

Inquiries
and
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 05442-21
AGENCY DKT. NO. 2021-1957

**IN THE MATTER OF NEIL ALZAMORA,
JERSEY CITY (POLICE DEPARTMENT).**

Leonard C. Schiro, Esq., for appellant (Mets, Schiro, McGovern, attorneys)

**James B. Johnston, Assistant Corporation Counsel, for respondent (Peter J.
Baker, Corporation Counsel, attorney)**

Record Closed: January 4, 2022

Decided: February 14, 2022

BEFORE KELLY J. KIRK, ALJ:

STATEMENT OF THE CASE

Jersey City police officer Neil Alzamora was removed from his employment at the Jersey City Police Department for violation of Jersey City Police Department Police Manual (JCPD Police Manual) rules and regulations and conduct unbecoming a public employee arising from a random drug test positive for cannabinoids (THC).

PROCEDURAL HISTORY

On March 18, 2021, the Jersey City Police Department (JCPD) served upon Alzamora a Preliminary Notice of Disciplinary Action (PNDA) charging him with violation

of the JCPD Police Manual and conduct unbecoming a public employee. A departmental hearing was held on May 19, 2021. (R-1.) On May 20, 2021, the JCPD served upon Alzamora a Final Notice of Disciplinary Action (FNDA) sustaining the charges and removing him, effective May 20, 2021. (R-1.)

Alzamora filed an appeal on June 8, 2021, with the Office of Administrative Law (OAL) and the Civil Service Commission (Commission). The appeal was received by the OAL on June 16, 2021, pursuant to N.J.S.A. 52:14B-1 to -15, N.J.S.A. 52:14F-1 to -13, and N.J.S.A. 40A:14-200 et seq., and it was perfected on June 22, 2021.

The hearing was scheduled for September 22, 2021, but it was adjourned at the request of appellant due to a scheduling conflict. The hearing was rescheduled and held on September 29, 2021, and October 29, 2021. The record closed on January 4, 2022, upon receipt of the parties' post-hearing briefs.

FACTUAL DISCUSSION

Neil Alzamora testified on his own behalf. John Barone, Michael Sammartino, Stephen Palomba, and George Jackson testified on behalf of the respondent.

Background

Having had an opportunity to consider the evidence and to observe the witnesses and make credibility determinations based on the witnesses' testimony, I **FIND** the following material **FACTS** in this case:

Neil Alzamora was hired by the JCPD on July 8, 2019, and he has no prior disciplinary history.

All sworn law-enforcement officers, regardless of rank or assignment, are subject to random unannounced mandatory drug testing for illegal drugs. (R-3.) The testing process is under the direct supervision of the Internal Affairs Unit (IAU). (R-3.) The specimen acquisition and submission procedures are set forth in JCPD General Order

12-18, at Section 3 and Section 4, and in the Attorney General's Law Enforcement Drug Testing Policy (AG Policy) at Section IV and Section V. (R-3; R-4.)

On January 7, 2021, the JCPD conducted a random selection for participants in a random drug test, which selection was witnessed by both unions. (R-5.) There were ninety-three participants and ten alternates selected. (R-5.) Alzamora was selected as one of the participants.

On January 14, 2021, Alzamora was called into the IAU office to be drug tested. The IAU office is a limited-access, locked office, accessible via a keypad lock. (R-14E.) Only members of the IAU—nine officers and one unsworn civilian clerk—have access to the IAU office. There is a bathroom in the IAU office. Next to the bathroom is a locked refrigerator/freezer,¹ where the drug-testing urine samples are stored. The key and backup key to the freezer are stored in a locked file cabinet inside the IAU office. (R-14D.) There is no video camera on the freezer. The freezer and the file cabinet each have a single lock. (R-14A; R-14B; R-14C.) Only members of the IAU have keys to the locked file cabinet.

Alzamora's drug test was monitored by IAU Sergeant Stephen Palomba. Palomba has been employed by the JCPD for fourteen years, a sergeant since May 2018, and assigned to the IAU for two years. The monitor is responsible for ensuring that all documentation is fully and accurately completed by the individual submitting the urine specimen (donor); to the extent practicable, collecting urine specimens in a manner that provides for individual privacy while ensuring the integrity of the specimen and testing process; and complying with the chain-of-custody procedures established for the collection of urine specimens and their subsequent submission to the State Toxicology Laboratory for analysis.

