

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 29TH DAY OF JUNE, 2022

Deirdre L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 10181-2021

**IN THE MATTER OF PETER FRATTICCIOLI,
CAMDEN COUNTY (POLICE DEPARTMENT).**

Katherine D. Hartman, Esq., for appellant

Krista A. Schmid, Esq., Assistant County Counsel, for respondent (Office of
Camden County Counsel)

Record Closed: May 13, 2022,

Decided: June 2, 2022

BEFORE WILLIAM T. COOPER III, ALJ:

STATEMENT OF THE CASE

Peter Fratticcioli (appellant) challenges his removal from his position as a Camden County police officer for violations of the Camden County Police Department Rules and Regulations due to his positive drug test for amphetamine use.

PROCEDURAL HISTORY

On September 28, 2021, the Camden County Police Department (Department) served upon appellant a Preliminary Notice of Disciplinary Action (PNDA) charging him with violation of the Camden County Police Manual and conduct unbecoming a public

employee. A departmental hearing was held on November 12, 2021. On November 30, 2021, the respondent served upon appellant a Final Notice of Disciplinary Action (FNDA) sustaining the charges and immediately removing him from respondent's employment. The sustained charges were as follows:

- N.J.A.C.4A:2-2.3(a)(1) – Incompetency, Inefficiency or Failure to Perform Duties, and
- N.J.A.C. 4A:2-2.3(a)(3) – Inability to perform duties, and
- N.J.A.C. 4A:2-2.3(a)(6) – Conduct unbecoming a public employee, and
- N.J.A.C. 4A: 2-2.3(a)(12) – Other sufficient cause,
- Camden County Police Department Rules & Regulations:
 - 3.1.1 Standards of Conduct
 - 3.1.10 Obedience to Laws and Regulations
 - 3.2.2 Alcoholic Beverages and Drugs
 - 3.2.5 Physical and Mental Fitness for Duty
 - 3.2.19 Substance Testing
 - 3.2.21 All other Conduct

The specifications in support of the charges noted that:

On June 7, 2021, The Camden County Police Department Professional Standards Bureau conducted a departmental-wide random drug analysis test. As a result, you, Officer Fratticcioli was selected and submitted a urine sample for testing. On August 17, 2021, the New Jersey Toxicology Laboratory provided the Professional Bureau with your urine drug analysis results which proved positive for the narcotic amphetamine. You were then contacted and advised of the lab findings. You were further advised that you must produce a valid prescription for Adderall, which is what you listed on your Drug Testing Medication Information form, and you failed to do so, advising that you didn't possess one.

[Id.]

On December 13, 2021, appellant appealed the FNDA, and the matter was transmitted to the Office of Administrative Law (OAL) where it was filed as a contested case on December 15, 2021. N.J.S.A. 52:14 B-1 to-15; N.J.S.A. 52:14 F-1 to-13.

The hearing was conducted April 25, 2022.¹ The record remained open for the parties to submit closing statements and closed on May 17, 2022.

FACTUAL DISCUSSION

Undisputed Facts

A review of the record reveals that the following is not in dispute, accordingly, I **FIND as FACT:**

Appellant's date of birth is December 3, 1988, and he is thirty-three (33) years old.

Appellant was an officer of the Department since his hiring on July 19, 2019.

On June 7, 2021, appellant was ordered to submit to a random drug test. The testing was conducted accordance with the Attorney General's Law Enforcement Drug Testing Policy. Prior to submitting to the drug test, appellant completed a confidential Drug Testing Medication Information form on which he listed all prescription and non-prescription medications he had taken within the prior fourteen days, along with the name of the physician who prescribed the medication. Appellant listed "Adderall" (a medication that contains amphetamine) and identified "Dr. Goldman"² as the prescribing physician on this form.

Appellant's specimen tested positive for amphetamine metabolites.

¹ Due to technical difficulties the hearing was not recorded. On May 27, 2022 the parties were advised of this issue and agreed to proceed by submitting proposed findings of fact in their written summations.

² The correct name of the physician is Goldson, and no explanation was provided as to why it was misspelled on the form.

Appellant does not challenge the specimen acquisition procedure, laboratory analysis or positive test result.

Amphetamine is classified as a Schedule III controlled dangerous substance in New Jersey, per N.J.S.A. 24:21-7 and is one of nine controlled substances that are screened by the New Jersey State Medical Examiner Toxicology Laboratory (Lab).

