the procedural posture of most of the cases. Most of the Georgia cases, as well as a significant number of the Federal cases cited, come up in the context of a Motion for Summary Judgment. Therefore, the issues are largely differences of pleading, procedure and the application of relevant precedent. In the instant Appeal, there is significant evidence admitted that deals with factual issues that most of the cited case authority does not address.

As stated above in the Findings of Fact, more than one disclosure was made and, therefore, the issue becomes whether one or both of the disclosures are covered by the Statute. This Examiner ultimately determines that one disclosure was protected but the other disclosure was not. The analysis of the two disclosures follows:

The easiest disclosure is the complaint Cox made on December 2, 2022, to the effect that Battalion Chief Smith was engaged in an inappropriate relationship with a young female under the age of 18 years and that that relationship may have been pursued on Calhoun Fire Department property. In addition, Cox disclosed the possibility of a crime relating to the disclosure of compromising photographs by means of cell telephone through the internet. There is no question that these allegations rise to the level of a whistleblower disclosure under the Statute.

Cox's *prima facie* case requirements are set up in Forrester v. Georgia Dept. of Human Services, 308 Ga. App. 716, 708 S.E.2d 660 (2011),

“To establish prima facie case of retaliation under O.C.G.A. § 45-1-4(d)(2), the employee must present evidence that (1) the employer falls under the statute’s definition of “public employer”, (2) the employee disclosed “a violation of or noncompliance with a law, rule, or regulation to either a supervisor or government agency”, (3) the employee was then discharged, suspended, demoted, or suffered some other adverse employment decision by the public employer, and (4) there is some casual relation between (2) and (3).”

Also see Pennington v. City of Huntsville, 261 F.3d 1262 (11th Cir. 2001). It is not contested that Cox is an employee of the City of Calhoun and the City of Calhoun is a public employer. It is not really contested that the disclosures relating to Battalion Chief Smith meet the requirements of the statute for a *prima facie* case. As Smith was terminated there is at least a casual connection between the two.

It appears that the City’s first real legal argument is that Cox disregarded the Departmental chain of command, which is also a violation of the Standard Operating Procedures for the City of Calhoun Fire Department. See Count One and Count Two of the City’s Hearing Notice dated December 23, 2022. The question thus presented is whether a valid Whistleblower complaint

overcomes the method through which that complaint is made. Even accounting for the importance of a chain of command for purposes of operating a fire department, this Examiner finds that failing to follow that chain of command with regard to this allegation would not, in and of itself, be sufficient grounds for termination.

There was evidence presented that Cox had violated the chain of command before and had been warned not to continue the practice. However, allegations of sexual improprieties between fire department personnel and minors in the community are serious and should be disclosed, investigated and, if necessary, punitive action including appropriate criminal action, instituted. If all that had taken place was the out-of-chain of command disclosure, this Examiner doubts this matter would have ever reached the level of termination. Even though there does not appear to be any specific law in Georgia relating to the application of standard operating procedures commonly used by fire departments and law enforcement agencies as regarding Whistleblower complaints, O.C.G.A. § 45-1-4(d)(1) provides that: “No public employer shall make, adopt, or enforce any policy or practice preventing a public employee from disclosing a violation of or noncompliance with a law, rule, or regulation to either a supervisor or a government agency”. This Examiner finds that a Cox’s disclosure protected him from the manner in which he made the disclosure, *i.e.*, to the City Administrator, and that the Whistleblower Statute protects him from retaliation on that ground.

The second disclosure deals with whether or not Nesbitt and Mills were engaged in a cover up of illegal, or highly inappropriate, activity between Smith and a 17-year-old girl. While the allegations are basically the same, the allegations of a cover up by the highest officials in the Department brings the matter to a whole new level. The above analysis on a *prima facie* case is easily reapplied to this second allegation to which Cox claims statutory protection. This allegation is contained in Count Three of the City’s Appeal Hearing Notice dated December 23, 2022. That

Count additionally contains the language which is an exception to the statutory protection found in O.C.G.A. § 45-1-4(d)(2). In its simplest form, the City takes the position that Cox either lied in making the allegation against his superiors or acted with reckless disregard concerning those same allegations. Cox's written Appeal, which is the only real evidence of Cox's rebuttal that is available, does not really address the specific allegations he made against Nesbitt and Mills at his meeting with Worley on December 2, 2022. It appears that Cox's basic position is that it does not matter whether the disclosure was 100% accurate in order to maintain whistleblower protection. In other words, Cox is basically admitting that his allegations of coverup are simply not true.