Palomba completed, initialed and signed the Schedule E Drug Specimen Acquisition Checklist as monitor. (R-12.) Alzamora's name did not appear on any form

¹ Some witnesses referred to the specimens being stored in a freezer, while others referred to it as a refrigerator. For consistency and to avoid confusion, "freezer" is used herein.

or specimen container sent to the lab. Alzamora's specimen was identified only by his Social Security number. Palomba is the same sex as Alzamora. The urine sample was ordered based on random drug screening. Palomba took reasonable steps to ensure that the testing procedure was not compromised by the introduction of a contaminant or other action of Alzamora. Palomba required Alzamora to complete the DRUG TESTING MEDICATION FORM. Alzamora completed the DRUG TESTING MEDICATION FORM. Alzamora was provided with two sealed bags, each containing a urine-specimen container, approved and supplied by the New Jersey State Toxicology Laboratory. Alzamora completed a specimen label for each bottle using a number 2 pencil. Alzamora printed his Social Security number and the date on the labels. Alzamora placed the labels, printed side facing out, inside each specimen bottle. The labels were not obstructed by the thermometer strip. Alzamora voided into two separate specimen bottles, filling each bottle to at least the .45 ml level. Alzamora sealed the bottles until the seals engaged. Alzamora presented the sealed specimen bottles to Palomba. Palomba checked the temperature control strip to determine that the temperatures of the specimen samples were acceptable. Palomba recorded the time the specimens were received as 4:33 p.m. ("1633"). Palomba ensured that Alzamora fully and accurately completed all documentation. Palomba ensured that chain-of-custody procedures were followed, including the collection and storage of the urine specimens in a controlled-access refrigeration storage area. Palomba presented all documentation to the IAU supervisor for recording. Lieutenant Frank Laraway was the testing coordinator.

On January 19, 2021, at 9:59 a.m., Alzamora's urine specimen was delivered by IAU Sergeant Michael Sammartino to the State Toxicology Laboratory. Sammartino has been a sergeant for three and a half years and assigned to the IAU for three years. Sergeant Sammartino printed and signed his name on the Law Enforcement Drug Testing (LEDT) Chain of Custody form (LEDT Form). The LEDT Form reflects Alzamora's specimen, and nine others, as having been collected on January 14, 2021, or January 15, 2021. (R-11.) Alzamora's specimen was received by Jean Suk. (R-11.) The LEDT Form was stamped January 19, 2021. (R-11.)

The Quantitative Analysis Complete Report, dated February 17, 2021, reflects that the THC level of Alzamora's specimen acquired at 2:38 p.m. was 54.3863 ng/mL, and the

THC level of Alzamora's specimen acquired at 2:52 p.m. was 51.8962 ng/mL, which exceeded the 15 ng/mL cutoff. (R-15.)

The Law Enforcement Drug Testing Toxicology Report, dated March 4, 2021, reflects that Alzamora's immunoassay screening was positive for cannabinoids (THC) and that the mass spectrometry confirmed that Alzamora's sample was positive for cannabinoids (THC), specifically, 11-Carboxy-THC, a controlled substance not listed on a medication sheet. (R-2.)

On March 17, 2021, the IAU received Alzamora's drug-test results from the State Toxicology Laboratory. There were no substances or medications listed on Alzamora's medication sheet, dated January 14, 2021. On March 18, 2021, Alzamora was ordered to respond to the IAU, and he arrived with his union representative at approximately 11:00 a.m. He met with IAU commander Captain Rotondo and IAU executive officer Lieutenant Nieves. Alzamora was asked if he had a medical-marijuana card, but he did not. Effective March 18, 2021, Alzamora was suspended without pay pending the departmental hearing and served with a PNDA. (R-7.)

IAU Sergeant John Barone has been employed by the JCPD since 2008, and has been a sergeant since 2017, and in the IAU since 2018. He was admitted to the New Jersey Bar in 2017. He has conducted seven or eight random drug tests—approximately two per year—since 2018. He received IAU random-drug-testing training from the prosecutor's office and the New Jersey State Police, as well as JCPD in-house training. Barone prepared an Internal Affairs Memorandum, dated March 31, 2021, to Captain George Rotondo. (R-5.)

