

STATE OF NEW JERSEY

In the Matter of Grayland Meeks,
City of Newark, Fire Department

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2019-2464

Request for Reconsideration

ISSUED: JULY 2, 2020 (JET)

Grayland Meeks, represented by Bette R. Grayson, Esq., requests reconsideration of the final decision issued on February 6, 2019, which upheld his removal. *See In the Matter of Grayland Meeks, City of Newark, Fire Department* (CSC, decided February 6, 2019).

In the prior matter, the appointing authority alleged that a September 20, 2017 drug test result confirmed that Meeks tested positive for marijuana, which was sufficient cause for his removal. The appellant appealed and the matter was transmitted to the Office of Administrative Law as a contested case, which was decided by Administrative Law Judge (ALJ) Kimberly A. Moss. In her January 8, 2019 decision, the ALJ recommended upholding the removal. The Civil Service Commission (Commission) affirmed the ALJ's initial decision and upheld the removal on February 6, 2019.

As background, the ALJ found that Meeks was previously arrested in May 2015 and charged with Possession of Marijuana, and as a result, he negotiated and signed a June 19, 2015 Conditional Letter of Employment, hereinafter referred to as a last chance agreement, with the appointing authority. The last chance agreement indicated that any future drug tests confirming a positive result would result in Meeks' termination.¹ Moreover, the last chance agreement indicated that Meeks acknowledged that failure to submit to such drug testing or testing that resulted in a positive reading would result in his termination. Additionally, the ALJ found that

¹ The last chance agreement indicated that Meeks agreed to refrain from using illegal drugs, any mood altering substances and abuse of alcohol, refrain from abuse of prescription pharmaceuticals, that he would continue to perform his duties to satisfactory levels, and he would undergo unannounced mandatory drug testing for a period of three years after the date the last chance agreement was signed.

Meeks did not appear for his scheduled shift on August 27, 2017, and despite the appointing authority's efforts to contact him, Meeks did not return to work until September 4, 2017. Upon his return to work, Meeks sent a written request to his supervisor asking for authorization to use two vacation days to cover the time that he missed. The ALJ found that, as a result of the time missed, the appointing authority instructed Meeks to undergo an unannounced drug test on September 20, 2017, and a Fire Captain accompanied Meeks to the Concentra facility where the drug test was administered. The ALJ found that Meeks did not have identification at the time he arrived at the drug testing facility, and as such, Fire Captain Walker vouched for Meeks's identity and documentation was signed. The ALJ found that Nurse Cook, who was employed at Concentra at the time of the incident and assisted Meeks with the drug tests, verified Meeks' information in the computer system.

The ALJ found that Nurse Cook provided a sealed container to Meeks for the initial sample, which the nurse split into separate vials and sealed in Meeks' presence, and a chain of custody form was provided to Meeks.² The specimen was put in a sealed container, initiated and dated, and sent to Qwest labs for analysis. The ALJ noted that Concentra sends its results to Qwest labs and that a third party administrator, E-Screen, maintains the results. The ALJ indicated that Captain Walker requested a second rapid drug test which was also performed on September 20, 2017. Both the initial and second rapid test confirmed a positive result.³

At the hearing, Meeks disputed that a second drug test was conducted September 20, 2017, and the signature and phone numbers indicated on the custody control form for the rapid test specimen were incorrect and did not appear to be his. The ALJ added that Meeks confirmed that the signature and phone number indicated on the first drug test was correct.⁴ The ALJ determined that, although the signatures for the rapid and non-rapid tests did not appear to be identical, such differences may have occurred as the signatures were provided by way of a computer screen. The ALJ found that a Certified Medical Review Officer, Dr. Kracht, testified that the second drug test indicated a positive result for marijuana.⁵ The ALJ indicated that Meeks was notified about the drug test results, and at no point did he request a retest of the samples within the provided three-day time frame for such requests after he was notified.