On August 20, 2021, the Department notified appellant of his positive test result and instructed him to provide a valid prescription for Adderall covering the June 7, 2021, test date.

Appellant did not have a valid prescription for Adderall on June 7, 2021.

Testimony

For Respondent:

Sergeant Curtis May testified that he is a supervisor of the Internal Affairs Unit that oversees drug screening. He was involved with the investigation of this matter and as such is familiar with the facts and circumstances of this matter. May testified that the Department utilizes a computer program that selects participants for random drug screenings. The selection process is observed by a member of the police department and a union representative. On June 7, 2021, appellant was selected for a drug screening. Appellant executed the officer notice and acknowledgement form that advises participants that a positive test result will result in termination from employment.

May testified that a urine sample was provided by appellant together with a completed confidential Medical Information form. This form provides participants the opportunity to list all medications that they are currently taking, so, that in the event of a positive result the lab can review the form and advise if the prescribed medication is the cause of a positive finding. Appellant listed Adderall as a prescribed medication he was

taking. The urine sample and form were then provided to the New Jersey State Toxicology Laboratory (Lab) on June 14, 2021.

On August 17, 2021, the Lab results were returned to the Department revealing a positive test result for the narcotic, Amphetamine. On August 20, 2021, appellant was advised of the positive test results, and he admitted that he was currently taking medication that would test positive for amphetamine. Appellant further advised that the medication was provided by a physician located in South Orange, New Jersey. Appellant then agreed to reach out to the physician and obtain the prescription.

On August 23, 2021, appellant advised that he had contacted his former doctor's office to have them send his prescription taken in June 2021 but had not yet gotten a response. Appellant offered to contact his former pharmacy, Rite Aid for his prescription history. However, he noted that the pharmacy had a new owner and was now a Walgreens.

On August 24, 2021, appellant related that he could obtain his prescription history from CVS, which would show his most recent medications. He furnished at this time the Rite Aid prescription breakdown from 2017. Appellant further advised that he attempted to obtain a note from his current physician, reporting he is taking medications that would test positive for amphetamine.

On August 25, 2021, appellant admitted that he did not have a valid prescription for Adderall covering June 7, 2021. He related that in 2019 he relocated from South Orange, New Jersey, to his parents' home in Williamstown, New Jersey, to attend the Camden County Police Academy. While attending the academy appellant was having issues with his mother which caused him to leave the home abruptly. In April/May of 2021 his parents sold the home and appellant had an opportunity to retrieve all his personal property he had left behind. This included a prescription bottle from 2019 with a small number of pills. Appellant advised that the medication had been prescribed to him in approximately June of 2019. Appellant admitted to taking the pills as needed prior to the

June 7, 2021, drug test. Appellant was aware that he had taken prescription medication that was prescribed to him but that the prescription was from 2019 and no longer valid.

On September 24, 2021, May conducted an audio/video interview of appellant. During this interview appellant confirmed that the last prescription for attention deficit hyperactivity disorder "ADHD" medication he received from Dr. Goldson was July 16, 2019, and it was for Concerta. Appellant advised that he did not take any ADHD medication in 2020, he also noted that he did not have a primary care physician at that time and due to COVID-19 he was having difficulty finding one closer to home. Appellant again stated that he located an old prescription bottle at his parents' home that had what he recognized as ADHD pills in it. Appellant could not say what brand these pills were and when he consumed the last pill, he discarded the bottle. When asked where he obtained the Adderall from appellant responded, "I don't know." Appellant stated that he was unaware of the difference between Adderall and Concerta.

Office notes from Goldson Medical Associates reveal that appellant had a history of ADH since the age of five. The disorder was treated through prescription medications that included Ritalin, Adderall and more recently Concerta. The records provided revealed that appellant had been prescribed only Concerta by Dr. Goldson from 2017 to 2019. Appellant's pharmacy records from CVS and Rite Aid verify that he only was given Concerta from 2017 to 2019.

It was reported to May by the State Toxicology's Medical Examiner Dr. Andrew Falzon that Concerta does not contain amphetamine and therefore would not provide a positive reading. It was further reported that Adderall does contain amphetamine and would result in a positive reading.

The medical and prescription records obtained during the investigation of this matter revealed that appellant had not been prescribed Adderall.