The State Toxicology Laboratory analyzed bottle A, but split-sample bottle B remains sealed at the laboratory. Alzamora did not request that bottle B be tested.

Testimony

Stephen Palomba

He was a foot or two away from Alzamora while monitoring. There was a carton-like container that holds probably thirty to forty bottles in the freezer. He removed the carton from the freezer and instructed Alzamora where to put the samples. Alzamora placed specimen bottle A and specimen bottle B into the carton and Palomba returned the carton to the freezer. The labels were completed by Alzamora with a pencil and Alzamora placed the labels in the specimen bottles to protect the integrity of the specimens. He has no knowledge of any allegation that any specimens were tampered with.

Michael Sammartino

He has no knowledge of any instance of any compromise of the specimen or anyone breaking into or improperly accessing the freezer or file cabinet. On January 19, 2021, he removed the specimens from the IAU freezer and drove them to the lab. The specimens remained in the open (not sealed) collection box with separators between them. He saw no evidence of tampering with any of the specimens. There were no complaints from the lab regarding the condition of the specimen bottles. If a specimen is not to lab standards, the lab does not accept the specimen. He witnessed one person from the lab accept the specimens. The person took each specimen out of the box in front of him and initialed the LEDT Form. No specimens were rejected. He was provided with a receipt, and he returned the receipt to the IAU office. It took less than an hour from the IAU office to the lab. He did not monitor the freezer temperature during the testing time from January 7 to January 19. He has transported specimens before. He has had no issue with specimens being accepted. Other than transporting the specimens on January 19, 2021, he was not the custodian for any of the specimens. He once attempted to open an empty, sealed specimen bottle and was not able to open it.

John Barone

Specimen bottles are sealed in little bags. There is a box of the testing bottles and the donor picks two bottles out of the box. The donor opens the plastic bag and there are three items in the bag: 1) the specimen bottle; 2) a self-sealing cap that must be pressed down and clicked in, which cannot be removed after it is clicked in; and 3) a label on which the donor writes in pencil the Social Security number, and specimen number (1 or 2). The officer clicks the cap to seal it; the monitor does not. The box is removed from the freezer, the donor drops the specimen bottles into the box, and then the box is returned to the freezer and the freezer is locked. If someone tried to open the bottle after it was sealed, it would be evident. It would be cracked, or it would be cut. He has no knowledge of any tampering with specimens or the freezer.

During COVID-19, the lab was requiring appointments to deliver specimens. It was not practicable to transport the specimens within one working day due to the new lab COVID-19 policy, because the lab was unable to accommodate JCPD for a drop-off appointment within that time. There was a state of emergency—the COVID pandemic—under executive order. Turnaround on test results was quicker pre-COVID because they had the ability to just drop samples off at the lab without an appointment.

The IAU is tightly regulated because of the seriousness and confidentiality of the role based on AG guidelines. To get into the IAU office, there is a keypad that requires a code. After the code is entered the door opens, and then there is a second locked door to the IAU office. All IAU members have a key to access the IAU office.

George Jackson

Jackson is a board-certified forensic toxicologist. He oversees the law-enforcement drug-testing section for the State Toxicology Laboratory. The lab is certified by the College of American Pathologists and has quality-control policies and procedures in place. The lab has no demographic information, so the donor is not known. A specimen goes through a vetting process after arrival to confirm that it is acceptable. Once vetting is complete, the specimen is assigned a unique laboratory number that

follows it throughout the testing process. The first step is that the specimen is screened for various classes of drugs. If the screening assay is negative, there is no further action. The second step is that if the screening assay is "presumptive positive" (specimen is identified as potentially having a drug present), a second aliquot is taken and then the confirmation gas chromatography-mass spectrometry (GCMS) process is performed to determine the molecular makeup of the drug and to quantify it. Each step has a two- or three-layer review. Once confirmed by GCMS, the results go to the medical review officer (MRO). The MRO is a doctor. The MRO opens the sealed medication form. The MRO is the only person who opens the sealed form because it contains health information. The MRO then determines if what is on the medications list caused the confirmed positive. Thereafter, the MRO reseals the form and indicates in a box on the report if the finding was caused by anything on the medications list. After the MRO is done, Jackson reviews everything all over again from the time the specimen was received to ensure that chain of custody and testing are all in order, and then a report is released. There were no chain-of-custody or testing issues, or a report would not have been released.