Additionally, the ALJ did not find Meeks's testimony credible. In this regard, the ALJ indicated that Meeks testified that he did not use marijuana. Rather, the

² The ALJ noted that, based on the testimony, Meeks was provided with four minutes to give a sample, and the samples were separated in a 30cc sample and a 15cc sample. Paperwork was completed confirming the temperature and there was no tampering of the sample.

³ The ALJ noted that, based on the testimony, the procedure for the rapid drug test was the same procedure used for the non-rapid drug test.

⁴ The ALJ noted that the signatures were written on a computer screen.

⁵ The ALJ noted that the certified medical reviewer did not analyze the first test as it was not sent to him for review.

ALJ stated that Meeks's testimony was that, prior to the drug test, he attended a party where he inadvertently ate brownies that may have been laced with marijuana. The ALJ found that there was no substantive evidence to show that Meeks ate brownies laced with marijuana at a party. The ALJ added that Meeks testified that he took some of his father's prescribed medication, which he stated was an appetite enhancement drug that he did not name, which could have resulted in the positive drug test for marijuana. The ALJ found that the certified medical officer testified that the only prescribed medication that would have indicated such a result was Marinol. The ALJ found that there was no substantive evidence to show that Meeks' father was prescribed Marinol or that Meeks took such medication. The ALJ found that Meeks entered Rebound drug rehabilitation facility within two weeks of testing positive for marijuana for severe cannabis use disorder.

Based on the fact that Meeks violated the last chance agreement and the competent evidence that he tested positive for marijuana, the ALJ recommended upholding the removal. The ALJ noted that the OAL record closed on December 17, 2018, however, Meeks e-mailed information to her assistant on December 17, 2018 that was not provided at the OAL hearing. As such, the ALJ indicated that since such information was not provided during the hearing, she did not accept the e-mails from Meeks given that the record for that matter had closed.

In his request for reconsideration, Meeks maintains that clear material errors occurred in the prior matter. Specifically, Meeks contends that the ALJ ignored conflicting witness testimony, improperly denied Meeks's request to provide handwriting experts, and misinterpreted the test results. Meeks argues that testimony from handwriting experts would have demonstrated discrepancies pertaining to the information that was provided at the time he registered for the second rapid test and what type of test was ordered. Meeks adds that the ALJ refused to allow testimony as to Meeks' alleged signature for the second test, and the ALJ refused a handwriting expert to clarify if Meeks actually signed the second registration form. As such, he argues the September 20, 2017 test was unreliable and unverified.

Further, Meeks states that the facility nurse at Concentra, Nurse Cook, registered him twice, once for the initial non-rapid drug test, and once for the second rapid drug test. In this regard, Meeks states that the second registration form contained incorrect information including a signature that did not appear to be his own, a former address, and the wrong phone number. Meeks explains that the conflicting testimony indicated that, while the appointing authority testified that Captain Walker escorted Meeks to the facility and subsequently Nurse Cook returned Meeks to Captain Walker with the test results after the procedure was conducted, Nurse Cook testified that she escorted Meeks to Captain Walker and Nurse Cook then had to re-register him in the system for the second rapid test. Meeks states that the registration forms contain contradicting information, as the initial registration

form indicates that he signed in at 12:10 p.m. and signed out at 12:56 p.m., and the second registration form indicates that Meeks signed in at 12:49 p.m., which is seven minutes prior to when he checked out as compared to the information on the initial registration form. There was no credible evidence from Nurse Cook regarding how the incorrect information could have appeared on the second registration form. Meeks adds that Battalion Chief Richardson testified that he scheduled Meeks for a rapid drug test and asked Captain Walker to assist with carrying out such orders, which refutes Nurse Cook's testimony that she was not directed to perform the rapid drug test. Meeks contends that Nurse Cook confirmed in the computer system what type of test the appointing authority usually requests. Meeks contends that since Nurse Cook confirmed that the appointing authority never requested rapid drug tests, such testimony conflicted with the testimony that the appointing authority always ordered rapid drug testing. In this regard, Meeks states that Nurse Cook testified that she was instructed to conduct a non-rapid drug test for Meeks, and only after she escorted Meeks to Captain Walker was she notified that the appointing authority requested the second rapid drug test to be conducted. In this regard, Meeks maintains that Nurse Cook's testimony contradicts Captain Walker's testimony that Meeks was returned to Walker after the tests were conducted. Meeks explains that Captain Walker testified that he and Meeks simultaneously signed the registration form and that Meeks remained with him until escorted to the technician to take the drug test. Meeks adds that Captain Walker testified that he was informed at Concentra that the results were non-negative and then they left. As such, Meeks asserts that, based on such discrepancies, the evidence submitted with respect to the test results should not have been considered.

