



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  
OCTOBER 4, 2017



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Daniel W. O'Mullan  
Member

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
P. O. Box 312  
Trenton, New Jersey 08625-0312

Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT NO. CSR 01327-17

**IN THE MATTER OF FRANCISCO PONCE,  
TOWNSHIP OF NORTH BERGEN.**

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**Charles J. Sciarra**, Esq., for appellant Francisco Ponce (Sciarra & Catrambone, LLC, attorneys)

**Joseph E. Santanasto**, Esq., for respondent Township of North Bergen (Chasan Lamparello Mallon & Cappuzzo, PC, attorneys)

Record closed: August 3, 2017

Decided: September 5, 2017

BEFORE **JUDE-ANTHONY TISCORNIA**, ALJ:

**STATEMENT OF THE CASE**

Francisco Ponce (Ponce or appellant) was removed from his position as a police officer with respondent Township of North Bergen because he failed a random drug test. Ponce asserts that the test conducted at the New Jersey State Toxicology Laboratory was flawed and that the corresponding results are not reliable.

**PROCEDURAL HISTORY**

On May 5, 2015, appellant was served with a Preliminary Notice of Disciplinary Action (PNDA) seeking a temporary suspension pending removal effective May 18, 2015. (R-1.) Appellant was charged with violating the following Department Rules and Regulations, in addition to the New Jersey Administrative Code:

1. Department Drug Screening For Law Enforcement (General Order 13-15);
2. Incompetency, inefficiency or failure to perform duties (N.J.A.C. 4A:2-2.3(a)(1))
3. Inability to perform duties (N.J.A.C. 4A:2-2.3(a)(3))
4. Conduct unbecoming a public employee (N.J.A.C. 4A:2-2.3(a)(6))

A departmental hearing was conducted on August 11, 2016, at which time all charges were sustained. Appellant was served with a Final Notice of Disciplinary Action dated January 5, 2017, removing appellant from his position as a police officer. The incident that gave rise to the removal was Ponce's positive random drug test administered April 20, 2015.

The matter was transmitted to the Office of Administrative Law (OAL) as a contested case on January 24, 2017. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

I heard this matter on April 26, 2017, and April 28, 2017. The record was kept open pending receipt of transcripts and closing arguments. Closing arguments were received on July 31, 2017, at which time the record was closed.

## FACTUAL DISCUSSION

### Undisputed Facts

The following facts are undisputed. I therefore **FIND** them to be the facts of this case.

Appellant was employed as a police officer for the Township of North Bergen (Township) in 2015. The Township has a random-drug-testing policy for all law-enforcement officers that was in effect in 2015. Appellant was selected to submit to a random drug test on April 20, 2015. Appellant provided a urine sample that was analyzed at the New Jersey State Toxicology Laboratory (State Lab). A second sample, known as a "split" sample, was also taken, but never analyzed.

The test results provided by the State Lab indicate that the Ponce urine sample tested positive for cocaine.

### Testimony for Respondent

Dr. Robert Havier, Ph.D.

Dr. Robert Havier (Dr. Havier) is a forensic toxicologist and the acting director of the New Jersey State Toxicology Laboratory. He testified as an expert in toxicology. Havier oversaw the screening of the urine sample Ponce provided.

Havier testified that the State Lab is charged with conducting random drug tests for every law-enforcement authority statewide. Havier noted that the State Lab is the only such facility in New Jersey that provides toxicology testing for law-enforcement entities. The State Lab has been certified by the College of American Pathologists since October 2016, though it is not required to be certified by any governing body.

Dr. Havier first described the general procedure regarding receiving, identifying and processing an individual urine sample. Dr. Havier stated that each sample is given

an initial screening (an amino-acid analysis), which identifies the presence of various drugs in the urine. If a urine sample is screened and evidence of a drug exists in the urine, the urine sample is transferred to a secure law-enforcement-testing portion of the lab for further testing and analysis known as a confirmation test.

