STATE OF NEW JERSEY

In the Matter of Van Jenkins	:	DECISION OF THE CIVIL SERVICE COMMISSION
CSC Docket No. 2018-1038 OAL Docket No. CSV 15785-2017	:	

ISSUED: MAY 23, 2018 (SLK)

The appeal of Van Jenkins, a Mechanic with the City of Camden, of his removal, effective August 1, 2017, on charges, was heard by Administrative Law Judge Elaine B. Frick (ALJ), who rendered her initial decision on March 22, 2018. Exceptions were filed on behalf of the appointing authority and a reply to exceptions and cross exceptions were filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on May 2, 2018, accepted and adopted the Findings of Fact as detailed in the initial decision. Further, the Commission adopted the ALJ's recommendation to reverse the removal. However, the Commission did not adopt the ALJ's recommendation to reinstate the appellant to suspended without pay status. Rather, the Commission ordered that the appellant's reinstatement be subject to a return to work drug test.

DISCUSSION

The appellant was charged with violating the appointing authority's Drug and Alcohol Policy (D&A Policy) and a second chance agreement. Specifically, the appointing authority alleged that after the appellant initially tested positive for marijuana, the appellant's return to work drug screen tested positive for marijuana. Upon the appellant's appeal to the Commission, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case.

The ALJ set forth in her initial decision that the appellant began his employment with the appointing authority in 2005. On July 27, 2017, the appellant tested positive for drugs. The ALJ noted that the appellant had never been previously tested positive for drugs nor had he ever previously been disciplined.

Martin Hahn, Risk Manager for the appointing authority, testified that there was no evidence that the appellant ever had a drug problem or been impaired at work prior to being randomly selected to take a drug screen on July 27, 2017 pursuant to the appointing authority's D&A Policy. Hahn indicated that, like other employees who test positive, the appellant was given an opportunity to sign a second chance agreement. The second chance agreement stated that the appellant would be suspended without pay from August 1, 2017 until he was cleared to return to work, which included the appellant passing a return to duty drug test among other criteria. Hahn stated that on August 29, 2017, he was informed that the appellant was ready to be considered for return to duty and therefore, he directed the appellant to get a return to work urine screen completed through the appointing authority's designated laboratory facility. He then received the drug testing summary report for the appellant which indicated that he tested positive for marijuana on August 30, 2017. Hahn agreed that the appellant was a reliable and valuable employee who had no prior employment issues. Additionally, Hahn confirmed that if the appellant had not used drugs after signing the second chance agreement and the positive drug test was a result of residual marijuana in the appellant's system from use prior to July 27, 2017, then the appellant would not be in violation of the second chance agreement. However, Hahn indicated that he did not have the ability to determine if the positive drug test was due to residual marijuana use and, since the appellant did not pass the return to duty urine screen, he could not return to work.

Harsh Dangaria, M.D., Medical Review Officer for the appointing authority, testified that he reviewed the appellant's laboratory test result from the urine sample collected on August 30, 2017, which was positive for marijuana. Further, Dangaria called the appellant on September 6, 2017 and he did not receive any information from the appellant that indicated that there may have been an alternate medical reason as to why he tested positive. Dangaria acknowledged that the appellant's July 27, 2017 drug test indicated quite a high result for marijuana metabolite and the appellant's August 30, 2017 marijuana metabolite result was significantly lower. However, Dangaria stated that the August 30, 2017 results were still above the federal Department of Transportation guidelines (guidelines) for a positive test for marijuana, which he is required to follow. Dangaria indicated that the guidelines provide that residual marijuana may stay in one's system for up to 30 days from the time of use. Dangaria agreed that it is possible that someone may test positive, negative, and then positive again for the same marijuana use; however, he stated that situation would only be within the 30 day time frame from when the use occurred. Dangaria acknowledged that he was aware of other

research where individuals tested positive for marijuana for up to 40 days from use, but he emphasized that he is required to follow the guidelines which only indicate that residual use may stay in one's system up to 30 days. Dangaria agreed that weight loss after marijuana use could impact the length of time it remains in one's system. However, he reiterated that he would follow the guidelines, which are the "gold standard" for employee drug testing, which state that a positive result would only continue up to 30 days from use.

The appellant testified that on August 22, 2017, he had a positive test for marijuana. Thereafter, on August 29, 2017, he submitted another urine sample and was advised that the test was negative. Accordingly, the appointing authority was advised he was ready to return to work. The appellant indicated that on August 30, 2017, he was tested at the appointing authority's approved facility and he expected that the result would be negative based on the results from the day before. The appellant states that if he knew that the results would come back positive, he would have never requested the return to duty drug screen. The appellant indicates that he lost 25 pounds during his suspension.

Gary Lage, Ph.D., testified as an expert in pharmacology and toxicology for the appellant. Lage presented that there have been studies that indicate that marijuana can stay in one's system for up to 70 days after initial exposure even if there has been no additional exposure to marijuana. Lage stated that it was his expert opinion that the appellant's 90 percent decrease in his marijuana metabolite level from the initial drug screen to the return to duty drug screen indicated that this dramatic decrease represented residual marijuana in the appellant's system from use prior to the first positive test and the appellant had not been exposed to marijuana after the initial drug screen. However, Lage did concede that it was possible that the appellant was exposed to marijuana in between the two tests, but reiterated this would contradict the facts in this matter. Lage also testified that there is a high correlation between weight loss, which affects the release of the metabolite from fat tissue, and how long the last positive urine test for marijuana occurs.

The ALJ found all the witnesses to be credible, but that Lage's testimony was the most persuasive based on his expertise and the scientific research he used to support his conclusions. Specifically, the ALJ found that the appellant's positive drug test on August 30, 2017 was due to residual marijuana from use prior to the initial drug test on July 27, 2017 and not from subsequent use based on the appellant's significant decrease in his marijuana metabolite level and the impact that the appellant's weight loss could have on the length of time he could have tested positive for marijuana without subsequent use. Additionally, the ALJ found that both the appointing authority's and the appellant's expert witnesses confirmed the appellant's positive, then negative, and positive drug tests were not unusual. Further, the ALJ stated it would not make sense for the appellant to have sought to

return to duty if he thought he would test positive again. Based on the foregoing, the ALJ found that the appellant had not violated the appointing authority's D&A policy and the second chance agreement and the ALJ reversed the appellant's removal and ordered that he be reinstated to suspended without pay status.

