STATE OF NEW JERSEY

In the Matter of Steven Morse, Middlesex County Sheriff's Office	:	**FINAL ADMINISTRATIVE ACTION OF THE CHAIRPERSON OF THE CIVIL SERVICE COMMISSION**
CSC Docket No. 2025-2749	:	Request for Interlocutory Review

ISSUED: July 2, 2025

Middlesex County Sheriff's Office, represented by Robert J. Merryman, Esq., requests interlocutory review of the June 9, 2025, order of Administrative Law Judge Judith Lieberman (ALJ) in *Steven Morse v. Middlesex County Sheriff's Office,* CSC Docket No. 2024-1362, OAL Docket No. CSR 00411-24, pursuant to *N.J.A.C.* 1:1-14.10(a).

In a letter dated June 23, 2025, the parties were informed that the appointing authority's request for interlocutory review was granted. The parties were also given the opportunity to submit additional arguments pursuant to *N.J.A.C.* 1:1-14.10(d).

As background, the appellant, a former Sheriff's Officer, appealed his removal effective December 22, 2023, on charges. The appellant was served with a Final Notice of Disciplinary Action, removing him on charges of conduct unbecoming a public employee and other sufficient cause. Specifically, the appointing authority asserted that on July 7, 2023, the appellant submitted to a random drug test, during which he tested positive for alpha-hydroxy-alprazolam, a banned substance. The appointing authority also noted that he failed to list the substance on his required medication form. Moreover, it maintained that on September 7, 2023, the appellant admitted in an Internal Affairs interview that he did not have a prescription for alpha-hydroxy-alprazolam. Upon receipt of the appeal, the case was transmitted to the Office of Administrative Law (OAL) for a hearing before an ALJ.

At the OAL, the appointing authority filed a motion for summary decision on the charges and penalty. In her order, the ALJ granted the motion for summary decision regarding the charges but denied the motion with regard to the penalty. In this regard, the ALJ found certain facts as undisputed. In relevant part, she found that the appellant was required to submit to a random drug test on July 7, 2023; he tested positive for alpha-hydroxy-alprazolam, a schedule IV controlled substance in the class of benzodiazepines; he had not listed that drug on his medication form and none of the drugs he did list contained benzodiazepine; the appellant signed an affidavit in which he stated that he ingested half of one of his wife's two-milligram alprazolam (*i.e.*, Xanax) tablets; and the appellant acknowledged that he did not disclose the medication on the medication form.[1] The ALJ also noted that the appellant's disciplinary record evidenced a one-day suspension in 2018 and a five-day suspension in 2022; and that he received a letter of commendation in 2023.[2] Based on the foregoing, the ALJ found that there was no genuine issue of material fact with respect to the charges and therefore granted summary decision in that regard.

However, with regard to the penalty, the ALJ noted that although the appointing authority argued that the Attorney General Guidelines (AG Guidelines) regarding drug testing and its own internal policies require termination, the appellant argued that there is a genuine issue of material fact as to the penalty. The ALJ noted that the appellant's forensic-toxicology expert opined that the appellant's test result was consistent with his claim that he took half of a two-milligram tablet the night before. The ALJ also noted that Kenneth Weiss, M.D., opined that the appellant took his wife's medication due to a "momentary lapse in his otherwise intact judgement" that was caused by insomnia and had "no implications for the future, [and he] should he be reinstated."

The ALJ noted that:

> . . . when a civil service employee is subject to discipline, the concept of progressive discipline is ordinarily applied. This involves imposition of penalties of increasing severity where appropriate. *West New York v. Bock*, 38 *N.J.* 500, 523 - 24 (1962); *see also In re Parlow*, 192 *N.J. Super.* 247 (App. Div. 1983). Several factors must be considered, including the nature of the employee's offense and the employee's prior record. *George v. N. Princeton Developmental Ctr.,* 96 *N.J.A.R.2d* (CSV) 463. However, progressive discipline may be "bypassed when an employee engages in severe misconduct, especially when the employee's position involves

[1] The ALJ noted that the appellant acknowledged that he did not disclose that he took his wife's medication on the Medical Information Form. He explained that he was not sure of the name of the medication and was concerned about the consequences of listing the wrong medication. He further explained that he tried to contact his wife and his doctor to obtain the correct name but was unable to reach them.