Dr. Havier described the confirmation test as a chemical extraction and analysis performed using gas chromatography and mass spectrometry. Dr. Havier stated that this is the procedure used by most labs doing this type of drug testing on urine samples. This process will identify the specific drug and provide the amount of the drug present in the sample based on the principle of mass fragmentation. Dr. Havier explained that an extract of the sample is injected into a column and is vaporized. The time it takes for the vapor of the drug to leave the column (the retention time) is one of the identifying characteristics of the drug. Once the vapor leaves the column it enters into the mass detector, where it encounters a high electronic beam that fragments the vapor. The machine measures the weight of these fragments and the identity of the drug is determined. The amount of the drug present in the sample is used to determine the "cut-off level." The cut-off level refers to the amount of a drug present in a given sample and whether that amount is enough for the sample to be considered positive. The cut-off level is established by federal guidelines.

Dr. Havier testified that the State Lab conducted a test on appellant's urine sample (the sample) in April 2015. Dr. Havier then read from a document dated April 20, 2015, marked as "Ponce 8," which Dr. Havier described as the results of the initial test performed on the sample. Dr. Havier testified that these results indicated that the sample had tested positive for cocaine. Dr. Havier then testified that the positive sample was transferred for a confirmation test (gas chromatography/mass spectrometry (GCMS) test).

Dr. Havier then read from a document dated April 23, 2015, marked as "Ponce 9," which he described as an internal chain-of-custody form relative to the tests performed on the sample. He testified that the confirmation test was performed over two days: April 21, 2015, and April 22, 2015. Two aliquots were tested on the first day and three on the second. An aliquot is a small portion of the sample that is inserted into

the GCMS machine for testing. He explained that each aliquot tested is diluted with a varying amount of neutral or "blank" urine. Certain dilutions will give a more accurate result based on the concentration of the drug in the original sample.

Dr. Havier stated that on the first day of testing the results were out of acceptable range due to a very large amount of cocaine present in the aliquots tested. The aliquots had to be further diluted to account for the large amount of cocaine present in the sample, and then re-tested.

Dr. Havier then read from documents marked as "Ponce 73" and "Ponce 74," respectively. He identified these as the results of the confirmation testing performed on the sample on April 22, 2015. He testified that the sample was found to contain cocaine, cocaethylene, and benzoylecgonine. He testified that cocaethylene is a metabolite formed in the body when cocaine is consumed in conjunction with alcohol, and that benzoylecgonine is the major metabolite of cocaine. Dr. Havier stated that there were 227 nanograms per milliliter of cocaine, 103 nanograms per milliliter of cocaethylene, and 3,662.4 nanograms per milliliter of benzoylecgonine present in the sample. He testified that the State Lab cut-off rate was 100 nanograms per milliliter for all three substances. Any sample found to contain 100 nanograms or more per milliliter is considered a positive result. The sample tested in the instant matter was found to contain well beyond the cut-off amount. Dr. Havier concludes that the sample was positive for cocaine. He stated that this conclusion was made within a reasonable degree of scientific certainty.

### **Testimony for Appellant**

Dr. Lyle Hayes, Ph.D.

Dr. Lyle Hayes (Dr. Hayes) is a certified New York State forensic toxicologist. He testified as an expert in toxicology. Dr. Hayes reviewed the report and results of the test performed at the State Lab on the Ponce urine sample and he drafted a report based on his review. He did not conduct his own test on any urine sample.

Dr. Hayes testified that he reviewed the State Lab results in order to evaluate the standard operating procedures, chain of custody, operation of the instruments, and interpretation of the results. Dr. Hayes testified that the State Lab was not certified by any certifying agency at the time the test on the Ponce sample was performed, and that such certification is important to ensure proper testing.

Dr. Hayes testified that he found various procedural and reporting problems with the State Lab reports/results. Dr. Hayes drafted a report (A-1) based on his findings and conclusions.