Cannabinoids (cannabis) contain over sixty metabolites and 11-Carboxy-THC is the predominant metabolite used to indicate exposure to marijuana. Alzamora's specimen was positive for 11-Carboxy-THC. The lab follows federal or SAMHSA² guidelines, and the cutoff level of 15 ng/mL takes into account possible passive exposure. Numerous studies have shown that an individual can have a positive urine test following passive inhalation. The THC cutoff is set at 15 ng/mL because the studies all indicate that a number above 15 ng/mL would not be passive inhalation. Alzamora's level of 54 ng/mL was substantially higher than the 15 ng/mL cutoff and does not indicate passive inhalation.

Neil Alzamora

This was his first random drug test. After regular roll call, he was asked by the lieutenant to report to the IAU office for a drug test. When he arrived at the IAU office, he sat down with the sergeant and reviewed a couple papers with the sergeant and signed

² Substance Abuse and Mental Health Services Administration.

them. He does not recall which sergeant he sat down with, but it was not Sergeant Barone. The sergeant gave him a cup of water. When he had to urinate, he walked to the bathroom and the sergeant followed him. He asked to take his vest off, which was allowed. Alzamora went inside the bathroom. The bathroom door was cracked open the whole time. He was told not to flush and not to seal the caps yet. After he gave the samples, he opened the door to let the sergeant know he was finished. The sergeant went into bathroom, checked the toilet, and told Alzamora to flush. The sergeant also told him to seal the samples. "From there . . . the sergeant opened the . . . refrigerator . . . oh from there he put the sample inside the little cardboard thing . . . and then he opened the . . . freezer and just placed the box in there and closed it. To my knowledge the freezer was unlocked when he first opened it."

He was notified by the captain in March that his specimen was positive for THC. He thereafter got himself drug tested twice—once immediately after he was notified and once before the departmental hearing—and the results were negative. To his knowledge he did not ingest any type of THC in January. He did not request that the split specimen be tested.

LEGAL ANALYSIS AND CONCLUSIONS

N.J.S.A. 11A:1-1 through 12-6, the "Civil Service Act," established the Civil Service Commission in the Department of Labor and Workforce Development in the Executive Branch of the New Jersey State government. N.J.S.A. 11A:2-1. The Commission establishes the general causes that constitute grounds for disciplinary action, and the kinds of disciplinary action that may be taken by appointing authorities against permanent career-service employees. N.J.S.A. 11A:2-20. N.J.S.A. 11A:2-6 vests the Commission with the power, after a hearing, to render the final administrative decision on appeals concerning removal, suspension or fine, disciplinary demotion, and termination at the end of the working test period, of permanent career-service employees.

N.J.A.C. 4A:2-2.2(a) provides that major discipline shall include removal, disciplinary demotion, and suspension or fine for more than five working days at any one time. An employee may be subject to discipline for reasons enumerated in N.J.A.C. 4A:2-2.3(a),

including conduct unbecoming a public employee and other sufficient cause. N.J.A.C. 4A:2-2.3(a)(6) and (12). In appeals concerning such major disciplinary actions, the burden of proof is on the appointing authority to establish the truth of the charges by a preponderance of the believable evidence. N.J.A.C. 4A:2-1.4; N.J.S.A. 11A:2-21; Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

The Office of the Attorney General Internal Affairs Policy & Procedures, dated June 2021 (IA Policy), states, in part, as follows:

7.6 DRUG TESTING

7.6.1 The testing of law enforcement officers in New Jersey for the illegal use of drugs is strictly regulated by the Attorney General's Law Enforcement Drug Testing Policy. This policy permits the testing of applicants and trainees for law enforcement positions. It further specifies that veteran law enforcement officers may be tested for drugs if reasonable suspicion exists that they are using drugs or if they have been chosen as part of a random drug testing program. In any case, drug testing is done through an analysis of urine samples by the State Toxicology Laboratory within the Department of Health.