[2] Agency records indicate that he received a regular appointment to the title of Sheriff's Officer, effective September 9, 2011.

> public safety and the misconduct causes risk of harm to persons or property." *In re Herrmann*, 192 *N.J.* 1 9, 33 (2007). The appointing authority bears the burden of establishing the truth of the allegations by a preponderance of the credible evidence. *Atkinson v. Parsekian*, 37 *N.J.* 143, 149 (1962).

The ALJ further noted that both the appellant and appointing authority cited cases that supported their position concerning the appropriate penalty, but that none of the cited decisions were published. The ALJ further noted that no published opinion mandating termination was found. In this regard, she noted that the Appellate Division has held that the AG Guidelines require termination. *See, e.g., Forcinito v. Borough of Clayton*, Docket No. A-0433-23 (App. Div. July 25, 2024) (Attorney General's drug policy "requires a violator's termination" notwithstanding "an unblemished disciplinary history" and admirable service);[3] *In the Matter of S.D.*, Docket No. A-2844-21 (App. Div. February 22, 2024) (expressly rejecting progressive discipline because Attorney General and police department's policies "unequivocally mandate termination"); *In the Matter of Wayne Roesch,* Docket No. A-1436-05T5 (App. Div. August 14, 2006) (the Civil Service Commission (Commission) adopted and the court affirmed the ALJ's conclusion that the AG Guidelines do not require a "culpable mental state in order to find a violation" and require termination when a sworn law enforcement officer tests positive for illegal drug use).

However, the ALJ also noted that the Appellate Division has upheld lesser penalties in other cases. For example, in *In the Matter of William Shorter,* Docket No. A-3150-18T3 (App. Div. May 4, 2020), the Commission modified Shorter's[4] penalty from removal to a 120-calendar-day suspension based on principles of progressive discipline, citing Shorter's long service, nearly untarnished disciplinary record, and the indication in the record that CBD oil was "likely" the cause of his positive test result as mitigating factors that warranted a reduced penalty. The Appellate Division affirmed the Commission's decision as it found that the decision to downgrade Shorter's penalty could not fairly be characterized as "so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness." The Appellate Division further noted that the Commission was not bound by the appointing authority's findings in determining the appropriate penalty as that decision was subject to *de novo* review by the Commission. Further, the Appellate Division found that the Commission's sanction was hardly *de minimis* as Shorter was severely penalized with a lengthy suspension without pay for failing to accurately complete the medication form. Based on the foregoing and given the appellant's presentation of evidence that could be considered mitigating, and the obligation to view the evidence in the light most favorable to the non-moving party, the ALJ concluded that summary decision with respect to the penalty was not appropriate in the present matter.

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[3] This matter concerned a non-civil service jurisdiction.

[4] Shorter was a Correctional Police Sergeant with the Department of Corrections.

In the instant request for interlocutory review, received June 13, 2025, the appointing authority argues that the ALJ erred in disregarding the AG Guidelines which mandate termination for a positive drug test for an illegal controlled substance. Specifically, it argues that multiple recent Appellate Division decisions have upheld the removal of law enforcement officers on that basis. In particular, it notes that in *S.D.*, *supra*., the Appellate Division upheld the removal and noted that whether S.D. intentionally or unintentionally had cannabis in his system above the threshold level was irrelevant under the 2020 AG Guidelines regarding drug testing which mandated termination for a positive drug test, even where there was no prior disciplinary history as was the case here. Moreover, the appointing authority maintains that the ALJ reliance on *Shorter, supra*, and others, was inappropriate as those matters were factually distinguishable and did not reference the AG Guidelines. Therefore, it argues that as the AG Guidelines mandate removal, there is no need for, or ability, to argue for mitigation of the penalty.