Dr. Hayes then testified regarding Ponce 8 (previously described by Dr. Havier as the results of the initial test performed on the sample). He testified that this document showed that the corresponding sample screened positive for cocaine and its metabolites. Dr. Hayes testified that the date and time indicated on Ponce 8 is 13:49 (1:49 p.m.) on April 20, 2015. Dr. Hayes testified that according to another document he reviewed from the State Lab, the sample did not reach the State Lab until 1:56 p.m. Dr. Hayes concludes that this is a clear discrepancy with regards to the timing of the chain of custody, but notes that he failed to refer to this discrepancy in his report. (A-1.) Dr. Hayes does state in his report that there appear to be "a number of clerical and technical errors" in the State Lab records that call into question the reliability of the testing process.

Dr. Hayes then testified regarding the "unacceptable chromatographic results, as seen on pp. 378-380," and to "benzoylecgonine carryover in blank urine on p. 56" as described in his report. (A-1.) Dr. Hayes explained that pages 378-380 of the State Lab report (marked Ponce 378-80) reflect tests performed on March 24, 2015. He noted that the results did not have the proper ratios and were therefore questionable results. He added that remedial action would need to be taken to correct these flaws.

Ponce 56 indicates that on April 21, 2015, a test on blank urine detected benzoylecgonine at a concentration of -16.52. Dr. Hayes testified that he views two problems with this test. The first is that the concentration was a negative, which Dr. Hayes concludes is the result of the machine not being calibrated properly.



Dr. Hayes testified that this is not a major problem and can be corrected. The larger problem is that benzoylecgonine was found to be present at all in the blank urine tested. Dr. Hayes concluded that the testing column was "dirty" or contaminated when the test was conducted. A "dirty" column means there are residual elements of a prior sample remaining in the column. Dr. Hayes states that this is an issue that should be addressed by some sort of remedial action, and he saw no remedial action taken by the State Lab based on his review of the records.

Dr. Hayes then testified with regard to Ponce 9. He notes that on line three of the document the lab technician notes, "1:50, 1:20 & straight—qualifiers out." Dr. Hayes opines that this means that a test was performed on the Ponce sample at dilutions of 1:50, 1:20 and straight (meaning not diluted), and that the test did not return acceptable results. Dr. Hayes testified that under such circumstances the sample should be diluted further and retested for a more accurate result.

On cross-examination, Dr. Hayes testified that he has never been to the State Lab or inspected any of the equipment there. He testified that he had not conducted any of his own tests on either the sample tested at the State Lab or the split sample. Of the two labs he currently works at, neither perform such tests. He stated that the initial amino-acid test performed on the urine sample is not enough for a confirmation, and added that amino-acid tests will give a false positive approximately 20–40 percent of the time. He agreed that a confirmation test such as the one performed in this case is needed.

Dr. Hayes then testified to a series of documents included in the State Lab's report. He testified to a document identified as Ponce 133 and stated that he reviewed this document in preparing his report. Dr. Hayes agreed that this document shows the identification criteria for benzoylecgonine. He testified to a document identified as Ponce 130 and stated that he reviewed this document in preparing his report. Dr. Hayes agreed that this document shows the identification criteria for benzoylecgonine. Dr. Hayes testified to a document identified as Ponce 134 and stated that he reviewed this document in preparing his report. Dr. Hayes agreed that this document shows the identification criteria for cocaine. Dr. Hayes testified to a

document identified as Ponce 135 and stated that he reviewed this document in preparing his report. Dr. Hayes agreed that this document shows the identification criteria for cocaethylene.

Dr. Hayes testified that the result of the Ponce test as per the report is positive (for cocaine), and that he cannot testify within a reasonable degree of scientific certainty that the result of the test performed on the Ponce sample was a false positive. (See Transcript of April 28, 2017, at 97, lines 1–3.)

Dr. Hayes then testified that with regard to Ponce 9, the notation “qualifiers out” does not mean the test sample is negative for cocaine, nor does it mean the test sample should have come back negative. Dr. Hayes testified that in his opinion “qualifiers out” means the test result is unreliable because the qualifiers were not in the acceptable range. Dr. Hayes testified that diluting the sample further could remedy this issue. Dr. Hayes also testified that he believed that “qualifiers out” referred to the tests performed at the 1:50 and 1:20 dilutions on April 21, 2015.