7.6.2 The Attorney General's Law Enforcement Drug Testing Policy identifies specific responsibilities that may be assigned to internal affairs. These include the collection of specimens, the establishment of a chain of custody and the maintenance of drug testing records. Every officer assigned to internal affairs should be familiar with the Attorney General's Law Enforcement Drug Testing Policy.

[R-13.]

JCPD General Order 12-18, dated June 19, 2018, states its purpose as follows:

To insure employment of only those members and employees that are free of illegal drug use, to protect the integrity of the law enforcement function, to maintain the safety of the public and personnel, and to enhance the effective delivery of law enforcement services and to protect the public interest, the following Substance Abuse—Drug Testing Policy is hereby effective June 19, 2018:

.....

This policy will deter substance abuse, detect and address substance abuse problems as quickly as possible, provide help where possible, and encourage members and employees who are abusing drugs to seek assistance voluntarily. This policy is based in part on the New Jersey Attorney General's Guidelines for drug testing of law enforcement officers in the State of New Jersey.

[R-3.]

JCPD General Order 12-18, at Section 4.2, provides, in part, as follows:

Urine specimens, whenever practicable, are to be submitted to the State Toxicology Laboratory within one (1) working day of their collection. (R-3.) In the event a urine specimen cannot be submitted to the laboratory within one (1) working day of its collection, the urine specimen shall be stored in a controlled access refrigerated storage area until submission to the State Toxicology Laboratory.

[R-3.]

The Attorney General's Law Enforcement Drug Testing Policy (AG Policy) provides, in pertinent part:

The goal of the policy is deterring illegal drug use by law enforcement officers. The policy provides law enforcement agencies with a mechanism to identify and remove those law enforcement officers engaged in the illegal use of drugs. Because illegal drug use is inconsistent with the duties, obligations and responsibilities of sworn law enforcement officers, the policy mandates that officers who test positive shall be terminated from employment.

[R-4, at Section I.]

JCPD General Order 12-18 Section 7 and AG Policy Section VIII(C) reflect that the consequences of a positive test result are that the officer shall be immediately suspended from all duties; that the officer shall be administratively charged and, upon final disciplinary action, terminated from employment as a law-enforcement officer; that the officer shall be

reported by his or her employer to the Central Drug Registry maintained by the Division of State Police; and that the officer shall be permanently barred from future law-enforcement employment in New Jersey. (R-3; R-4.)

Attachments to the AG Policy and JCPD General Order 12-18 include an acknowledgement stating, *inter alia*: "I understand that a negative drug test is a condition offor my continued employment as a sworn officer," and, "I understand that if I produce a positive test result for illegal drug use, I/it [sic] will result in my termination from employment." (R-3; R-4.) Alzamora signed the OFFICER NOTICE AND ACKNOWLEDGMENT on January 14, 2021. (R-8.) The DRUG TESTING MEDICATION INFORMATION form is to be completed with all medications—prescribed by a physician and non-prescription—taken in the preceding fourteen days. (R-9.) Alzamora crossed out the prescription and non-prescription boxes and checked "C": "During the past fourteen days, I have taken NO prescription or non-prescription medications." (R-9.)

Section 3:108 of the JCPD Police Manual states that "[m]embers will not engage in any conduct which constitutes conduct unbecoming an officer or neglect of duty," and "will conduct their private and professional lives in such a manner as to be a credit to the department." (R-6.) Further, Section 3:164 of the JCPD Police Manual states that "[a] member will not use narcotics, hallucinating, stimulating or dangerous drugs on-duty or off-duty, unless prescribed by a physician for illness." (R-6.)

Per the Attorney General's Frequently Asked Questions, Marijuana Decriminalization and Legalized Cannabis, issued February 22, 2021, and updated March 26, 2021, a law-enforcement officer cannot use cannabis while off duty without consequence.

Until the Cannabis Regulatory Commission promulgates and implements regulations, there is no regulated, legal cannabis in New Jersey. Therefore, any marijuana consumed by a law enforcement officer or applicant for a law enforcement position will be a controlled dangerous substance and illegal. The Attorney General's Law Enforcement Drug Testing Policy remains unchanged.

[R-10, question 8.]