In response, the appellant, represented by Catherine M. Elston, Esq., argues that the instant request does not meet the standard for interlocutory review pursuant to *N.J.A.C.* 1:1-12.5 as no irreparable harm exists if the request is denied. The appellant argues that interlocutory review is discretionary and should be "exercised only sparingly." *See State v. Reldan* 100 *N.J.* 187, 205 (1985). Additionally, the appellant maintains that the Civil Service Act, Title 11A, provides procedural safeguards throughout the disciplinary process to employees, including the right to a *de novo* hearing on disciplinary charges and the Commission is empowered to disapprove a penalty imposed by an appointing authority. Therefore, it maintains that the appointing authority's contention that the Commission is bound by the AG Guidelines as the only penalty available is without merit. In this regard, he argues that the AG Guidelines do not strip the Commission of its role as the agency factfinder. Nor do the AG Guidelines contain language that eliminates the right to present mitigating evidence or prohibit the Commission's mandate to evaluate evidence, apply principles of progressive discipline and ensure fair outcomes, rather than to enforce an executive policy without regard to individual facts as urged by the appointing authority. The appellant maintains that the instant matter presents stronger mitigation reasons than those presented in *Shorter* or *In the Matter of the Alberto Aponte*, Docket No. A-1782-19 (App. Div. July 20, 2021).[5]

Moreover, the appellant argues that although the AG Guidelines have the force of law, that does not mean that it can displace the Commission's statutory obligation to assess penalty proportionality under *N.J.S.A.* 11A:2-6 and *Carter v. Bordentown,* 191 *N.J.* 474 (2007). In this regard, he argues that the use of "shall be terminated" in the AG Guidelines is not self-executing in a Civil Service context as due process still requires a hearing where material facts exist, and the appointing authority has not cited to any Appellate Division case that has held that the AG Guidelines preempt an employee's civil service due process rights.

[5] Aponte was a County Correctional Police Sergeant with the Essex County Department of Corrections.

Finally, the appellant argues that the current record supports the application of progressive discipline to modify the penalty of removal. Specifically, there was no allegation that he was ever impaired on duty, his statement as to dosage and timing of ingestion was corroborated by his forensic toxicology report, he has only had two minor disciplinary actions in his 12-year career and received a letter of commendation from the Sheriff a month after this failed test.

CONCLUSION

Initially, *N.J.A.C.* 4A:1-3.2(b)3 provides, in part, that the Chairperson, on behalf of the Commission shall, between meetings of the Commission, review requests for interlocutory review of an order or ruling by an ALJ. Therefore, since the matter could not be presented at the July 2, 2025,[6] Commission meeting and a decision must be issued no later than July 2, 2025, pursuant to *N.J.A.C.* 1:1-14.10(e), this matter is being reviewed by the Chairperson prior to the next Commission meeting on July 23, 2025.

Upon a review of the record, the Chairperson finds that the appointing authority's request for interlocutory review should be granted, and the order of the ALJ should be reversed. *See, e.g., In the Matter of Ivette Arce, Department of Corrections* (CSC, decided September 6, 2017) (Commission granted interlocutory review and reversed the ALJ's denial of the appointing authority's motion for summary decision in a major discipline appeal); *In the Matter of Sabrina Cheng, Catastrophic Illness in Children Relief Fund* (CSC, decided June 9, 2010).

N.J.A.C. 1:1-12.5(b) provides that a motion for summary decision may be granted:

> if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. *See also, Brill v. Guardian Life Insurance Co.*, 142 *N.J.* 520 (1995).