Additionally, Meeks asserts that the testimony from Assistant Public Safety Director Malave pertaining to the Rebound drug rehabilitation center constitutes hearsay and should not have been considered. In this regard, Meeks states that Malave admitted that he never spoke to anyone at Rebound and his opinion was based on what was told to him by an unidentified party. Meeks asserts that there was no way for Substance Abuse Counselor Mark Reider at Rebound to have been aware of the test results from Jayde Laboratory, as such records were not included in Meeks's records at Rebound. Meeks explains that Jayde Laboratory provided an explanation in its test results pertaining to Cannabidoil, which was not provided in Concentra's analysis. Additionally, Meeks now submits a report from New Directions Behavioral Health Center in support of his case. Based on the above reports, Meeks maintains that he did not test positive for marijuana containing the THC ingredient, but rather, tested positive for Cannabidoil, which is a legal substance. Meeks adds that his testimony pertaining to the brownies was truthful, as he was unaware of which brownies contained marijuana and which did not. Moreover, Meeks asserts that the ALJ mischaracterized the testimony where he stated that his parents urged him to take medication that was supposed to help him with his appetite despite that it was not prescribed to Meeks. As such, Meeks contends he did not violate the last chance agreement.

Further, Meeks asserts he returned to work after the incident and there was no substantive testimony from the appointing authority of any inefficiency, incompetency or failure to perform his duties. In this regard, Meeks explains that he competently performed his duties during various shifts at the time he returned to work after missing his shift on August 27, 2017.⁶ Meeks maintains that his request for vacation on August 27, 2017 was approved, and as such, he should not have been considered as AWOL. Meeks adds that, at the time he requested the vacation day, his father was terminally ill and, as a result, he was experiencing depression. Accordingly, Meeks argues that the appointing authority failed to meet its burden of proof in this matter.

In response, the appointing authority, represented by Joyce Clayborne, Assistant Corporation Counsel, argues that Meeks' attorney failed to file exceptions to the initial decision and did not request an extension of time. As such, the appointing authority argues that it appears that Meeks' attorney is filing delayed exceptions in this matter. The appointing authority states that Meeks reiterates arguments that were presented to the ALJ, which were unsupported by the record. Further, the appointing authority states that Chief Richardson testified that he received a letter from Chief Jackson indicating that Meeks failed to appear at work and could not be reached by his supervisors, and as such, Meeks was considered as AWOL. As a result, the appointing authority explains that Assistant Director, Raul Malave, ordered Meeks to undergo a drug test at Concentra. The appointing authority confirms that Meeks signed a last chance agreement due to a prior arrest for marijuana in 2015, which it contends is a binding contract between the appointing authority and Meeks. In this regard, the appointing authority asserts that the last chance agreement was submitted into evidence by the appointing authority, and Meeks' failure to show up at work and inability to be reached by his supervisors prompted the review of Meeks' prior disciplinary history and the last chance agreement. As such, the appointing authority states that Meeks was properly subjected to an unannounced drug test since he was within his three year period as indicated by the last chance agreement. It adds that the last chance agreement notified Meeks of his possible termination in the event he tested positive for drugs. The appointing authority asserts that Meeks's request to have the evidence from Concentra repressed is baseless. In this regard, the appointing authority explains that Meeks was escorted to the Concentra facility by Captain Walker. Further, the appointing authority states that Captain Walker testified that he identified Meeks at Concentra and his identity was not in question at the time. The appointing authority maintains that Meeks was registered for the first test at 12:10 p.m. and was completed by 12:56 p.m. It maintains that the first test revealed a non-negative result, which means a positive result. As such, the appointing authority requested Meeks register for a second drug test at Concentra at 12:49 p.m. which was completed at 1:05 p.m. The appointing authority explains that Concentra maintains protocols