For Appellant:

Appellant testified that he was diagnosed with ADHD when he was in kindergarten. His parents were hesitant about treating his illness with prescription medications, but his kindergarten teacher was able to “talk them through” how the medication would be beneficial. Since his diagnosis appellant has been prescribed various medications including Ritalin, Adderall, Concerta, and others that he cannot remember.

Appellant testified that his last prescription for Concerta was in June 2019. In July 2019 he moved back in with his parents in Williamstown, New Jersey, and commenced training with the Camden County Police Academy. During this time appellant did not have a primary care physician (PCP) and stopped taking prescribed medications for ADHD.

During his training an issue with his mother occurred that resulted in appellant leaving the family home. When he left the home, he was only able to take limited items, ones that he deemed essential. Thereafter, he stayed at hotels and with friends while he completed the academy. In 2021 his parents sold the home, but before the sale went through appellant was given an opportunity to retrieve the rest of his personal belongings. Among the items he took was an old prescription container that he located in a nightstand. Appellant testified that this was an old prescription of his for Adderall and it had approximately ten to eleven pills in it. He took these pills on an as needed basis and when he was finished, he discarded the prescription bottle.

In May 2021 appellant saw Dr. Wall of the Cooper Health Care System for a work-related injury to his back. According to the appellant an ADHD screening was performed, and Dr. Wall was willing to prescribe medication to treat same. However, at the time appellant was already taking muscle relaxants and pain medication for the back injury. Dr. Wall did not want to immediately prescribe additional medication as it could have negative side effects. Eventually Dr. Wall did prescribe medication for appellants ADHD that contain amphetamine. Appellant admits however, that when he took the random drug test on June 7, 2021, he did not have a valid prescription for Adderall.

Appellant testified that he has never purchased amphetamine illegally and only used medications that were lawfully prescribed to him. According to him he failed the test because he used up an old prescription. He indicated that he was taking Adderall on the Medical Information form because to him it was a generic term that represented any and all ADHD medications.

Appellant admitted that since 2017 his ADHD was treated with Concerta and that he did not have a valid prescription for Adderall as of June 7, 2021. He further admits that the Adderall he found must have been medication prescribed to him while he was still in High School. He could not advise how old the prescription was.

Credibility

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witnesses' story in light of its rationality or internal consistency and the manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "the interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

A trier of fact 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).

In this matter the testimony of Sergeant May was straightforward, undisputed, and credible. Appellant was randomly selected for a drug test, reported that he was taking

the prescription medication Adderall, and was cooperative throughout the process. When the test results were reported as positive for Amphetamine the appellant was properly notified and provided with an opportunity to furnish a valid prescription for Adderall. Appellant could not provide a valid prescription and admitted that on the date of the drug test he did not have a valid prescription for Adderall.

Appellant outlined his early diagnosis of ADHD and subsequent treatment of the disorder through prescription medications. On June 7, 2021, he completed the Medical Information form, reporting that he was taking Adderall a medication prescribed to him by a physician. Appellant knew on that date that he did not have a valid prescription, moreover, the documents collected during the department's investigation of this matter, indicate that his physician, Dr. Goldson never prescribed Adderall. The records from that physician reveal that from 2017 through 2019 only Concerta had been prescribed to appellant.

During interviews on August 23 and 24 the appellant continued to maintain that he had a valid prescription for Adderall. On August 25 he finally admitted to the department that he did not have a valid prescription. It was on this date that he related that he located an old prescription medication container of his in his parents' home. He recognized the medication as ADHD medicine that had been previously prescribed to him sometime in 2019. It was the ten or eleven pills from this prescription container that appellant consumed prior to the drug screening on June 7, 2021. This version would have been plausible if he had related that from the start. He did not do this and as such I cannot find appellant as entirely credible.

Even if appellant's version was found to be entirely credible, as a law enforcement professional the appellant had to know that consuming ADHD medication such as Adderall, without a valid prescription was wrong. In the final analysis credibility is not a controlling factor, this is a situation where the test results, not challenged by appellant, must govern.

ADDITIONAL FINDINGS OF FACT:

Having had the opportunity to consider the testimony of the witnesses and having considered the documentary evidence, I additionally **FIND** the following as **FACT**:

Appellant was originally diagnosed with ADHD when he was five years old. The disorder has been treated with prescription medications. Appellant was prescribed Ritalin as a child and then was Adderall XR in high school. On May 12, 2017, Dr. Goldson prescribed Concerta to appellant and he took this medication until July 16, 2019.