While Cox can rely upon a good-faith complaint, the reverse is also true, and he can be terminated for a bad-faith complaint. This is where the evidence diverges. Worley's testimony clearly provided a significant contrast with Cox's written Appeal. On the one hand, Cox alleges a cover up as testified to by Worley; however, the written Appeal discloses something dramatically different. See Findings of Fact outlined above. Therefore, the legal issue dealing with burden-shifting comes to the fore. All parties agree that Georgia applies the burden-shifting analysis set forth in McDonnell Douglas Corp. v Green, 411 U.S. 792, 93 S. Ct. 1817 (1973). Cox takes the position that burden-shifting analysis is not required and the City applies the burden-shifting analysis that justifies their conduct. The Examiner finds that this burden-shifting analysis is necessary to make a determination in this Appeal.

The underlying principle behind the burden-shifting analysis deals with the difficulties tied to a proof of discrimination. Because discrimination, in most cases, is so hard to prove the courts have sought to change the burdens of proof in order to facilitate the proof of discrimination in the appropriate case. The connection with this analysis and the Georgia Whistleblowers Statute is set forth in Baptiste v. Mann, 360 Ga. App. 345 (2021) 861 S.E.2d 212, 2021 IER Cases 245, 304.

“When analyzing claims brought under the Georgia Whistleblowers Act, we apply the same burden-shifting analysis established by the United States Supreme Court for retaliation cases brought under Title VII of the Civil Rights Acts of 1964 Under this framework, the plaintiff must make a *prima facie* case of retaliation. If the plaintiff makes a *prima facie* case, the burden of production shifts to the employer to articulate some legitimate, nondiscriminatory reason for the employment decision. If the employer successfully meets this burden of production, then the burden shifts back to the plaintiff to show that each proffered reason was pretext.”

If Cox had made only the limited disclosure that he had been told, along with the other limiting factors in his statement, the situation would have been very different.

Applying the McDonnell Douglas analysis, it appears that Cox has made a *prima facie* case of retaliation, *i.e.*, he was fired for making a complaint about improper activity by Smith. The City responds and justifies its action by stating that the termination was not based only on the complaint against Smith but also based upon the false allegations against Nesbitt and Mills. There is no question that the allegations made by Cox to Worley were false and this Examiner is left with no doubt that those allegations were recklessly false. See Findings of Fact above. While there is no apparent direct case law in Georgia dealing with false claims, there is some guidance from the Georgia Attorney General. In Official Opinion 96-15 issued on August 16, 1996, an opinion was requested as to the interpretation of the Whistleblowers Statute concerning the Georgia National Guard. A National Guard member was relieved of his duties for insubordination and returned to his home station. Before a letter of Reprimand was delivered, the officer sent a document making allegation of improper conduct by the relieving officer. After investigation it was concluded that the allegations were false and malicious, and they were submitted solely because the officer

became aware of the relieving officer's intention to issue a Letter of Reprimand. The ultimate issue was whether the Whistleblower Statute protected the officer when making a false and malicious complaint. The obvious answer under the Statute is that it does not.

In the present case, Cox substantially altered the information he had been given to commit to what amount to a slander *per se* of Nesbitt and Mills. See O.C.G.A. § 51-5-4. Cox did not have a factual basis for this allegation and his Appeal statement clearly states two things: First, he knew to be wary of the information he was given, and second, he had no other real information other than some form of complaint had been made and no action had been taken for six weeks. Cox had two options. The first, if he chose to insert himself into this issue, he needed to make some inquiry to verify the information he was providing or at least not embellish the story he had been told. Second, he had the simple option of making an inquiry of either Nesbitt or Mills to see if a complaint had been made and receive some information as to the complaint's status. It appears that Cox intentionally chose to do neither and the reasons appear to arise from ill intent on Cox's part. Therefore, has the City met its burden to provide a non-pretextual reason for Cox's dismissal, and the answer to that is clearly yes.

Cox's actions appear to be driven by several factors and all of those factors show animas by Cox and to Nesbitt and Mills. The first factor was a complaint made concerning Mills back in 2016 for which Mills was reprimanded by the Department. The second factor appears to be Cox's belief that Nesbitt had a general pattern of ignoring complaints. Third, an ongoing issue of Cox's desire for a training protocol in the Department, partially at odds with Mills and partially at odds with a number of the other firefighters. These issues came to a head at promotion time. Cox wished to be considered for a battalion chief position and was discouraged by his supervisors based

largely on his relationship with the individual firefighters on that shift. Cox believed, and in essence, he states in his Appeal that he was being singled out and not treated appropriately. Cox's reaction was to fail to apply for consideration for advancement as battalion chief. After Smith was elevated, Cox was dissatisfied to the point of filing one of the few Grievances the City of Calhoun Fire Department have ever had to adjudicate. The resolution was foreordained, and the Grievance was dismissed for the reason that Cox failed to even apply for the position for which he wished to be considered. Cox may very well have believed that Smith did not deserve to be elevated and he may have believed the allegations against Smith fully vindicated him in that belief. However, it does not justify Cox in making slanderous statements about his superiors and then trying to hide behind the Whistleblowers Statute.