Dr. Hayes testified that the qualifiers were within the acceptable range on the April 22 test performed, and that he saw no problem with the results from the April 22 test (the results upon which the subject removal is predicated).

Dr. Hayes testified that the errors he identified in his expert report (A-1) are not sufficient to negate the entire test performed at the State Lab, but are sufficient to call the results into question. He further testified that he does not know if the positive result on the Ponce sample is a false positive.

Dr. Robert Havier, Ph.D.

Dr. Havier was recalled to rebut Dr. Hayes’ testimony. Dr. Havier testified that the notation “qualifiers out” in Ponce 9 referred to the tests performed on the Ponce sample with the wrong dilutions on April 21, 2015, and not to the tests on the Ponce sample with the proper dilutions on April 22, 2015. Dr. Havier reiterated his prior

testimony that certain dilutions will give a more accurate result based on the concentration of the drug in the sample tested.

With regard to the discrepancy between the time stamp on Ponce 1 and the time shown on Ponce 8, Dr. Javier explained that Ponce 1 is stamped with a Bates stamp by a receptionist at the front desk. He stated that this Bates stamp may be adjusted by the receptionist at any time and is not necessarily accurate. The time on Ponce 1 has no correlation to the functionality or times kept by any of the equipment in the State Lab. The time on Ponce 8 is the time recorded by the amino-acid testing machine and does not relate to the Bates stamp machine at the front desk. He testified that the difference in time between the Bates stamp on Ponce 1 and the time indicated on Ponce 8 in no way affects the outcome of either the amino-acid test or the confirmation test.

#### **Arguments of the Parties and Additional Findings of Fact**

Dr. Javier testified that the Ponce urine sample tested positive for cocaine, cocaethylene and benzoylecgonine, and that this conclusion was made within a reasonable degree of scientific certainty.

Appellant asserts that the test conducted on his urine sample at the State Lab was flawed and therefore produced a false positive. He relies on his expert's report (A-1) to illustrate these flaws. Exhibit A-1 was produced by Dr. Hayes, a forensic pathologist, who reviewed 480 pages of documents obtained from the State Lab (Ponce 1 through Ponce 480) and drafted a report based on this review.

Dr. Hayes first raises the issue that the State Lab is not certified by any governing body or institution, and argues that such certification is required to ensure proper testing. Dr. Javier testified that the Lab has been certified by the College of American Pathologists since October 2016, but noted that there is no law or regulation requiring the State Lab to be certified.

The issue of certifying the State Lab speaks to the internal policies and procedures of the lab as a whole, and calls into question the results of any and all tests

performed at the State Lab. I reject this argument, as petitioner has failed to show how certification would change or in any way affect the State Lab or its policies and procedures. The general policies and procedures of the State Lab are not on trial, and this tribunal is not in a position to evaluate whether all tests performed at the State Lab are flawed.

On page 2, paragraph 6, of the expert report Dr. Hayes points to “unacceptable chromatographic results, as seen on pp. 378–380” and to “benzoylecgonine carryover in blank urine on p. 56.” (A-1.) The testimony of both expert witnesses confirms that pages 378–380 as referred to by Dr. Hayes correspond to a machine-calibration test run on blank urine done on March 24, 2015, almost one full month before the Ponce sample was tested. Dr. Havier testified that this March 24, 2015, calibration test performed on blank urine has absolutely no bearing on the April 21 and 22, 2015, tests performed on the Ponce sample at the State Lab. Since the “unacceptable chromatographic results, as seen on pp. 378–380” do not refer to tests actually performed on the Ponce sample, I find they are not relevant in determining the validity of the tests performed on the Ponce sample at the State Lab on April 21 and 22, 2015.

With regard to “benzoylecgonine carryover in blank urine on p. 56,” Dr. Hayes testified that this was a “red flag” because it showed that the testing machine used by the State Lab found traces of benzoylecgonine in “blank” or “clean” urine. Dr. Hayes testified that this false positive is likely due to the machine being “dirty,” meaning there is residual benzoylecgonine present in the machine from a prior test. Dr. Hayes testified that in such an instance remedial action needs to be taken to ensure a good result on future tests.