Appellant did not have a valid prescription for any ADHD medication from July 16, 2019, to June 7, 2021, the date of the drug test.

It was reported to Sergeant May by the Department by the State Toxicology's Medical Examiner, Doctor Andrew Falzon that Concerta does not contain amphetamine and therefore would not provide a positive reading. It was also noted that Adderall does contain amphetamine and would result in a positive reading.

At his Internal Affairs interview on September 24, 2021, Appellant was asked where he obtained the Adderall. He responded, "I don't know." Although he previously told stated that the pill bottle found at his parents' house was from 2019, he offered the possibility that it may have been from high school, some fourteen (14) years ago.

Appellant believed it was permissible to consume prescription medication from 2019 as long as it was previously prescribed to him.

Appellant has no major disciplinary history.

Appellant had not advised the Department as to his ADHD disorder or the need to take prescription medication to treat same. Further, appellant did not seek approval from the appropriate authority to take the prescription medication Adderall.

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 important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil-service law, a public entity should not be burdened with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his or her duties. N.J.S.A. 11A:1-2(a). A civil-service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline, including removal. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. The general causes for such discipline are set forth in N.J.A.C. 4A:2-2.3(a).

This matter involves a major disciplinary action brought by the respondent against the appellant. An appeal to the Civil Service Commission requires the OAL to conduct a hearing de novo to determine the appellant's guilt or innocence as well as the appropriate penalty if the charges are sustained. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987). Respondent has the burden of proof and must establish by a fair preponderance of the credible evidence that appellant was guilty of the charges. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the fact alleged and generates a reliable belief that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), overruled on other grounds, Dwyer v. Ford Motor Co., 36 N.J. 487 (1962).

This case is particularly sensitive because it involves law-enforcement official.

[A] police officer is a special kind of public employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint, and good judgment in his relationship with the public. He 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).]

Police officers are aware that they are subjected to random drug testing to ensure they are not using banned substances. "Every police officer understands that an officer who uses or sells drugs is a threat to the public." Rawlings v. Police Dept of Jersey City, 133 N.J. 182, 189 (1993).

There is no question that appellant's sample tested positive for amphetamine - a controlled-substance screened per the Attorney General Policy and that appellant did not have a valid prescription for same as of June 7, 2021. Based upon the positive test result appellant has been charged with violations of N.J.A.C. 4A:2-2.3(a)(1), Incompetency, Inefficiency or Failure to perform Duties; N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming an employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. Appellant has additionally been charged with violations of the Department rules and regulations as follows: 3.1.1 Standards of Conduct, 3.1.10 Obedience to Laws and Regulations, 3.2.2 Alcoholic Beverages and Drugs, 3.2.5 Physical and Mental Fitness for Duty, 3.2.19 Substance Testin, 3.2.21 All other Conduct.

1. N.J.A.C. 4A:2-2.3(a)(1) Incompetency, Inefficiency or Failure to Perform Duties

Pursuant to N.J.A.C. 4A:2-2.3(a)(1) An employee may be subject to discipline for: Incompetency, inefficiency or failure to perform duties;

In general, incompetence, inefficiency, or failure to perform duties exists where the employee's conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. Clark v. New Jersey Dep't of Agric., 1 N.J.A.R. 315 (1980). Incompetence means that an individual lacks the ability or the qualifications to perform the duties required of him or her. Rivera v. Hudson Cty. Dep't

of Corr., CSR 6456-16, Initial Decision (October 24, 2016) https://njlaw.rutgers.edu/collections/oal/html/initial/csr06456-16_1.html, adopted, CSC (November 28, 2016).

Section 3:1.6 of the Camden County Police Department Rules and Regulations defines "Neglect of Duty" as;

Failure to give suitable attention to the performance to duty. Examples include but are not limited to; failure to take appropriate action on the occasion of crime, disorder, or other act or condition deserving police attention; absence without leave; failure to report to duty at the time and place designated; unexcused absence from their assignment; failure to conform to the department operating procedures etc.; Neglect also connotes a deviation from normal standards of conduct.

Here, the appellant had a positive test result for an illegal substance-amphetamine. Appellant failed to provide a valid prescription to support he was lawfully prescribed medication that contained amphetamine. The parties agree that the ADHD medication Adderall could result in a positive result for amphetamine. However, appellant failed to produce credible evidence to support his theory that he inadvertently consumed an old lawful prescription of his for Adderall on or before the June 7, 2021, random drug test.