Appellant is charged with violation of the JCPD Police Manual and conduct unbecoming a public employee because of a random drug test positive for THC. Appellant argues that these charges must be dismissed because “[t]he chain of custody of Officer Alzamora’s drug test sample was compromised and therefore his drug test results are unreliable.” More specifically, appellant argues that the JCPD “completely failed to comply with the Attorney General’s Law Enforcement Drug Testing Policy in maintaining Officer Alzamora’s urine specimen” and “failed to observe their own drug testing policy in preserving and maintaining the integrity of Officer Alzamora’s urine specimen pursuant to General Order 12-18.” Appellant also argues that “the conventional refrigerator/freezer where Officer Alzamora’s urine specimen was kept for five (5) days was not a ‘controlled access refrigerated storage area’ pursuant to the Attorney General’s Law Enforcement Drug Testing Policy and the JCPD’s General Order 12-18,” and that “this regular refrigerator/freezer was easily accessible to any officer handling Officer’s Alzamora’s urine specimen” and “any officer handling Officer Alzamora’s drug test specimen could have easily tampered with his urine specimen and compromised the sample.”

Whether chain of custody of a drug sample has been sufficiently established is within the province of the trier of fact. In re Lalama, 343 N.J. Super. 560, 565 (App. Div. 2001). Test results should be admitted if there is a “reasonable probability that the evidence has not been changed in important respects.” Id. at 565–66 (citation omitted). The party introducing the test results need not “negate every possibility of substitution.” Id. at 566 (citation omitted). “[A] party seeking to introduce drug test results only needs to show a ‘reasonable probability’ that the integrity of the sample has been maintained, because a relaxed standard of admissibility of evidence applies in administrative proceedings.” Ibid.

The AG Policy states:

Urine specimens should be submitted to the Laboratory as soon as possible after their collection. In the event specimens

cannot be submitted to the Laboratory within one working day of collection, the law enforcement agency shall store the specimens in a controlled access refrigerated storage area until submission to the Laboratory (Attachment E).

[R-4 at Section V(B).]

Similarly, JCPD General Order 12-18 states:

Urine specimens, whenever practicable, are to be submitted to the State Toxicology Laboratory within one (1) working day of their collection. In the event a urine specimen cannot be submitted to the laboratory within one (1) working day of its collection, the urine specimen shall be stored in a controlled access refrigerated storage area until submission to the State Toxicology Laboratory.

[R-3 at Section 4.2.]

Appellant argues that his specimen was submitted five days later “without providing any explanation for this delay.” Alzamora’s specimen was collected on January 14, 2021—a Thursday—and was submitted to the lab on January 19, 2021—the following Tuesday. While not submitted on Friday, which was the next working day, there was credible testimony that specimens could no longer be submitted without an appointment due to COVID-19, and the appointment from the laboratory was January 19, 2021, the third working day. Neither the AG Policy nor JCPD General Order 12-18 mandates that the specimen be submitted within one working day, and two additional business days during a state of emergency and global pandemic is not unreasonable.

Appellant also argues that the freezer was not “refrigerated storage” or “controlled access.” There is no evidence that the freezer was not functioning or that the lab rejected any samples as having been improperly temperature controlled or that a temperature issue would result in a false positive for THC. While there is no dispute that the monitor for each donor was not always the same IAU officer or that all IAU personnel—nine officers and one unsworn clerk—had access to the file cabinet and freezer keys, there was no evidence of any unauthorized access to the IAU office, or that any IAU member had tampered with Alzamora’s sample. Although appellant alleges that the hinged side

of the freezer “could have easily been accessed providing an opportunity for any officer handling Officer Alzamora’s urine specimen to tamper with his urine sample,” there is no evidence of any tampering with the freezer or the samples, and the only officers with access to the freezer were the nine in the IAU—all of whom already had access to the freezer key. Further, Sergeant Sammartino testified that he once tried to open an empty, sealed bottle and was unable to do so.

Appellant also argues that the chain of custody was broken, and his test results are unreliable because he did not receive his test results for two months. Regarding test results, the AG Policy states, in pertinent part:

The Laboratory will provide written test results for every specimen submitted for analysis. All efforts will be made to deliver these reports within 15 working days of the submission.

[R-4 at Section VII(A).]

Similarly, JCPD General Order 12-18 states, in pertinent part:

The State Toxicology Laboratory will notify the Police Department of test results for all specimens submitted for analysis. All efforts will be made to deliver these reports within fifteen (15) working days.