In the appointing authority's exceptions, it argues that it cannot be confirmed that the August 30, 2017 positive drug test was a result of residual marijuana use. Instead, the appellant's expert could only testify that it was likely that the positive result was due to residual marijuana. Further, the appellant signed a second chance agreement that indicated that if he failed a subsequent drug test, he would be removed. Therefore, the appellant violated the appointing authority's D&A Policy and the second chance agreement by failing the return to duty drug screen and should not be given a third chance. The appointing authority presents that *N.J.A.C.* 4A:2-2.4 does not provide for a suspension for greater than six months except for when there are pending criminal charges. Therefore, the appointing authority asserts that the ALJ incorrectly ordered the appellant to be reinstated to "suspended without pay" status and it was further error for the ALJ to not specify how long the appellant would remain in that status. The appointing authority emphasizes that it has an obligation to put the safety of the public and its employees at the forefront of all decisions and argues that it is arbitrary, capricious and unreasonable to reinstate an employee who has twice tested positive for marijuana.

In the appellant's reply to exceptions and cross exceptions, he states that the appointing authority has not provided any factual or legal argument to support its exceptions. Specifically, the appointing authority failed to demonstrate that the ALJ's conclusion that the appellant's positive drug screen on August 30, 2017 was a result of residual marijuana was arbitrary and unreasonable. On the contrary, the ALJ explained why that the appellant's expert's testimony was the most persuasive based on his experience and scientific studies that supported the conclusion that the appellant's decreased marijuana metabolite level and weight loss were evidence that the positive result on the return to duty drug screen was based on residual marijuana and not new use. Further, Hahn confirmed that if the positive drug test was based on residual marijuana than the appellant would not be in violation of the appointing authority's D&P Policy and the second chance agreement. Additionally, he argues that the Commission is not bound by the appointing authority's drug policy to determine the proper penalty and the appellant is not being provided a third chance as he only tested positive on August 30, 2017 due to residual marijuana being in his system. Further, public safety is not at risk as the appellant will only return to work upon passage of a return to work drug screen, which is a common condition that the Commission imposes where positive drug tests are involved.

Upon its *de novo* review of the record, the Commission agrees with the ALJ regarding the reversal of the charges, but does not agree with the ALJ's recommendation that the appellant be reinstated to suspended without pay status. In this regard, where a removal is reversed, an appellant is normally entitled to be reinstated subject to any conditions imposed by the Commission. Where charges are dismissed and the penalty reversed, an appellant cannot be returned to any type of suspended status. Accordingly, as it has done in similar matters, the Commission orders that the appellant undergo a return to work drug test as a condition of reinstatement. Should the appellant fail his return to work drug test, the Commission orders that the appointing authority issue a new Final Notice of Disciplinary Action (FNDA) removing the appellant effective August 1, 2017. Upon receipt of the FNDA, the appellant may appeal that matter to the Commission in accordance with *N.J.A.C.* 4A:2-2.8. Upon timely submission of any such appeal, the appellant would be entitled to a hearing regarding the **current drug test only**. Should he be unsuccessful in that appeal, he shall be deemed removed effective August 1, 2017.

If the appellant passes the drug test, the appellant is to be reinstated, and is entitled to mitigated back pay, benefits and seniority pursuant to *N.J.A.C.* 4A:2-2.10. Typically, when there is a reversal of charges, mitigated back pay, benefits and seniority would be from the effective date of the suspension, which in the case is August 1, 2017. However, in light of the fact that the appointing authority had legitimate grounds for suspending the appellant effective that date due to an undisputed positive drug screen on July 27, 2017, the Commission finds that the appellant is entitled to mitigated back pay, benefits and seniority from August 30, 2017, the date of the appellant's return to duty drug screen by the appointing authority's authorized facility which resulted in a positive result due to residual marijuana.

With respect to counsel fees, *N.J.A.C.* 4A:2-2.12 provides for the award of full reasonable counsel fees incurred in proceedings before it and incurred in major disciplinary proceedings at the departmental level where an employee has prevailed on all or substantially all of the primary issues before the Commission. In this case, the Commission reversed contingent on his passing a return to work drug test. Should he pass that test, he is entitled to reasonable counsel fees. Should he fail that test, counsel fees are denied. Additionally, in light of the Appellate Division's decision in *Dolores Phillips v. Department of Corrections,* Docket No. A-5581-01T2F (App. Div. February 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay or counsel fees are finally resolved. However, under no circumstances should his reinstatement be delayed pending resolution of any back pay or counsel fee dispute.

ORDER

The Civil Service Commission finds that the removal of the appellant was not justified and therefore, reverses that action. The Commission also orders that the appellant undergo a return to work drug test prior to his reinstatement. Should the appellant fail the drug test, the appointing authority is to issue a new FNDA with a removal date of August 1, 2017. Should he pass the drug test, he should be immediately reinstated. If ultimately reinstated, the Commission further orders that the appellant be granted back pay, benefits and seniority for the period from August 30, 2017 to the date of actual reinstatement. The amount of back pay awarded is to be reduced and mitigated to the extent of any income earned or that could have been earned by the appellant during this period. Proof of income earned and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of the issuance of this decision.

It is further ordered that, should the appellant pass the return to work drug test, counsel fees should be awarded to the appellant as the prevailing party pursuant to *N.J.A.C.* 4A:2-2.12. The appellant shall provide proof of income earned and an affidavit of services to the appointing authority within 30 days of issuance of this decision. If the appellant fails the drug test, counsel fees are denied.

Pursuant to *N.J.A.C.* 4A:2-2.10 and *N.J.A.C.* 4A:2-2.12, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any back pay or counsel fee dispute.