Law enforcement officers are under a duty to remain free of illegal substances. In testing positive for the banned substance, amphetamine, without a valid prescription appellant failed in this duty.

Applying the regulations to the facts of this matter I **CONCLUDE** that appellant's actions constitute, Incompetency, Inefficiently or Failure to Perform Duties and the charge of N.J.A.C. 4A:2-2.3(a)(1) is hereby **SUSTAINED**.

2. N.J.A.C. 4A:2-2.3(a)(3) Inability to Perform Duties

Pursuant to N.J.A.C. 4A:2-2.3(a)(3) An employee may be subject to discipline for:
Inability to perform duties.

The charge of inability to perform duties, under N.J.A.C. 4A:2-2.3(a)(3), has been upheld where the employee is incompetent to execute his job responsibility. Klusaritz v. Cape May Cnty, 387 N.J. Super. 305, 317 (App. Div. 2006) (removal of accountant who was incapable of preparing a bank reconciliation and was of no value to the county); Richard Stockton College v. Parks, CSV 4279-03, Initial Decision (January 31, 2005), adopted, Merit Sys. Bd. (April 3, 2005), <http://njlaw.rutgers.edu/collections/oal/final/csv4279-03.pdf> (where respondent failed to prioritize and complete tasks in a timely manner).

The Camden County Police Department Rules and Regulations as well as the New Jersey Attorney General Guidelines require that all law enforcement officers remain free of illegal drugs. Appellant failed a random drug test when his sample came back positive for Amphetamine and appellant did not have a valid prescription for same. Thus, appellant failed in his duty to remain free of an illegal substance.

Applying the regulations to the facts of this matter, I **CONCLUDE** that appellant's actions constitute, an inability to Perform Duties and the charge of N.J.A.C. 4A:2-2.3(a)(3) is hereby **SUSTAINED**.

3. N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming a Public Employee.

Pursuant to N.J.A.C. 4A:2-2.3(a)(6) An employee may be subject to discipline for:
Conduct unbecoming a public employee.

"Conduct unbecoming a public employee" is an elastic phrase which encompasses conduct that "adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services." Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136,

140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily “be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartmann v. Police Dep’t of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)). Suspension or removal may be justified where the misconduct occurred while the employee was off duty. In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960).

In the present matter, the random urine sampling documents that appellant’s sample tested positive for amphetamine. Appellant argues that he is not guilty of “illegal drug use” because he consumed Adderall that had been previously prescribed to him. Appellant’s argument fails, as, intentionally, or inadvertently, he did not comply with the drug policy.

Applying the regulations to the facts of this matter, I **CONCLUDE** that appellant’s actions constitute unbecoming conduct, and the charge of N.J.A.C. 4A:2-2.3(a)(6) is hereby **SUSTAINED**.

4. N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause

Pursuant to N.J.A.C. 4A:2-2.3(a)(12) An employee may be subject to discipline for: Other sufficient causes.

“Other sufficient cause” is essentially the catchall provision for conduct, which is not specified in the eleven listed causes at N.J.A.C. 4A:2-2.3, as the reason for which an employee may be subject to discipline. Such cause has been described as other conduct, not delineated within the regulation, which would “violate the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” In re Keith Harkcom, Dep’t of Corrections, CSR

14703-19 (April 13, 2020), <https://njlaw.rutgers.edu/collections/oal/html/initial/csr14703-19_1.html>, adopted Comm'r (May 22, 2020).

Specifically, appellant has additionally been charged with violations of the Department rules and regulations as follows: A) 3.1.1 Standards of Conduct; B) 3.1.10 Obedience to Laws and Regulations; C) 3.2.2 Alcoholic Beverages and Drugs; D) 3.2.5 Physical and Mental Fitness for Duty; E) 3.2.19 Substance Testing; F) 3.2.21 All other Conduct.

A. Standards of Conduct

Appellant has been charged with a violation the Departments General Rules and Regulations Standards of Conduct. Section 3:1.1 which states that; "Employees shall conduct their private and professional lives in such a manner as to avoid bringing the department into disrepute."

By testing positive for amphetamine without having a valid prescription appellant has failed conduct himself in such a manner so as to avoid bringing the department into disrepute. Therefore, I **CONCLUDE** that appellant's actions constitute a violation of the section 3:1.1 Standards of Conduct, and the charge is hereby **SUSTAINED**.