⁶ Meeks states that he worked on September 4, 8, 12, and 16, 2017.

for drug testing, and Nurse Cook testified that Meeks was escorted to the bathroom.⁷ Nurse Cook confirmed that Meeks signed the registration forms in front of her using a laptop provided by Concentra. Nurse Cook testified that, if there were any inconsistencies, Meeks should have reviewed the e-form before providing his signature. Additionally, the appointing authority contends that Nurse Cook testified regarding the procedures used when administering the drug test. In this regard, Nurse Cook admitted the phone numbers for Meeks that were recorded on the second test did not match the information on the first test. However, Nurse Cook testified that she was not the individual who received the phone numbers. In addition, Nurse Cook confirmed that each test specimen container was sealed and dated in Meeks' presence, and Meeks provided his initials on the specimen containers and Nurse Cook sealed them in a plastic bag for shipment to the lab. As such, the appointing authority states that the ALJ properly found that a handwriting expert was not necessary, as Meeks properly signed the specimens which was witnessed by Nurse Cook and other Concentra staff.

Moreover, the appointing authority asserts that Certified Medical Review Officer, Dr. Kracht, testified he works for Qwest Labs, where Meeks' results were sent for analysis. He testified the results he received from Concentra were positive for marijuana, and that Meeks admitted to another doctor to his marijuana use. In addition, the appointing authority explains that the testimony confirmed that Concentra staff asked Meeks if he would like to contest the results and have the specimen retested, and the lab even gave Meeks a three day window to call them back to dispute the results, and at no point did he request a retest. The appointing authority adds that Meeks did not dispute the results of the tests at time he received them, but rather, he admitted to using marijuana. As such, the appointing authority maintains that he committed a direct violation of the 2015 last chance agreement. Additionally, the appointing authority explains that Meeks testified to taking his father's prescription cancer medication, which further substantiates his substance abuse in this matter. It adds that such testimony was provided only after Dr. Kracht testified that the cancer appetite enhancer drug, Marinol, may result in positive results for marijuana. However, there was no substantive evidence provided to show that Meeks actually used Marinol. However, it argues that such an admission that he took a drug not prescribed to him shows that Meeks is in complete violation of the last chance agreement.⁸ The appointing authority adds that Meeks' continued substance abuse tarnishes his personal integrity and dependability for the citizens of the jurisdiction, which is unacceptable as it jeopardizes the safety of the jurisdiction.

⁷ The appointing authority states that the testimony indicated that a blue dye is placed in the toilet to avoid tampering. Additionally, it states that Nurse Cook testified that each bottle contains scanned codes, and drug testing demonstration kits were demonstrated by Nurse Cook during at the OAL hearing.

⁸ The appointing authority notes that the language indicated in the last chance agreement states ““you will refrain from the abuse of any prescription pharmaceuticals for the duration of your career.”