The parties must inform the Commission, in writing, if there is any dispute as to back pay or counsel fees within 60 days of the appellant's reinstatement. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R.* 2:2-3(a)(2). After such time, any further review of this matter should be pursued in the Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 2nd DAY OF MAY, 2018

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
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Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 15785-2017

AGENCY DKT. NO. 2018-1038

IN THE MATTER OF VAN JENKINS, CITY OF CAMDEN, DEPARTMENT OF PERSONNEL.

James Katz, Esq., for appellant Van Jenkins (Spear Wilderman, P.C., attorneys)

Ilene Lampit, Esq., Assistant City Attorney, for respondent City of Camden

Record Closed: February 5, 2018 Decided: March 22, 2018

BEFORE **ELAINE B. FRICK**, ALJ:

STATEMENT OF THE CASE

Respondent, City of Camden (the City), removed appellant, Van Jenkins, from his position as a mechanic, effective August 1, 2017. The City alleges there was just cause for the disciplinary action under N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause, because the appellant's return to work drug screen tested positive for marijuana, in violation of the City's Drug and Alcohol Policy (D&A Policy) and a second chance agreement.[1] Appellant contests his removal and seeks reinstatement to his employment and back pay.

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[1] Although the Preliminary and Final Notice of Disciplinary Action forms in this matter list additional charges of insubordination, conduct unbecoming, and neglect of duty, the City has specified the only charge upon which they are basing the removal of appellant is N.J.A.C. 4A:2-2.3(a)(12) other sufficient causes.

PROCEDURAL HISTORY

On August 1, 2017, the City issued a Preliminary Notice of Disciplinary Action setting forth charges against appellant, and suspending him effective August 1, 2017, without pay. On September 7, 2017, the City issued a second Preliminary Notice of Disciplinary Action to appellant, recommending removal effective August 1, 2017.

A departmental hearing was conducted on September 28, 2017. The City issued a Final Notice of Disciplinary Action on October 2, 2017, disciplining appellant with removal from his position, effective August 1, 2017. Appellant requested an appeal, and the matter was filed with the Office of Administrative Law (OAL) on October 24, 2017, to be scheduled for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on January 25, 2018. The parties submitted post-hearing summation briefs and the record closed on February 5, 2018.

FACTUAL DISCUSSION

The parties stipulated the following facts and I therefore **FIND** them as **FACTS**:

1. Vance Jenkins began employment with the City of Camden on April 27, 2005.
2. His permanent Civil Service title at [the] time of removal was mechanic.
3. Prior to the incident which occurred on July 27, 2017, Mr. Jenkins had never been disciplined by the City of Camden for any reason in connection with his employment.
4. Prior to the drug test on July 27, 2017, Mr. Jenkins was previously tested for drugs in connection with his employment with the City of Camden.
5. Prior to the drug test on July 27, 2017, Mr. Jenkins had never previously tested positive for drugs in connection with his employment with the City of Camden, nor had there been any issues in connection with any prior drug test administered by the City of Camden to Mr. Jenkins in connection with his employment. (J-1).

TESTIMONY

Martin Hahn, Risk Manager, City of Camden, testified for the respondent. He has been employed as a risk manager for approximately thirty-six years, and has worked for the City of Camden in that position for the past fourteen years. Approximately twelve years ago, he crafted the City's D&A Policy with the then City attorney. (R-1.) The D&A Policy outlines six types of employee drug and alcohol testing that may occur, two of which are random drug screens for employees in safety sensitive positions, such as appellant's position as a mechanic; and return-to-work testing, used in situations where an employee has been absent from work due to enrollment in a drug or alcohol rehabilitation program. (R-1 at 104.)

The City had no evidence of appellant ever having a drug problem or being impaired at work prior to, or on July 27, 2017. The City had no evidence of appellant ever failing to perform his job duties prior to, or on July 27, 2017. Pursuant to the D&A Policy, an outside vendor randomly selects employees to submit to drug screens. Appellant was randomly selected on July 27, 2017.

Mr. Hahn is the Drug Enforcement Representative (DER) for the City, and is responsible to oversee the City's drug testing program and the Employee Assistance Program (EAP) related to the D&A Policy. As DER, he receives the results of employee drug tests and received the appellant's positive random urine screen of July 27, 2017. The result of the random drug screen was positive for marijuana. (R-4.)

The City issued a Preliminary Notice of Disciplinary Action to the appellant, charging him with violation of the D&A Policy, for having tested positive for marijuana. (R-6.) The appellant was suspended without pay, pending a hearing. The appellant was not terminated. Rather, like all other employees who test positive, he was given the opportunity to sign a second chance agreement.

Mr. Hahn assisted the City's attorney in crafting the City's second chance agreement many years ago. The purpose of the second chance agreement is to give an

employee who has tested positive for drugs the opportunity to become rehabilitated, instead of immediately being discharged. The parties signed the appellant's second chance agreement on August 1, 2017. (R-3.)

The second chance agreement identifies that appellant would be suspended without pay from August 1, 2017, until he was cleared to return to work. (R-3.) The agreement provided that the appellant had to cooperate and comply with the EAP recommended program or treatment. (R-3 at paragraph 3.) If he did not comply with the EAP program, the City could precede with disciplinary action. (R-3 at paragraph 3.)

The second chance agreement also required the appellant to pass a return to duty drug test. (R-3 at paragraph 4.) Mr. Hahn acknowledged there were no consequences in that paragraph as to what would occur if the appellant did not pass the return to duty drug test. There are no time constraints as to when the appellant would be required to pass a return to duty drug screen. Mr. Hahn identified a subsequent paragraph in the agreement which provides that if appellant tested positive at any time in the future, then his employment with the City would be terminated. (R-3 at paragraph 8.)

The second chance agreement further provided that upon the appellant's return to active duty, he would be required to participate in a two-year after-care program and would be required to submit to at-will drug testing. (R-3 at paragraph 5.) The consequences for non-compliance with the after-care program, or a positive test for drugs during that time, would result in immediate termination. (R-3 at paragraph 5.)

