



STATE OF NEW JERSEY

In the Matter of Gerald J. Ebner
Bayside State Prison, Department of
Corrections

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2018-7
OAL DKT. NO. CSR 09618-17

ISSUED: MARCH 29, 2018 BW

The appeal of Gerald J. Ebner, Senior Correction Officer, Bayside State Prison, Department of Corrections, removal effective June 13, 2017, on charges, was heard by Administrative Law Judge Kathleen M. Calemno, who rendered her initial decision on January 31, 2018. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of March 27, 2018, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Gerald J. Ebner.

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 27TH DAY OF MARCH, 2018



Deirdre L. Webster Cobb
Acting Chairperson
Civil Service Commission

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 09618-17

AGENCY DKT. NO. N/A

2018-7

**IN THE MATTER OF GERALD J. EBNER,
BAYSIDE STATE PRISON,
DEPARTMENT OF CORRECTIONS.**

• **Michael L. Testa, Esq.**, for appellant (Testa, Heck, Testa and White, attorneys)

Andy Jong, Deputy Attorney General, for respondent (Gurbir S. Grewal, Attorney General of New Jersey, attorney)

Record Closed: January 19, 2018

Decided: January 31, 2018

BEFORE KATHLEEN M. CALEMMO, ALJ:

STATEMENT OF THE CASE

Senior Corrections Officer (SCO) Gerald J. Ebner (appellant) appeals the decision of the Department of Corrections (DOC), Bayside State Prison (respondent) to remove him from employment. Respondent charged Ebner with the following violations: N.J.A.C. 4A:2-2.3(a)(6), Conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(12), Other sufficient cause; and DOC Human Resource Bulletin (HRB) 84-17, including: C1, reporting to work unfit for duty; C2, reporting to work for duty while under the influence of

intoxicating liquors or drugs; C11, conduct unbecoming an employee; and E1, violation of a rule, regulation, policy, procedure, order or administrative decision.

PROCEDURAL HISTORY

Bayside issued a Preliminary Notice of Disciplinary Action (PNDA) dated March 9, 2017, notifying Ebner of the charges against him. (R-20.) After a departmental hearing held on March 25, 2017, Bayside sustained the following charges and incorporated them into a Final Notice of Disciplinary Action (FNDA) dated June 13, 2017, with a proposed penalty of removal from employment: N.J.A.C. 4A:2-2.3(a)(6), Conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(12), Other sufficient cause; and the following violations of DOC Human Resource Bulletin (HRB) 84-17: C1, reporting to work unfit for duty; C2, reporting to work for duty while under the influence of intoxicating liquors or drugs; C11, conduct unbecoming an employee; and E1, violation of a rule, regulation, policy, procedure, order or administrative decision. (R-10.) The appellant requested a hearing and the matter was transferred to the Office of Administrative Law (OAL), where it was filed on July 5, 2017, to be heard as a contested case. N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. I heard the matter on December 4, 2017 but kept the record open for post-hearing submissions. After receipt of the post-hearing submissions, I closed the record on January 19, 2018.

FACTUAL DISCUSSION

On March 9, 2017, Ebner reported to duty at Bayside State Prison for his 6:00 a.m. shift where he was assigned to A-Unit. At approximately 9:45 a.m., Lieutenant McCarthy was notified by SCO Meyers¹ that she suspected Ebner of being intoxicated. Myers recorded her observations on an Special Custody Report form dated March 9, 2017 with a time of incident as 9:45 a.m. (R-1.) McCarthy contacted his supervisor, Lieutenant Barnes, and reported to A-Unit to evaluate Barnes for himself. McCarthy's observations of possible signs of intoxication, including slurred speech, glassy eyes, and a strong smell

¹ Senior Corrections Officer Meyers unfortunately passed away prior to the hearing.

of alcohol, were noted on his incident report. (R-2.) Upon notification from McCarthy, Barnes also reported to A-Unit and prepared a report indicating that he perceived Ebner to smell like alcohol and slur his speech. (R-3.) Ebner was relieved of duty, his union representative was contacted, and he was escorted to the Special Investigations Division (SID). Per departmental policy, Ebner was subjected to a breathalyzer test. Deputy Chief Naughton administered the test to Ebner using a machine known as the Draeger Alcotest 6810, serial number ARDF-0273. As instructed, Ebner provided two breath samples. The result of the first sample was 0.174% and the result of the second sample was 0.167%. (R-7.) Both results were higher than the DOC's threshold limit of 0.04% for a positive alcohol test result. (R-14.) Ebner signed and dated the DOC testing form. (R-7.) Thereafter, respondent issued a PNDA dated March 9, 2015 to Ebner seeking his removal. After a hearing was held, respondent issued a FNDA dated June 13, 2016 upholding the removal. (R-20.)