Counts Four and Five of the Appeal Notice make allegations of employment incompetence and/or dereliction of assigned responsibilities. Cox takes the position in his Appeal Statement that his competence is not an issue, and any dereliction of duty is simply a pretext. As outlined above in the Statement of Facts, Cox was given an email from Mills on December 1, 2022, relating to the Department's upcoming ISO Audit. In that email Cox was asked to provide information so the Department could identify missing items between the date of the email on December 1st and December 16, 2022. According to Mills' testimony, there was never a response and Cox was terminated on December 12, 2022. Cox's response in his Appeal is in direct contravention to the email. The email clearly asked for information to be gathered and gives a deadline of December 16. Cox's position is that he simply had a meeting on December 16, 2022. Regardless, the basic allegation against Cox was accurate and Cox was not responsive to his superiors. Second, because of the importance of an ISO Audit the issue could have been interpreted in many ways but this issue is not a pretext simply to justify employment action taken against Cox.

II. Retaliation Claims Pursuant to Title of 42 USC Section 2000 et seq. and (Title VII) and 42 USC Section 1983

The statutory basis for Federal Retaliation Claims is found 42 USCA Sect. 2000e-3. However, retaliation claims are not different in substance from the whistleblower claims dealt with above.

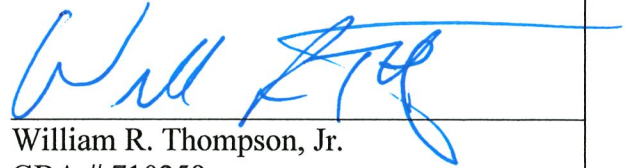
As with whistleblowers cases, the party making a retaliation claim must put forth *a prima facie* case. Those elements are (1) they engaged in statutorily protected conduct; (2) they suffered an adverse employment action; and (3) the adverse action was casually related to protected expression. After a *prima facie* case has been set forth the employer has an opportunity to set forth a legitimate, nonretaliatory reason for the employment action, but ultimately, the burden remains with the complainant to prove that the employer's reason or reasons is a pretext. See Trask v. Secretary, Dept. of Veterans Affairs, 822, F.3d 1179 (11th Cir. 2016) and Swint v. City of Carrolton, 859 Fed. Appx. 395 11th Cir. (2021). Similar to the whistleblower discussion above, Cox has set forth a *prima facie* case. The City has responded with multiple grounds for termination that are not retaliatory so the burden ultimately lies with Cox to refute the City's position. Unfortunately, Cox's written Appeal, which is the only statement of his position available, fails to truly address the City's positions supporting his termination. In the absence of Cox's ability to refute the City's allegations, any claim Cox has under Title VII ultimately fails.

DECISION OF EXAMINER

Based upon the Examiner's Findings of Fact and Findings of Law, the Examiner determines that the adverse employment action taken against Christopher Cox by the City of Calhoun on December 12, 2022, was justified and that Cox's termination of employment with the

Fire Department of the City of Calhoun, Georgia is allowed to stand. Any of the relief requested by Christopher Cox pursuant to the terms of his Appeal is also hereby denied.

Executed this, the 2nd day of March, 2023.



William R. Thompson, Jr.
GBA # 710259

P.O. Box 485
Calhoun, Georgia 30703
706-629-1667
williamrthompson@aol.com

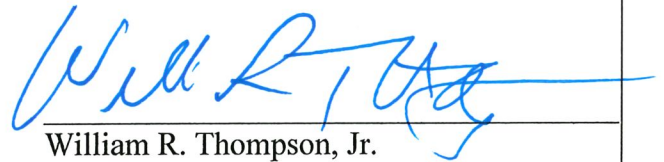
CERTIFICATE OF SERVICE

This is to certify that I have this day served I. Gregory Hodges, Esq., counsel for Christopher Cox, and George P. Govignon, counsel for the City of Calhoun, by placing a copy of the above and foregoing Decision of Examiner in the United States Mail in an envelope with adequate postage affixed thereon and addressed as follows:

I. Gregory Hodges, Esq.
Oliver Maner, LLP
218 W. State Street
Savannah, Georgia 31401
ghodges@olivermaner.com

George P. Govignon, Esq.
109 N. Wall Street
Calhoun, Georgia 30701
govig@aol.com

This, the 2nd day of March, 2023.


William R. Thompson, Jr.