After the second chance agreement was signed, Mr. Hahn did not reach out to the company that independently operates the EAP program. He did not reach out to the appellant regarding the status of his compliance with the EAP program. Mr. Hahn learned that appellant wanted to return to work and had tested negative for drugs through a test the appellant had obtained on his own. Mr. Hahn received a letter dated August 29, 2017, from an EAP representative, indicating that appellant was ready to be considered for return to duty. (P-1.) He directed appellant to get a return to work urine screen completed through the City's designated laboratory facility. He then received the

drug testing summary report for the appellant, with a positive result for marijuana, from the return to work urine sample collected from appellant on August 30, 2017. (R-2.)

Another Preliminary Notice of Disciplinary Action was issued, this time recommending removal because of the positive return to duty drug screen of August 30, 2017. (R-7.) A departmental hearing was conducted on September 28, 2017. (R-8.) The City issued a Final Notice of Disciplinary Action, removing appellant, effective August 1, 2017. (R-9.)

Mr. Hahn agreed that appellant was a reliable and valuable employee. The appellant had no prior employment issues.

Mr. Hahn confirmed that if the appellant did not use drugs after signing the August 1, 2017, second chance agreement, then he would not be in violation of the agreement. He further confirmed that if the August 30, 2017, positive result for drugs was due to residual marijuana in the appellant's system, from use prior to the July 27, 2017, positive random drug screen, then the appellant would not be in violation of the agreement. He emphasized he does not have the ability to determine if the positive result was due to residual marijuana, because the D&A policy only requires a positive result, without any further analysis of the quantity or comparison to prior tests. The appellant could not return to work, because he did not pass the return to duty urine screen.

Harsh Dangaria, M.D., testified on behalf of the City. He is a doctor of medicine and his primary line of work is in the field of pain management and he also works as a Medical Review Officer (MRO). He was qualified as an expert in the field of reviewing medical reports and urinalysis report review.

All MROs are required to follow federal Department of Transportation (DOT) guidelines when reviewing medical reports. Even though the appellant is a non-DOT employee, Dr. Dangaria, as a certified MRO, must adhere to DOT guidelines. Those guidelines provide that a urine screen will be considered positive for marijuana if the marijuana metabolite level is greater than 15 ng/mL.

Dr. Dangaria's duties as an MRO are to review an employee's positive laboratory drug result to determine if the result is correct, and speak to the employee to determine if there is some other medical explanation as to why the positive result occurred. He accepts the written results at face value, and does not conduct tests on the actual sample. It is beyond his duties as an MRO to conduct research to determine how or when an individual was exposed to marijuana. He reviews the chain of custody notations regarding the urine sample to ensure that each step has been initialed by an individual as having been completed. He does not independently verify that every individual involved, from the collection of the sample to the handling and testing of the sample, completed each task and complied with proper procedures.

Dr. Dangaria reviewed the appellant's laboratory test result from the urine sample collected on August 30, 2017, which was positive for marijuana with a level of 33 ng/mL. (R-2 at page 4.) He called the appellant on September 6, 2017, after 9:00 p.m. and spoke to him, but did not independently recall the conversation. He could not recall specifically what they discussed, but indicated that he did not receive any information from the appellant that there may have been an alternate medical reason as to why the test was positive. Dr. Dangaria signed the report confirming the test result to be positive for marijuana. (R-2 at page 3.)

If there happens to be a prior drug test, Dr. Dangaria does not review it as part of his duties. He did not review appellant's first test from July 27, 2017, until a few days prior to the hearing when he received a copy of it. (R-4.) He agreed that the quantitative result from July 27, 2017, of 319 ng/mL of marijuana metabolite was quite high. He would not be able to determine when the usage occurred, but the quantitative result would be indicative of recent high quantity use, and not a casual use a long time prior to the testing. He agreed that marijuana can stay in one's system, generally seven days for casual user, and up to thirty days for a chronic user, according to the DOT guidelines he must follow.

Dr. Dangaria acknowledged that the 33 ng/mL marijuana metabolite result from appellant's return to duty drug test of August 30, 2017, was significantly lower than the

July 27, 2017, quantitative result of 319 ng/mL. That differential would not have affected his conclusion that the second test was positive, since the 33 ng/mL quantitative result was still above the DOT guidelines of 15 ng/mL being the cut off for a positive test. He agreed that the August 30, 2017, result may reflect casual use of marijuana a long time ago, but such use would have occurred within thirty days prior to the test sample being collected, as per the DOT guidelines.

Dr. Dangaria has not done research into the length of time marijuana can remain in one's system, but has reviewed research articles. He agreed there is the possibility that someone may test positive, negative, then positive again from the same use, but that would only be within the thirty-day time frame from when the use occurred. He is aware of other research literature where individuals tested positive for marijuana thirty to forty days from use, but they are just case studies, they are not the DOT guidelines he is required to follow as an MRO.

Dr. Dangaria agreed that weight loss after use of marijuana can have an impact on the length of time marijuana remains in one's system because marijuana metabolite is stored in fatty cells. When there is a loss of weight, the marijuana may continue to show up in urine screens for some time after the drug use. However, he would still adhere to the DOT guidelines that a positive result would only continue up to thirty days from use. The DOT guidelines are considered the "gold standard" for all types of drug testing for employers. He is retained to review a report and if it is considered positive, over the DOT guideline cut off of 15 ng/mL, it is a positive test, regardless of weight loss, or when and how the drug use occurred. Thus, the appellant's August 30, 2017, return to work drug screen was confirmed as positive for marijuana.

Van Jenkins testified on his own behalf. He was hired by the City of Camden to be a mechanic in 2005. He was suspended without pay because of testing positive for marijuana from the random drug screen urine sample collected on July 27, 2017. His last pay was as of July 28, 2017.

The appellant was presented a second chance agreement. He reviewed it and executed it in the presence of his union representative on August 1, 2017. He

understood the terms of the second chance agreement to require him to complete a recommended course of EAP treatment and produce a clean return to work urine screen before he would be returned to active duty. Once he would be returned to active duty, he knew he must comply with an after-care program for two years. He also understood that if he tested positive for drugs at any time after being reinstated to active duty, he would be immediately terminated.