B. Obedience to Laws and Regulations

Appellant has been charged with a violation the Departments General Rules and Regulations, Obedience to Laws and Regulations. Section 3:1.10 which states; "Employees shall observe and obey all laws and ordinances, all rules and regulations and orders of the department."

By testing positive for amphetamine without having a valid prescription appellant has failed obey all laws and ordinances as well as departmental rules and regulations. Therefore, I **CONCLUDE** that appellant's actions constitute a violation of the section 3:1.10, Obedience to Laws and Regulations and the charge `is hereby **SUSTAINED**

C. Alcoholic Beverages and Drugs

Appellant has been charged with a violation the Departments General Rules and Regulations, Alcoholic Beverages, and Drugs Standards Section 3.2.2.

Section 3:2.2a states that; "No employee of the department will appear for, or be on duty, under the influence of alcohol or drugs, or be unfit for duty because of its use."

Section 3:2.2b states in part; "Employees of the department shall not drink any kind of intoxicating beverage while on duty or take any drugs not duly prescribed and necessary for health at any time except on special assignment authorized by the Chief of Police."

Section 3.2.2d states; Taking Medication on Duty, states that; "Employees of the "department shall not take any medication which may diminish their alertness or impair their senses prior to or after reporting for duty unless directed by a physician."

Section 3:2.2e; Notification about Medication states; "When employees are required to take any prescription medication or any non-prescription medication which may diminish their alertness or impair their senses, the employee shall immediately make notification as prescribed by the Chief of Police, as to the medication required, its properties, the dosage, and the period during which the employee is required to take the medication. This information so provided shall remain confidential."

By testing positive for amphetamine without having a valid prescription appellant has violated sections 3:2.2a through 3:2.2e. Appellant stated that he had consumed outdated prescription medication without having a valid prescription. Appellant failed to notify his supervisor or the appropriate authority that he needed prescription medication.

By testing positive for amphetamine without having a valid prescription appellant has violated the Department's Alcoholic Beverages and Drugs. Therefore, I **CONCLUDE**

that appellant's actions constitute a violation of the sections 3:2.2a through 3:2.2e and the charge is hereby **SUSTAINED**.

D. Physical and Mental Fitness for Duty

Appellant has been charged with a violation the Departments General Rules and Regulations Standards of Conduct, Physical and Mental Fitness for Duty, section 3.2.5 which states; Police officers shall maintain sufficient physical and psychological condition in order to handle the core functions required of a law enforcement officer and shall immediately report their inability to perform the core functions of a law enforcement officer to their supervisor. Employees displaying conduct that may be harmful to themselves or others shall be reported to the Chief of Police and Watch Commander immediately.

Appellant's random drug test produced a positive result for amphetamine. Appellant stated he consumed an old ADHD medication which caused the positive reading. Appellant's admission indicates that he believed that ADHD medication was required to control or abate the symptoms of the disorder. Appellant failed to properly advise his supervisor as to his physical condition.

Therefore, I **CONCLUDE** that appellant's actions constitute a violation of the section 3:2.5 Physical and Mental Fitness for Duty, and the charge is hereby **SUSTAINED**.

E. Substance Testing

Appellant has been charged with a violation of the Department General Rules and Regulations, Substance Testing section 3:2.19. This section provides guidance for the administration of drug testing and there is no evidence that appellant was in violation of this rule. Thus, I **CONCLUDE** the Department has not proven the charge of section 3;2.19 Substance Testing by a preponderance of the evidence.

F. All other Conduct.

Appellant has been charged with a violation of the Department General Rules and Regulations, All Other Conduct section 3:2.21 which states; Conduct not specifically addressed herein shall be consistent with existing law, department policy, public policy, department philosophy, rules, and regulations. This section provides a catch all for personnel to conform their conduct to appropriate standards. There is no evidence that appellant was in violation of this rule. Thus, I **CONCLUDE** the Department has not proven the charge of section 3;2.21. All other Conduct by a preponderance of the evidence.

PENALTY

Once it has been determined that a civil-service employee has violated a statute, regulation, or rule regarding their employment, progressive discipline is to be considered when imposing the penalty. West New York v. Bock, 38 N.J. 500 (1962); In re Stallworth, 208 N.J. 182, 195 (2011). When deciding the disciplinary penalty, the fact finder shall consider the nature of the charges sustained and the employee's past record. West New York, 38 N.J. at 523–24. The past record is said to encompass the employee's reasonably recent history of promotions or commendations on the one hand, and on the other hand, any "formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated . . . by having been previously called to the attention of and admitted by the employee." Id. at 524. Consideration should also be given to the timing of the most recently adjudicated disciplinary history. Ibid.