With respect to his argument that the ALJ should not have allowed hearsay testimony from an undisclosed third party by Assistant Public Safety Director Malave, the appointing authority states that Director Malave testified that the appointing authority had dealings with Rebound regarding another employee's disciplinary matter. In this regard, Assistant Director Malave testified regarding his prior dealings with Rebound led him to determine they were untruthful. Assistant Director Malave did not disclose the employee's name or disciplinary record which led to his prior dealings with Rebound as that particular employee was not on trial. In this regard, the ALJ found Assistant Director Malave was credible, while Mark Reider of Rebound was found not credible. Additionally, the appointing authority states that hearsay may be admitted as evidence at hearings, and in this case it was appropriate to admit such testimony as Director Malave is in charge of employee discipline at the appointing authority. The appointing authority adds that Meeks' arguments in this matter supports the appointing authority's position, as Meeks' witness, Mr. Freeman, testified that he did not see Meeks eat any brownies. Freeman also testified he does not know who allegedly spiked the brownies, nor was the "brownie baker" brought in to testify. Moreover, the appointing authority contends that Meeks discredited himself with his own medical records from Rebound, as such records indicate "severe cannabis disorder."⁹ The appointing authority explains that Meeks' counsel, during the hearing, inappropriately produced results from Jayde Laboratory indicating positive drug test results. The appointing authority confirms that Jayde Laboratory tested Meeks at the time of his entry into Rebound. It contends that, although Meeks now attempts in this matter to refute the positive test results from Jayden Laboratory with documentation from New Directions Behavioral Health Center, the appointing authority had no opportunity to conduct an examination of the report since it was not produced at the OAL hearing. Moreover, the author of the report indicates that he is no way trained as a medical doctor and lacks expert credentials to dispute the Jayde Laboratory result. Therefore, the appointing authority states that such information should be excluded. As such, the appointing authority maintains that Meeks' removal was appropriate and should be upheld.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. It is noted that the burden of proof is on the appellant to provide information in support of her case. *See N.J.S.A.* 11A:2-6(b) and *N.J.A.C.* 4A:2-1.4(c).

⁹ The appointing authority notes that the Rebounds records indicate severe cannabis disorder at least 30 times. Additionally, it notes that Jane Cohn from Rebound also indicated in the records that Meeks has the inability to abstain from substance use without structure.

In this matter, Meeks has not provided any substantive information to show that a material error occurred or any new information that would somehow change the outcome of the prior matter. Initially, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). “[T]rial courts’ credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record.” *See In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ’s decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. *See N.J.S.A. 52:14B-10(c); Cavalieri v. Public Employees Retirement System*, 368 N.J. Super. 527 (App. Div. 2004). In the prior matter, the Commission agreed with the ALJ’s findings and conclusions, and adopted the recommendation to uphold Meeks’ removal. Meeks does not provide any substantive information in this matter to show that the ALJ’s review of the evidence was not properly considered or any substantive information that would somehow overcome the ALJ’s findings and conclusions as set forth in the January 8, 2019 decision. Moreover, the ALJ noted in the January 8, 2019 decision that Meeks attempted to submit additional information by e-mail to the ALJ after the hearing record had closed on December 17, 2018. As such, the ALJ determined that, since such information was not submitted at the hearing, there was no reason to accept the e-mails after the record had closed. The Commission agrees. The fact that the ALJ did not accept information after the record had closed does not overcome that he failed the drug tests in this matter, nor does it show that he did not violate the last chance agreement. Similarly, Meeks cannot now claim that information that was not provided at the time of the hearing is new information that should be considered in this matter. Such information cannot now be considered as it should have been submitted at the time of the hearing. Moreover, the prior record does not reflect that Meeks’ attorney submitted exceptions to the January 8, 2019 decision in the prior matter. As such, the arguments that are submitted in this matter should have properly been submitted by way of exceptions in the prior matter. Therefore, the Commission finds no reason in this case to give Meeks a “second bite at the apple” in this matter. In this regard, the Commission finds that Meeks had ample opportunity in the original proceeding to present his case. Regardless, the “new” evidence does not invalidate the other credible evidence in the record regarding his failed drug tests.

Regarding Meeks’ request to ignore the results of the drug tests, such arguments are without merit. Meeks has not provided any substantive information in this matter that would overcome that he failed the first and second drug tests, nor did he show that he did not take the first and second drug test. Any procedural errors

that may have occurred in the recording Meeks' personal information on the first and second drug tests does not overcome that he did not fail the first and second drug tests. Additionally, as will be discussed more fully below, the record reflects that witnesses established Meeks' identity at the Concentra facility at the time he took the first and second drug tests.