He was evaluated by a representative of the EAP program. He was required to refrain from drug use. He has not used marijuana or any illegal drugs since he tested positive from the random screen collected on July 27, 2017.

The EAP representative recommended that appellant attend three weekly lectures. (P-2.) He attended those lectures as scheduled in August of 2017. (P-3.) He was told by the EAP representative he did not have to attend a fourth lecture listed on the schedule, regarding grief and loss.

The EAP program representative also recommended that the appellant take his own drug screens, to monitor his status. On August 22, 2017, he went to his primary care doctor and submitted a urine sample. He was advised it was positive for marijuana. He went back to his primary care doctor on August 29, 2017. He submitted another urine sample and was advised it was negative. His primary care doctor noted on her prescription blank form that appellant had a negative urine drug screen in the office on that date. (P-4.)

Upon receipt of the note from his doctor, the appellant advised the EAP representative of the negative result. The EAP representative authored a letter dated August 29, 2017, indicating the appellant was ready to return to duty. (P-1.) The EAP representative advised the appellant to contact the City's Risk Manager, which he did. He was given forms to go to the City's approved laboratory facility to submit a urine sample for a return to duty drug screen.

The appellant went the next day, August 30, 2017, to the City's specified laboratory facility and provided a urine sample. He was later advised the result was

positive. He believed he would be negative since the day prior his primary care doctor advised him that his urine screen was negative and he had not used any illegal drugs since he entered into the second chance agreement. He never would have requested to submit to the return to duty drug screen if he knew he would be positive. He never was advised he could be re-tested or submit a second sample. Instead, he was notified he would be terminated.

The appellant lost approximately 25 pounds while he was suspended. He had gone to his doctor in mid-July, and recalled being told he weighed 223 pounds, which he thought was high for him. On August 22, 2017, when he went to his doctor to have a urine screen done, he weighed 198 pounds.

The appellant asserts he is ready, willing, and able to return to work. He has had his own urine screen completed again. As of January 16, 2018, he tested negative for illegal drugs. (P-5.)

Gary Lage, Ph.D., testified on behalf of the appellant. He was qualified as an expert in pharmacology and toxicology. He explained that a positive urine screen indicates there is a suggestion of previous exposure to marijuana at some time in the past. It cannot pinpoint how or when it was ingested. The urine screen is testing for THC COOH, (marijuana metabolite) which is a metabolite of THC, the active ingredient in marijuana, which is formed in the body when someone is exposed to marijuana. Marijuana metabolite is a fat-soluble substance which has a long elimination from one's system because it can have a long half-life. For example, when marijuana is smoked, it effects the brain first because of the fatty tissue in the brain. Over time, the metabolite ends up being stored in the body fat, where it can remain for a long time. Once in the body fat, it will leek back into the blood, then into the urine, where it is excreted. As a result, an individual may continue to have a positive urine screen for marijuana for a very long time, after the use.

Mr. Lage is aware that the DOT standard setting the time frame for marijuana remaining in one's system is up to thirty days. He considers that cut off as a "regulatory" standard. There have been research studies finding that marijuana may remain in an

individual's system for thirty to seventy days after initial exposure. (P-7A at 1.)[2] This may occur even when there has been no additional exposure to marijuana. It is also not unusual for an individual to test positive, then negative, then positive again, as the metabolite is released from the fat to the blood to the urine. (P-7A at 1.)

Mr. Lage correlated one research study with the appellant's circumstances. (P-7A and B.) The purpose of the study was to determine the time period for the urinary excretion of marijuana metabolite by individuals who were under a monitored abstinence program. This would enable a better understanding of the patterns of excretion, to differentiate recent cannabis use from residual drug excretion in urine screens. The study followed sixty individuals, breaking them into three subset groups according to initial positive quantitative levels of marijuana metabolite. The individuals were also tracked according to their Body Mass Index (BMI).

The appellant's random positive drug screen of July 27, 2017, had a quantitative result of 319 ng/mL, which correlated with 20 individuals in the subset group of the study who had a greater than 150 ng/mL initial positive test. (R-4.) The study monitored numerous urine samples of the individuals over a fixed protocol of thirty days. Six of the individuals in the group similar to appellant's situation, were still testing positive for marijuana in their drug screens late into the study, on the twenty-seventh day, twenty-eighth day, and the twenty-ninth day, which was the final testing day. (P-7B; P-7A at 5.) Mr. Lage opined that some of those individuals may have continued to test positive beyond thirty days. However, he conceded that the study did not go beyond thirty days and he recognized that the appellant's positive return to work screen on August 30, 2017, was thirty-four days after the July 27, 2017, result.

The research study results that have found large differentials of the quantitative levels of marijuana metabolite from the initial positive test to the subsequent positive tests, that marijuana metabolite will continue to be excreted for a long time after initial exposure. Similarly here, the appellant had a nearly 90 percent decrease in his

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[2] Mr. Lage referred to five different research articles which are references cited in Exhibit P-7A, Goodwin, Robert, et al, *Urinary Elimination of 11-Nor-9-carboxy-9-tetrahydrocannnabinol in Cannabis Users During Continuously Monitored Abstinence*, <u>Journal of Analytical Toxicology</u>, 2008 Oct; 32(8): 562-569.

quantitative initial positive result of 319 ng/mL versus the positive result with 33 ng/mL. Mr. Lage reasoned that if the appellant had abstained from any exposure after his first positive test, the dramatic decrease would represent residual marijuana in his system from the first positive test of July 27, 2017. He conceded there was the possibility that appellant was exposed to marijuana between July 27, 2017, and August 30, 2017, but it was not consistent with these facts.