Dr. Havier testified that the test highlighted here by Dr. Hayes was a calibration test routinely performed to ensure that the machine is functioning correctly. Dr. Havier testified that it is common for residual substances to be present in the machine from a prior test. Dr. Havier testified that in order to remediate this issue the standard procedure is to run a test on blank urine through the machine prior to testing an actual donor sample. The blank urine sample clears out any residual substances from the prior donor sample tested and insures that the next test will not have any residual

substances present. Dr. Havier testified that this procedure was followed when testing the Ponce sample, and that there was therefore no residual cocaine or cocaine metabolite present in the testing column of the machine when the Ponce sample was tested.

Also regarding Ponce 56, Dr. Hayes notes that the benzoylecgonine concentration was recorded as -16.52. Dr. Hayes testified this reading was incorrect on its face since the machine recorded a concentration less than zero. Dr. Hayes subsequently testified that it was not a major problem and could be remediated by further dilution.

With regard to the test performed on the Ponce sample on April 21, 2015, Dr. Hayes testified that he understood "qualifiers out" as indicated on Ponce 9 to refer to a test performed at dilutions of 1:20 and 1:50 on April 21, 2015. As was explained in detail by Dr. Havier, "qualifiers out" as indicated on Ponce 9 referred to a 1:10 dilution performed on April 21, 2015, and was a notation made to show why the 1:10 dilution was insufficient and instructing further testing to be performed at 1:20 and 1:50. This further testing was performed on April 22, 2015, at the new dilutions. Dr. Hayes testified that this would constitute remedial action, and stated there is nothing wrong with the April 22, 2015, Ponce test results.

Dr. Hayes also testified that he does not know if the positive test result on the Ponce sample at the core of this case was a false positive.

Finally, appellant raises the issue of a discrepancy regarding the time recorded on the April 21, 2015, Bates stamp on Ponce 1 and the time recorded on the April 21, 2015, amino-acid-test computer-printout sheet (Ponce 8). While I find that there is a clear discrepancy between the two times indicated, I do not find that the discrepancy is a fatal flaw, nor do I find that the discrepancy tends to disprove the positive result of the confirmation test performed on April 22, 2015. The arguments against the validity of the test as presented by appellant fall into three general categories: 1) flaws in the testing procedures at the State Lab generally; 2) flaws regarding tests performed on the Ponce sample; and 3) flaws regarding tests performed on urine samples other than the Ponce

sample. I **FIND** that the general testing procedures of the New Jersey State Toxicology Laboratory are adequate to perform a valid test on a urine sample and procure a result within a reasonable degree of scientific certainty. I therefore reject any argument predicated upon scrutiny of those procedures generally.

Appellant argues that if any test performed in the lab was flawed, then the test performed on the Ponce sample may, too, be flawed. I reject this argument for two reasons. First, I do not find that appellant did, in fact, prove that any past test was flawed, and, second, even if some test given at the State Lab on some other date was flawed, this would not disprove the validity of the test performed on the Ponce sample on April 22, 2015, the test upon which the subject removal is predicated.

In the case at bar, appellant has stipulated that the only issue before me is the validity of the test performed on the Ponce urine sample and whether any such flaw resulted in a false positive. The Township of North Bergen has shown by a preponderance of the credible evidence that the test performed on the Ponce urine sample at the State Lab was a valid test, and I **FIND** the result of that test to be a valid result.

### **CONCLUSIONS OF LAW**

The Civil Service Act and its associated regulations govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1, et seq. 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. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. Among the causes for major discipline are incompetency, inefficiency or failure to perform duties; inability to perform duties; and conduct unbecoming a public employee. N.J.A.C. 4A:2-2.3(a)(1), (3), (6).

The issues to be determined at the de novo hearing are whether the employee is guilty of the charges brought against him/her and, if so, the appropriate penalty, if any, that should be imposed. Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Bock, 38 N.J. 500 (1962).

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

[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).]