Initially, the Commission is satisfied that the ALJ properly relied on the evidence and testimony of the witnesses in this matter, and based on such information, properly determined that Meeks was identified at the time the drug tests were conducted. The record reflects that Meeks was identified by Nurse Cook at the time the first and second drug tests were conducted, and by Captain Walker at the Concentra facility. In this regard, the record reflects that Meeks sat face to face with Nurse Cook at the time she registered him for the first and second drug tests, she confirmed that he signed and initiated the samples, and he did so in the nurse's presence at the drug testing facility. Additionally, Captain Walker testified that he identified Meeks, which is confirmed on the Concentra registration forms. Such identifications refute any incorrect information that may have been provided with respect to the second test. Regarding Meeks' claim that Nurse Cook testified that the appointing authority did not normally request two drug tests, the record is clear that the appointing authority in this case requested the first and second drug tests be conducted. With respect to Meeks' claims that his signatures as recorded on the first and second tests appeared to be different, he has not provided any substantive evidence in support of that claim. The ALJ found that Meeks' signatures were done on a computer screen, which could have accounted for the differences in the signatures. Regardless, the signatures, in and of themselves, are insufficient to establish that Meeks was improperly identified. Based on the witness testimony as noted above, there is no question in this matter that Meeks was identified at the time he took the drug tests.

Moreover, the testimony established the procedure that was used for the drug testing, and Meeks did not provide any evidence to overcome that the tests were incorrectly performed. The tests were sent by Concentra to credentialed experts for analysis and it was determined that Meeks tested positive for marijuana. Meeks tenuous claims pertaining to eating marijuana laced brownies and taking his father's cancer medication are unpersuasive, as he provided no evidence that he actually ate the brownies or that his father's cancer medication contained marijuana or its active ingredient. Moreover, Meeks was provided with a three day window to have the samples retested and at no point did he ask for a retest. Moreover, Meeks took the drug tests on September 20, 2017. As such, his claims with respect to the information from Rebound, Jayde Laboratory, and the report from New Directions Behavioral Health Center occurred after he took and failed the first and second drug tests. As such, any new drug tests or information pertaining to drug tests provided after the September 20, 2017 tests cannot be considered, and regardless, such information does not overcome that Meeks tested positive for marijuana on September 20, 2017.

Additionally, the June 19, 2015 last chance agreement constitutes a valid agreement. The agreement made it clear that removal would be the recommended penalty if the appellant tested positive for marijuana within three years of the date of the agreement. Meeks does not dispute that he agreed and negotiated the terms of the settlement agreement. As such, the Commission is satisfied that Meeks clearly violated the terms of the June 19, 2015 last chance agreement. With respect to Meeks' argument that he was approved for a vacation day, was not AWOL, and should not have been subjected to a drug test, such claims are unpersuasive. The last chance agreement clearly indicates that Meeks could be subjected to an unannounced drug test. The fact that Meeks was not immediately removed from employment does not establish that the charges against him were not valid. Moreover, the Commission finds that Meeks' disciplinary record evidences prior marijuana use that resulted in the last chance agreement. Fire Fighters are held to a higher standard of conduct. *See Karins v. City of Atlantic City*, 152 N.J. 532, 552 (1998). Meeks' penchant for marijuana use cannot be condoned, especially in light of the last chance agreement, and puts the safety of the jurisdiction at risk. As such, the Commission finds that the penalty of removal was appropriate.

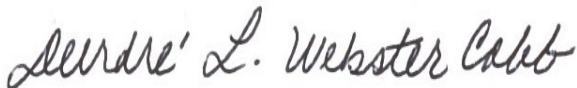
Accordingly, Meeks has failed to present a sufficient basis for reconsideration of the Commission's prior decision.

ORDER

Therefore, it is ordered that this request be denied.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1ST DAY OF JULY, 2020



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