The appellant's BMI also correlated with the six individuals in the research study who continued to test positive late into the study. The appellant's BMI based upon his height and weight as of mid-July 2017, would be considered overweight, just as the six individuals were categorized by their BMI. The appellant lost twenty-five pounds within a month. During a period of abstinence from marijuana, the release of the metabolite from fat tissue into the blood is highly variable, and weight loss can affect that release, which in turn leads to variability in the urinary marijuana metabolite concentration. (P-7A at 5.) Thus, there is significant correlation between BMI and the time until the last positive urine test occurs. (P-7A at 5.) Coupled with weight loss, where any body fat chemicals get thrown into the blood, then excreted through the urine, the metabolite will continue to be excreted and will result in a positive urine screen.

Mr. Lage concluded that it was his expert opinion that it was toxicologically probable that appellant's positive urine screen of August 30, 2017, was the result of residual marijuana from the first positive test of July 27, 2017, if the appellant had not been exposed to marijuana since that time. The conclusion was based upon the decline in quantitative levels from the appellant's July 27 random test to the August 30 return to work test; the scientific research finding that individuals may test positive, negative, then positive again as the marijuana metabolite is excreted; the scientific research finding the length of time marijuana remains in one's system more than thirty days after use; and the variability that occurs in the excretion of marijuana from one's system for an individual who has lost weight during a period of drug abstinence.

FINDINGS OF FACT

A fact finder is obligated to weigh the credibility of witnesses. The choice of accepting or rejecting the witnesses' testimony or credibility rests with the finder of facts. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). Credibility is the value that a fact finder gives to a witness' testimony. It is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950).

A credibility determination requires an overall assessment of the witness' story in light of its rationality, internal consistency, and the way it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). The fact finder also should consider the witness' interest in the outcome, or any motive or bias. The fact finder may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

I deem the testimony of Martin Hanh, Risk Manager for the City of Camden, as being credible. He testified in a forthright and confident manner, having decades of experience in his line of work. He assisted in crafting the City's D&A Policy and the second chance agreement and had firsthand knowledge of the City's intent to rehabilitate employees to enable them to return to active work. He candidly acknowledged that Mr. Jenkins would not be in violation of the second chance agreement, if the positive test result of August 30, 2017, was due to residual marijuana in Mr. Jenkin's system.

I deem the testimony of Van Jenkins to be credible. He testified in a very business-like manner, with a flat affect. He did not fidget. He maintained eye contact with the attorneys when questioned during direct and cross examination. He did not respond to questions in a mechanical or coached manner. Rather, he was very

thoughtful in his responses and paused at times before responding. His factual assertions were consistent with other facts, and not inherently incredible. He has a substantial stake in the outcome, but he did not exaggerate his testimony, nor was he displaying desperation in his demeanor. His disposition came across as a man who simply wants to get back to work. This intent is supported by the logical steps he took in following the terms of the second chance agreement to get reinstated to active duty.

I further deem his factual testimony credible, because it is consistent with the scientific research. The appellant refrained from drug use from the time of the positive random screen of July 27, 2017, through the time of the positive return to work screen on August 30, 2017. This is supported by his actions in immediately following the EAP recommendations. He monitored his own drug level status by getting drug screens through his primary care doctor's office. When he still tested positive on August 22, 2017, he went back a week later, and tested negative on August 29, 2017, according to his primary care doctor. It defies logic that the appellant would seek out taking the return to work screen the very next day if he had used marijuana.

I deem the testimony of Dr. Harsh Dangaria as credible, but not as persuasive as Mr. Lage. His testimony was consistent with the job he was engaged to do: review a lab report. He is required to follow DOT guidelines. That is why he would adhere to the DOT standard position that marijuana may remain in one's system up to thirty days, but it is irrelevant to him because he only confirms if a report is positive or negative. He thus acknowledged the possibility that the appellant's August 30, 2017, positive test result could be due to residual marijuana, but only because of use within thirty days prior to the positive result, because that is what the DOT guidelines provide. He rigidly held to the DOT standards, because he is bound to them, despite his knowledge of scientific studies that identify the possibility of marijuana remaining in one's system beyond thirty days.

I deem the testimony of Gary Lage, PhD, to be credible, and most persuasive. He has decades of experience and has testified as an expert in hundreds of matters. He is deemed to be credible not just due to experience, but also due to his reasoning and opinion being supported by several scientific studies, which were not discredited or

rebutted.

Mr. Lage's expert opinion is consistent with the totality of the facts, when viewed with the scientific research, which compels the conclusion that the positive return to work drug screen was the result of residual marijuana. The quantitative levels of marijuana metabolite from the random test, 319 ng/mL, compared to the subsequent result of the return to work test of 33 ng/mL, demonstrates that this was residual marijuana, for an individual who has abstained from marijuana. Both experts confirmed this was a significant decrease. Although there is the possibility that the positive result of the return to work test was due to recent exposure, all other factors weigh in support of this being residual marijuana.

Both experts agree that weight loss could have an effect on the time frame when marijuana remains in one's system. The appellant experienced a twenty-five-pound weight loss during the time frame the marijuana continued to be excreted from his system. Therefore, the weight loss caused variability in the excretion of the metabolite.

The City's expert could only agree that the appellant could test positive up to thirty days, because that is the DOT guideline he is bound to follow as an MRO. Those guidelines are regulatory. As Mr. Lage explained, the research supports appellant's circumstances, that the length of time to excrete the residual marijuana may go beyond thirty days. It is not a stretch to think that residual marijuana was still in appellant's system four days beyond a thirty-day regulatory cut off, and when coupled with the appellant's weight loss.

The pattern of appellant's self-initiated drug screen results also supports the proposition that residual marijuana continued to be excreted. Both experts confirmed that an individual may test positive, negative, and positive again while the metabolite continues to be excreted. It defies logic for appellant, as a long-term employee with no prior issues, to seek out return to active duty, if he thought he would test positive again. He had a negative self-test the day prior to the return to work screen. This pattern is not unusual, as described by both expert witnesses. Although the City's expert again adhered to the thirty-day cut off period for that pattern to occur, the totality of the

circumstances, as supported by other scientific studies cited by Mr. Lage, compels the conclusion that that this was residual marijuana.

Based upon a review of the documentary evidence and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I **FIND** the following as **FACTS** in this matter:

1. The City's D&A policy governs the drug testing procedures for illegal and abusive drug use for City employees and job applicants.