In the instant matter, the ALJ denied the request for summary decision on the issue of the penalty. In this regard, although the appointing authority's request for interlocutory review is being granted, the Chairperson does not agree with appointing

[6] The Commission's agenda for its July 2, 2025, meeting was posted on June 25, 2025. As set forth above, the parties were informed that the appointing authority's request for interlocutory review was granted on June 23, 2025, and the parties were given the opportunity to submit additional arguments pursuant to *N.J.A.C.* 1:1-14.10(d).

authority's assertion that the AG Guidelines require that the appellant's removal be upheld, without consideration of mitigation factors. Rather, for the reasons set forth below, no genuine issue of material fact has been presented in this matter to prevent the imposition of the penalty of removal.

As indicated by the ALJ, there are no published decisions on this specific issue. However, the Appellate Division has upheld removals pursuant to the AG Guidelines on drug usage. In particular, the ALJ noted that the Appellate Division in *S.D.*, *supra*, found that under the 2020 AG Guidelines, S.D.'s termination was mandated for a positive drug test. In that matter, S.D., a Police Officer with Freehold Township, on two consecutive days in December 2020, sat with his wife in a car while she smoked prescription cannabis. The next day, S.D. was selected for a random drug test, which resulted in a positive drug test and his removal. S.D. appealed his removal to the Commission, and the matter was transmitted to the OAL as a contested case. The ALJ in that matter recommended sustaining the charges and S.D.'s removal. Thereafter, the Commission considered the matter at its meeting on March 2, 2022. A Commission member moved to modify the removal to a six-month suspension. At the time, there were only four Commission members, and two members voted for, and two members voted against the motion. Thus, under *N.J.S.A.* 52:14B-10(c), since there was a tie vote, the motion failed and the ALJ's decision was deemed adopted as the Commission's final decision. Further, the Commission denied S.D.'s request for reconsideration since the Commission did not actually render a decision and could not have made a clear material error. On appeal to the Appellate Division, it found no error in the ALJ's decision to terminate S.D. based on a positive drug test. The Appellate Division noted that whether S.D. intentionally or unintentionally had cannabis in his system above the threshold level was irrelevant under the 2020 drug testing policies which mandated termination for a positive drug test, even where there was no prior disciplinary history.

> Regardless of S.D.'s unblemished record, lack of any prior disciplinary history, and strong support of his fellow police officers and other character witnesses, the policies promulgated by the Department and the Attorney General unequivocally mandated termination of employment for law enforcement officers testing positive for drugs. S.D. never denied his awareness of the policies mandating termination as a law enforcement officer after a positive test result. *Id*, at 20.

However, in a similar case concerning a non-civil service Police Sergeant, the Appellate Division did consider mitigation, even though it ultimately upheld the removal of a Police Sergeant who tested positive during a random drug test. *See Cincotta v. Borough of Longport*, Docket No. A-1390-23, (App. Div. May 12, 2025). In that matter, Cincotta had assisted at a motor vehicle stop, during which he failed to don any personal protective equipment while handling purported drug paraphernalia and suspected drugs. Although he eventually donned gloves, he subsequently ate a

meal without washing his hands. Subsequently, a random drug test was conducted, and Cincotta yielded a positive test result for a controlled dangerous substance. He was subsequently terminated. He appealed his termination pursuant to *N.J.S.A.* 40A:14-150, which entitled him to a *de novo* review in the New Jersey Superior Court. The Court noted that it considered Cincotta's admitted violation of proper processing procedures, "the nature of the conduct and the impact of the misconduct on the public interest and public safety, [p]laintiff's positive drug test and the New Jersey Attorney General Guidelines." *Id* at 7. The Court found that Cincotta's disregard of the rules, and positive drug test were serious, and that termination was "not so disproportionate to the offenses in light of all of the circumstances and the seriousness of the charges . . . termination is not shocking to one's sense of fairness in this specific case." *Id* at 8. In upholding the removal, the Appellate Division noted that:

> To ensure "proportionality and uniformity in the rendering of discipline of public employees[,]" our Supreme Court adopted the principles of progressive discipline which predicate the severity of the punishment upon the seriousness of the offense committed and the employee's disciplinary record. *In the Matter of Anthony Stallworth,* 208 *N.J.* 182, 195 (2011),

Finally, the Appellate Division stated that as Cincotta's violation of the pertinent policies and regulations, constituted conduct unbecoming for a Police Officer, "termination was a proportionate punishment, notwithstanding this favorable disciplinary record." *Cincotta v. Borough of Longport,* at 15.