The theory of progressive discipline is not a fixed rule to be followed without question. In re Carter, 191 N.J. 474, 484 (2007). "[S]ome disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record." Ibid. The question for the fact finder is whether the disciplinary action is so disproportionate to the offense, considering all circumstances, to shock one's sense of fairness. Ibid. Removal has been upheld where the acts charged, with or without prior disciplinary history, have warranted imposition of the sanction. Id. at 485. Hence an

employee may be removed, without regard to progressive discipline, if their conduct was egregious.

Here, respondent has brought and sustained charges of violations of N.J.A.C. 4A:2-2.3(a)(1) Incompetency, Inefficiency, and failure to perform duties; N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming an employee; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. Appellant has additionally been charged with sustained violations of the Departments rules and regulations as follows: 3:1.1 Standards of Conduct; 3.1.10 Obedience to Laws and Regulations; 3:2.2 Alcoholic Beverages and Drugs; 3.2.5 Physical and Mental Fitness for Duty; and 3.2.21 All other Conduct.

The salient facts in this matter are not in dispute. On June 7, 2021 appellant reported for work and was directed to submit a urine sample for random drug testing. As part of that process, he reported he was taking the prescription medication Adderall, which is a part of the random-drug-screening process. He submitted a sample and on August 20, 2021, appellant was notified that testing of the urine sample he submitted was positive for amphetamine.

Appellant was directed to provide the Department with a valid prescription for the Adderall he reported to being on that medication. Appellant was unable to do so, as he knew that he did not have one. Appellant knew the policies and procedures of the Department and knew that he was held to higher standard as a law-enforcement officer.

Further, while testimony reflects that appellant has no disciplinary record, test results documenting illegal drugs in the system of someone in a safety-sensitive position is a serious offense, and the penalty should reflect the same. Accordingly, I **CONCLUDE** that the sustained charges are sufficiently egregious to warrant the termination of appellant from his position as a police officer.

ORDER

It is hereby **ORDERED** that the charges of violations of N.J.A.C. 4A:2-2.3(a)(1), Incompetency, Inefficiency or Failure to perform Duties; N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming an employee; N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause; as follows: 3.1.1 Standards of Conduct, 3.1.10 Obedience to Laws and Regulations, 3.2.2 Alcoholic Beverages and Drugs, 3.2.5 Physical and Mental Fitness for Duty, are **SUSTAINED**.

It is hereby further **ORDERED** that the Camden County Police Department's removal of appellant 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.

June 2, 2022
DATE


WILLIAM T. COOPER III, ALJ

Date Received at Agency: June 2, 2022

Date Mailed to Parties: June 2, 2022

lr

APPENDIX

WITNESSES

For Appellant:

Peter Fratticcioli

For Respondent:

Sgt. Curtis Mays

EXHIBITS IN EVIDENCE

For Court

A-1 Written summation from appellant

R-1 Written summation from respondent

For Appellant:

None

For Respondent:

- R-1 Urine Drug Testing Submission Form (6/7/21)
- R-2 Drug Testing Officer Notice and Acknowledgment (6/7/21)
- R-3 Toxicology Report
- R-4 Office of the Chief Medical Examiner correspondence (9/15/21)
- R-5 Office of the Chief Medical Examiner correspondence (9/22/21)
- R-6 Professional Standards Bureau Investigation Memorandum (9/29/21)
- R-7 Disciplinary Action Forms
- R-8 Walgreens Pharmacy screenshot (8/25/19 – 8/25/21)
- R-9 CVS Pharmacy screenshot (8/1/20 – 8/24/21)
- R-10 Rite Aid Pharmacy screenshot (5/15/17 – 12/31/17)
- R-11 Concerta prescription records (5/10/17 – 7/16/19)

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- R-12 Goldson Medical Associates, LLC records (4/26/17, 5/10/17)
- R-13 Camden County Police Rules and Regulations: The police Manual (1/13/20)
- R-14 Attorney General's Law Enforcement Drug Testing Policy (12/20/20)
- R-15 Written Directive: Law Enforcement Drug Testing (6/18/21)