2. The City's D&A policy outlines six types of drug tests the City is authorized to conduct, two of which are return-to-work testing and random testing.

3. The City's D&A policy may require employees in safety-sensitive positions to submit to random drug testing.

4. The City's D&A policy may require employees in safety-sensitive positions to submit to return-to work drug testing at the discretion of the DER, where the employee has been absent from work due to enrollment in a drug or alcohol rehabilitation program.

5. The City's D&A policy provides that upon receipt of a verified or confirmed positive drug test result, the employee will be permitted to return to work upon verification of rehabilitation and/or treatment by the DER and the employee successfully completing a drug screen.

6. The City's D&A policy provides that when the employee returns to work after their rehabilitation and/or treatment, they are required to enter a two-year program of EAP supervision and be subject to drug testing without prior notice.

7. Van Jenkins submitted to a random drug screen on July 27, 2017, which tested positive for marijuana. The quantitative result was 319 ng/mL.

8. The City issued a Preliminary Notice of Disciplinary Action to Mr. Jenkins on August 1, 2017, notifying him of the charges against him, and that he was suspended effective August 1, 2017, without pay, until after a Loudermill Hearing, and then it would be determined when he would be suspended or removed from employment.

9. The parties entered into a second chance agreement on August 1, 2017.

10. The second chance agreement held in abeyance the City's disciplinary action, but suspended the appellant without pay, until he was cleared to return to work.

11. The second chance agreement required Mr. Jenkins to submit to and cooperate in a substance abuse program through the EAP, and participate and comply with the recommendations of the EAP.

12. The second chance agreement required Mr. Jenkins to pass a return to duty drug test, in order to return to work.

13. The second chance agreement required Mr. Jenkins to participate in a continuing after care program, including at-will testing, for a period of two years, commencing with his date of return to active duty.

14. Mr. Jenkins was recommended by EAP to attend a lecture series, which he did in August 2017.

15. Mr. Jenkins was recommended by EAP to monitor his status by obtaining his own independent drug screens, which he did on August 22, 2017, and August 29, 2017, through his primary care doctor's office.

16. The result of Mr. Jenkins' August 22, 2017, drug screen administered through his doctor's office was positive for marijuana.

17. The result of Mr. Jenkins' August 29, 2017, drug screen administered through his doctor's office was negative for marijuana.

18. Mr. Jenkins took a return to duty drug screen, at his request, on August 30, 2017, administered through the City-approved facility.

19. The result of Mr. Jenkins' August 30, 2017, return to duty drug screen was positive for marijuana. The quantitative result was 33 ng/mL.

20. Mr. Jenkins did not use marijuana or illegal drugs from July 27, 2017, through August 30, 2017.

21. Mr. Jenkins had a weight loss of twenty-five pounds from mid July 2017, through August 22, 2017.

22. Mr. Jenkins positive return to work drug screen of August 30, 2017, was the result of residual marijuana metabolite from appellant's prior exposure to marijuana before the July 27, 2017, test.

LEGAL ANALYSIS AND CONCLUSIONS

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an inducement to attract qualified people to public service. Mastrobattista v. Essex County Park Commission, 46 N.J. 138, 147 (1965). A civil service employee who commits a wrongful act related to his or her employment, or gives other just cause, may be subject to major discipline, including removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A2-2.

The appointing authority shoulders the burden of establishing the truth of the allegations by preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consolidated Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). The evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metropolitan Bottling Co.,

26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

Here, the City has the burden to demonstrate by a preponderance of the evidence that the appellant violated the D&A policy and the second chance agreement, to justify the disciplinary action of removal. N.J.A.C. 4A:2-2.3(a)(12). This is a fact-sensitive determination as to whether the positive return to work drug screen of August 30, 2017, mandated removal of the appellant.

I **CONCLUDE** that the appellant is required under the City's D&A Policy and the second chance agreement, to complete two conditions before he is returned to active duty, and then is subject to the conditions of the after-care program. The two conditions to be completed before return to active duty are compliance with the treatment recommended to him through the EAP program, and for him to pass a return to duty drug screen. A plain reading of the D&A policy in conjunction with the second chance agreement, supports that both conditions must be completed before the appellant is returned to active duty.

I **CONCLUDE** the appellant has completed the terms of the EAP program that were recommended to him. After executing the second chance agreement, the appellant immediately contacted the EAP representative, was evaluated, and then given the recommended course of treatment: stay drug free; complete the three weekly lecture series; and monitor his status with self-obtained drug screens. He followed all those recommendations, completed the tasks, and the EAP representative confirmed he was ready to return to active duty. (P-1.)

The second condition the appellant was required to complete to be returned to active duty, was to pass a return to duty drug screen. He did not do that. The return to duty drug screen of August 30, 2017, was positive for marijuana. The City contends the positive screen mandated the removal of the appellant because it was a violation of the D&A policy and the second chance agreement.

The paragraph of the second chance agreement requiring the appellant to pass a return to duty drug screen, before returning to active duty, does not specify any consequences if the appellant tested positive. Nor does the D&A policy outline any consequences. There are no time constraints as to when the appellant must pass the return to work drug screen. In contrast, there are consequences outlined in the second chance agreement if he failed to comply or complete the recommended treatment of the EAP program. There are consequences outlined if he failed to comply with the after-care program once he is returned to active duty. The only requirement without consequences within the second chance agreement is the requirement to pass a return to duty drug screen. The only consequence would be he is not yet returned to active duty. Thus, it logically flows that if the City, which was the scrivener of the agreement, intended the major disciple action of removal to occur if the return to duty test was positive, that consequence would have been spelled out, and it was not.

To interpret paragraph 4 of the second chance agreement to require immediate termination if a positive return to work drug screen was produced, frustrates the intent of the second chance agreement. The City's long time Risk Manager, and assistant drafter of the policy and agreement, confirmed that the City intended to provide an employee who tests positive from a random drug screen the opportunity to be rehabilitated before returning to active duty. It is contrary to that intent if the appellant is removed because he has not yet demonstrated compliance with a second condition of the agreement, which has no time frame, nor such drastic consequences specified within the agreement or the policy.