Similarly, under Civil Service law and rules, it is well settled that the penalty in a disciplinary matter is reviewed by the Commission *de novo*. It is also well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 *N.J.* 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 *N.J.* 474 (2007). Even when a law enforcement officer does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust. In this regard, it must be emphasized that a law enforcement officer is held to a higher standard than a civilian public employee. *See Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). *See also, In re Phillips*, 117 *N.J.* 567 (1990).

As such, an appellant should not be precluded from presenting evidence of mitigating circumstances, even where, as here, the AG Guidelines mandate termination. While, as presented above, the Appellate Division appears to be somewhat split of this issue, as the Commission has exclusive statutory jurisdiction over the imposition of the penalty in Civil Service major disciplinary matters, the AG Guidelines, while instructive and generally applicable, cannot be used to completely usurp the Commission's exclusive jurisdiction over the penalty. Nevertheless, it is clear that, in the instant matter, removal is the appropriate penalty, notwithstanding any arguments concerning mitigation. In this regard, the appellant had the opportunity, both before the ALJ and in response to this matter, to fully present his arguments and reasons as to mitigation of the penalty. However, upon thorough review, his arguments and evidence of mitigation are unpersuasive. The appellant's forensic-toxicology expert opined that the appellant's test result was consistent with his claim that he took half of a two-milligram tablet the night before. Moreover, Dr. Kenneth Weiss, M.D., opined that the appellant took his wife's medication due to a "momentary lapse in his otherwise intact judgement" that was caused by insomnia and had "no implications for the future, [and] should he be reinstated." However, most importantly, these opinions do not explain or mitigate the appellant's failure to include the medication on the Medication Information Form. Although the appellant explains that he was not aware of the name of the medication and was worried about the consequences of listing the wrong name on the form, he still acknowledges that he failed to list it on the Medication Information Form. The appellant's failure to list the ingestion of his wife's prescription medication, as well as his ingestion of a controlled substance prescribed to another person, are egregious and inimical to what the public expects from a law enforcement officer, who is held to a higher standard. They "go to the heart of [the appellant's] capacity to function appropriately" in his position. *See Cosme v. E. Newark Twp. Comm.*, 304 *N.J. Super.* 191, 206 (App. Div. 1997). Moreover, based on the particular facts of this matter, this conclusion is consistent with the proscribed and recommended penalty in such matters found in the AG Guidelines. Accordingly, removal is neither disproportionate nor shocking to the conscience.

Therefore, it is appropriate to grant interlocutory review and reverse the ALJ's order denying the appointing authority's request for summary decision on the penalty. In doing so, the Chairperson grants the appointing authority's request for summary decision on the penalty and finds that its action in removing the appellant was justified. As such, the appeal regarding the removal is hereby denied, and this constitutes the final administrative action in this matter.

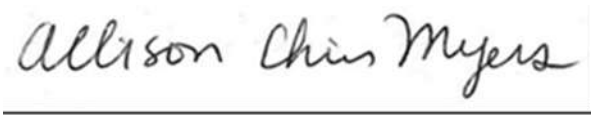
ORDER

Therefore, the appointing authority's request for interlocutory review is granted and the ALJ's May 2, 2025, order is reversed.

It is further ordered that the appeal regarding the removal is denied. Upon receipt of this decision, the ALJ shall return the entire file to the Commission.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CHAIRPERSON OF THE
CIVIL SERVICE COMMISSION ON
THE 2ND DAY OF JULY, 2025



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