Even more troubling is the fact that illicit drugs may be involved. “Every police officer understands that an officer who uses or sells drugs is a threat to the public.” Rawlings v. Police Dep’t of Jersey City, 133 N.J. 182, 189 (1993).

In this matter, the Township bears the burden of proving the charges against appellant by a preponderance of the credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). Thus, it is my duty to decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth. Jackson v. Delaware, Lackawanna and W. R.R., 111 N.J.L. 487, 490 (E. & A. 1933). Evidence is said to preponderate “if it establishes ‘the reasonable probability of the fact.’” Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). The evidence must “be such as to lead a reasonably cautious mind to the given conclusion.” Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958).

In the case at bar, appellant provided a urine sample that tested positive for cocaine. Appellant has attacked the general testing procedures of the State Lab and the results of a few isolated tests that his expert found to be “questionable” in order to raise a shadow of doubt over the test conducted on the urine sample. This tribunal is not swayed by the evidence presented by appellant. Appellant’s own expert testified that he cannot opine within a reasonable degree of forensic certainty that Officer Ponce’s positive test was a false positive. (See Transcript dated April 28, 2017, at 97,

lines 1–3.) The preponderance of the credible evidence weighs in favor of the respondent Township of North Bergen.

The only remaining issue left to address is whether termination is the appropriate form of discipline for appellant's actions. In making this determination one must consider the nature of the misconduct, the nature of the employee's job, and the impact of the misconduct on the public interest. Depending on the conduct complained of, major discipline may be imposed. Major discipline may include removal, disciplinary demotion, or a suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4. Nevertheless, the law is also clear that a single incident can be egregious enough to warrant removal without reliance on progressive-discipline policies. See In re Herrmann, 192 N.J. 19, 33 (2007) (Division of Youth and Family Services worker who snapped lighter in front of five-year-old), in which the Court stated:

. . . judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580, 410 A.2d 686 (1980).

In the case at bar, respondent argues that North Bergen's drug policies comport with the New Jersey Attorney General Guidelines, which provide for termination in instances of a positive drug test. Appellant agreed, and stipulated on the record that if I find that the test results are reliable, then by way of statute the only possible resolution of the case is termination. (See Transcript dated April 26, 2017, at 7, lines 2–4.) I therefore **CONCLUDE** that removal is the appropriate discipline for a law-enforcement officer who used illegal drugs. For purposes of this administrative disciplinary proceeding alleging incompetency, inefficiency or failure to perform duties; inability to



perform duties; and conduct unbecoming a public employee, I **CONCLUDE** that the North Bergen Police Department has proven by a preponderance of the credible evidence that its determination to remove appellant was proper.

**ORDER**

Accordingly, it is **ORDERED** that the disciplinary action entered in the Final Notice of Disciplinary Action of the North Bergen Police Department against appellant Francisco Ponce is hereby **AFFIRMED**.

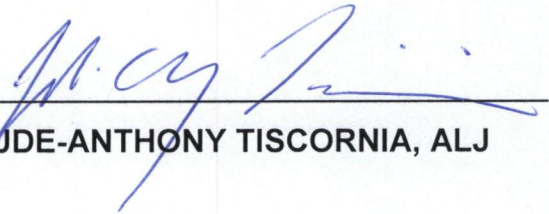
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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. 52:14B-10.

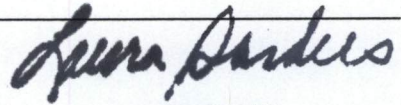
Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**,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

September 5, 2017

DATE

  
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JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency:

  
\_\_\_\_\_  
DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE

Mailed to Parties:

SEP 6 2017

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**APPENDIX**

**LIST OF WITNESSES**

For Appellant:

Dr. Lyle Hayes, Ph.D.

For Respondent:

Dr. Robert Havier, Ph.D.

**LIST OF EXHIBITS IN EVIDENCE**

For Appellant:

Ponce 1 to Appellant's Discovery Binder  
480

A-1 Report of Dr. Lyle Hayes, Ph. D.

For Respondent:

R-1 Preliminary Notice of Disciplinary Action