It is logical that there is no time constraint on the employee to produce a clean return to work drug screen. An employee may be compliant with recommended EAP treatment, but may continue to test positive for drugs that remain in one's system for some time after the use of the drug that resulted in the initial positive random drug screen. They may also test positive, negative, then positive again before the metabolite is completely excreted from their system. This was confirmed by both experts. That is precisely what occurred here. The appellant was compliant with the recommended EAP program, refrained from drug use, but tested positive by his primary care physician, then negative, then was positive on the return to work screen.

It is further reasonable and logical for the appellant to believe he was still in suspended status. That is supported by the structure of the agreement. Paragraphs 1 through 3 of the second chance agreement address the EAP conditions and consequences of non-compliance. Paragraph 4 addresses the suspension without pay and that appellant must pass a return to duty drug test to be considered an active duty employee. Paragraphs 5 through 7 address the conditions of the after-care program and the consequences of non-compliance. Paragraph 8 of the agreement provides that the appellant could be terminated at any time if there was a positive test, which reasonably is interpreted to mean *after* the appellant returned to active duty.

The structure of the City's D&A Policy supports the appellant's interpretation of the second chance agreement. The D&A Policy outlines six different types of employee drug testing that may occur. There is a distinction between a random drug screen and a return to duty drug screen. A return to duty test means just that: it is a test taken before an employee is returned to duty. Hence, it is logical and reasonable for Mr. Jenkins to believe that he had to pass that test, before he was considered returned to active duty.

Although the D&A Policy only goes by a positive or negative result, and does not get into an analysis of the quantity of marijuana metabolite from the initial test versus the subsequent test, the City's Risk Manager confirmed that if there was no drug use by Mr. Jenkins after the random screen on July 27, 2017, and the return to work drug test of August 30, 2017, was positive because of residual marijuana metabolite from the prior exposure, then there would be no violation of the second chance agreement. Since the totality of the circumstances supports that the positive return to work screen of August 30, 2017, was the result of residual marijuana, and Mr. Jenkins refrained from drug use, by the City's own admission, Mr. Jenkins would not be in violation of the D&A policy or the second chance agreement.

I **CONCLUDE** that the appellant's positive return to duty drug test of August 30, 2017, occurred while the appellant was suspended from his work duties. I **CONCLUDE** that the positive return to work drug screen did not violate the D&A policy and the second chance agreement. I further **CONCLUDE** that the neither the D&A policy nor the

second chance agreement mandated removal of the appellant because of his positive return to work drug screen.

The City certainly has a duty to put the safety of the public of paramount importance and require employees in safety sensitive positions to undergo random drug screens. However, the City also recognizes the rights of their employees and have balanced the importance of safety with the rights and health of their staff, by providing the second chance agreement as an opportunity for rehabilitation, rather than automatic termination.

The appellant is exactly the candidate for a "second chance". He is a long-term employee with no prior discipline issues and is responsible and valuable to the City. Clearly something was amiss for him to test positive for marijuana approximately fourteen years into his employment, without ever having tested positive previously. When given the second chance opportunity, he immediately agreed to comply with the conditions of the agreement to be reinstated to work. He immediately began the EAP recommended program. He did everything he was advised to do by the EAP representative. He did not hesitate in attending the lectures, and submitting himself to independent urine screens through his primary care doctor to ensure he would have a clean urine screen. He took on these tasks within one month from when he signed the second chance agreement. He reasonably interpreted the second chance agreement in a logical manner consistent with the language of the D&A policy and the language of the agreement. This is a man who wanted to get himself rehabilitated and get back to work as soon as possible.

I **CONCLUDE** that the positive return to work test of August 30, 2017, did not violate the City's D&A Policy and the second chance agreement. I **CONCLUDE** that the D&A policy and the second chance agreement do not mandate that removal will occur if there is a positive return to work test. I **CONCLUDE** that the appellant would still be in suspended without pay status, subject to the terms of the second chance agreement, before he can be returned to active duty. Therefore, I **CONCLUDE** the City has not sustained its burden by a preponderance of the evidence that removal of the appellant is warranted pursuant to N.J.A.C. 4A:2-2.3(a)(12), other sufficient causes.

DECISION AND ORDER

I **ORDER** that the City's decision to remove the appellant is **REVERSED**. I further **ORDER** that the appellant shall be reinstated to suspended without pay status.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 22, 2018	
DATE	**ELAINE B. FRICK**, ALJ

Date Received at Agency: March 22, 2018

Date Mailed to Parties: March 23, 2018

mph

APPENDIX

LIST OF WITNESSES

For Appellant:

Van Jenkins

Gary Lage, PhD

For Respondent:

Martin Hahn

Dr. Harsh Dangaria

LIST OF EXHIBITS

Joint Exhibits:

J-1 Stipulation of Facts

For Appellant:

P-1 EAP letter August 29, 2017

P-2 EAP lecture schedule

P-3 Meeting attendance Verification Form EAP lectures

P-4 Prescription Blank - negative UDS in office 08/29/2017

P-5 Drug screen 01/16/2018

P-6 Gary L. Lage, Ph. D, curriculum vitae

P-7 A: Research article: "Urinary Elimination of 11-Nor-9-carboxy- 9-tetrahydrocannnabinol in Cannabis Users During Continuously Monitored Abstinence"

B: Table/charts

For Respondent:

R-1 City's Drug and Alcohol Policy
R-2 Return to work drug screen 08/30/2017
R-3 Second Chance Agreement August 1, 2017
R-4 Random drug screen 07/27/2017
R-5 Collective Bargaining Agreement
R-6 Preliminary Notice of Disciplinary Action 08/01/17
R-7 Preliminary Notice of Disciplinary Action 09/07/17
R-8 Memo 09/29/2017 with Hearing Officer Report 09/28/17
R-9 Final Notice of Disciplinary Action 10/02/17
R-10 Job specifications-mechanic
R-11 Harsh Dangaria, M.D., curriculum vitae