[R-3 at Section 6.1.]

Alzamora’s specimen was provided on January 14, 2021, submitted to the lab on January 19, 2021, analyzed by the lab on February 17, 2021, and the report provided on March 17, 2021. It is noted that while the AG Policy and JCPD General Order 12-18 reflect that “all efforts will be made,” there is no mandate that results be provided within fifteen days. Although there was no testimony regarding the lab delay in results, it is observed that there remained a state of emergency and global pandemic, and there is no evidence of any compromise of the sample. Further, appellant has not cited any support for the positive test being voided because the notification of the test results exceeded the desired timeline.

It is observed that the appellant submitted to the JCPD two negative drug tests, from March 24, 2021, and May 17, 2021. However, these tests were two months and four months after the random drug test, and the first was almost a week after Alzamora was notified that his test was positive for THC. Further, the AG Policy states that “[a] donor whose specimen tested positive may only challenge the positive test result by having the split specimen independently tested by an accredited laboratory.” (R-4.)

There is simply no evidence to support appellant’s allegations of a break in the chain of custody or violation of the AG Policy or JCPD General Order 12-18. To the contrary, the evidence reflects that all processes and procedures for the reception, testing, and reporting of the results complied with the AG Policy and JCPD General Order 12-18. The specimens were delivered to the lab within three working days, and they were accepted by the lab, which additionally has its own quality control and chain-of-custody policies and procedures. As such, I **CONCLUDE** that Alzamora’s urine specimen was positive for THC. I further **CONCLUDE** that testing positive for THC is unbecoming a police officer and a violation of the JCPD Police Manual. I therefore **CONCLUDE** that the charges against Alzamora are sustained.

The Commission may increase or decrease the penalty imposed by the appointing authority, though removal cannot be substituted for a lesser penalty. N.J.S.A. 11A:2-19. Police officers are held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576–77 (1990). This higher standard of conduct is one of the obligations a police officer undertakes upon voluntary entry into the public service. In re Emmons, 63 N.J. Super. 136 (App. Div. 1960). A police officer’s primary duty is to enforce and uphold the law, and a police officer “represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public.” Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). The obligation to act in a responsible manner is especially compelling in a case involving a law-enforcement official. In re Phillips, 117 N.J. at 576.

Termination is generally supported by case law except in circumstances where there is a credible explanation for the positive result that is supported by evidence.

Alzamora tested positive for cannabinoids (THC), for which there was no credible explanation supported by evidence for the drug to have been in his urine, and no evidence of any break in the chain of custody or tampering with the specimens. Accordingly, I **CONCLUDE** that the JCPD's removal of Alzamora from his public employment should be affirmed.

ORDER

It is hereby **ORDERED** that the charges of violation of the JCPD Police Manual and conduct unbecoming a public employee are **SUSTAINED**. It is hereby further **ORDERED** that the JCPD's removal of Alzamora from his public employment is **AFFIRMED**.

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. 40A:14-204.

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.



February 14, 2022
DATE

KELLY J. KIRK, ALJ

Date Received at Agency:

February 14, 2022

Date Mailed to Parties:

February 14, 2022

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APPENDIX

WITNESSES

For Appellant:

Neil Alzamora

For Respondent:

John Barone

Michael Sammartino

Stephen Palomba

George Jackson

EXHIBITS IN EVIDENCE

For Appellant:

A-1 Drug Screen Results, March 24, 2021

A-2 Drug Screen Results, May 17, 2021

For Respondent:

R-1 Final Notice of Disciplinary Action

R-2 Toxicology Report

R-3 General Order 12-18

R-4 Attorney General's Law Enforcement Drug Testing Policy

R-5 IAU Special Investigation Report

R-6 JCPD Police Manual

R-7 Personnel Order 38-21

R-8 Drug Testing Officer Notice and Acknowledgement

R-9 Drug Testing Medication Information

R-10 Frequently Asked Questions

R-11 Law Enforcement Drug Testing (LEDT) Chain of Custody

R-12 Drug Specimen Acquisition Checklist Schedule E

R-13 Internal Affairs Policy & Procedures

- R-14A Photograph
- R-14B Photograph
- R-14C Photograph
- R-14D Photograph
- R-14E Photograph
- R-15 Quantitative Analysis Complete Report