There is no material dispute concerning the foregoing, which I **FIND** as **FACT**.

TESTIMONY

For Respondent:

Lieutenant Timothy McCarthy (McCarthy) was Ebner's supervisor at Bayside. He testified that after receiving the report about a suspicion of intoxication from SCO Meyers, he contacted Lieutenant Barnes and went to Unit A to meet with Ebner. Upon encountering Ebner and detecting the smell of alcohol, slurred speech, and red glassy eyes, McCarthy asked Ebner if he had been drinking. According to McCarthy, Ebner told him that he was drinking the previous night.

On cross-examination, McCarthy stated that he did a visual inspection of Ebner's work area and found no evidence of alcohol in the area.

Investigator Ruben Baca (Baca) is an Investigator for the DOC assigned to the SID at Bayside. Baca was present when Ebner was brought in for his breathalyzer test and remained in the room while Investigator Naughton administered the Alcotest. Baca testified that he had no contact with Ebner but even from a standing distance of approximately five feet, he could smell alcohol. The test process was video recorded. (R-9.) Baca recorded his observations in the incident report that was used at the department hearing. (R-4.)

On cross-examination, Baca could not recall what time Ebner's shift started but he knew that no alcohol had been found in Ebner's work area and that Ebner denied consuming any alcoholic beverages after 9:00 p.m. the previous night. He also stated that a fresh breathing tube is provided for every test but he did not put that information into his report.

Deputy Chief James Naughton (Naughton) administered the Alcotest to Ebner. On March 9, 2017, Naughton was at South Woods State Prison when he was contacted by Baca to come to Bayside to administer the Alcotest to Ebner. Walking into the interview room to meet with Ebner, he stated he could smell alcohol from the doorway, about six feet away. Naughton is trained and certified by Draeger, the manufacturer of the device. He received in-person training from a Draeger representative when the device was purchased and has taken on-line refresher courses. His Certificate dated August 13, 2012 qualified him to train and certify operators in the proper use and operation on the Draeger Alcotest 6810. (R-5.) His Certificate dated July 8, 2016 signified the completion of additional on-line course work to use and operate the devices. (R-6.)

Before administering the Alcotest, an accuracy test using a dry gas cylinder provided by Draeger is performed. The acceptable limit range for the accuracy test is 0.035% to 0.045%. Naughton performed the accuracy test and recorded the result of .036% in the log book. (R-8.) After the accuracy test, Naughton performed a screening test. Naughton testified that the machine must test to zero to proceed. The screening test registered a 0.0% allowing Naughton to proceed with the test. After clearing, Ebner

was provided a new mouthpiece and told to breathe into the device. Ebner's first breathing sample result was 0.173%. Because the result was above the limit of 0.04%, a confirmation test is required after a fifteen-minute waiting period between tests. After waiting the allotted time, Naughton instructed Ebner to provide another sample. The confirmation sample result was 0.167%. After the confirmation test, Naughton performed another accuracy test and received a reading of 0.039%, within the acceptable limits. Naughton recorded the test results and attached the printed test results from the machine to his report. (R-7.)

Naughton testified that the clock on the machine was approximately nineteen minutes fast. He documented that information on the testing forms (R-7) and Baca's report (R-4). He testified that the timer did not affect the accuracy of the test because the readings of the first and last accuracy tests were within the acceptable range, and the screening test reading recorded the required 0.0% needed to start the test.

The videotape of the process of administering the Alcotest to Ebner was played during Naughton's testimony at the hearing. It was noted that Ebner followed the directions. He was given a new mouthpiece for each test. He sat and calmly waited during the fifteen-minutes between each test. Naughton completed the testing form and Ebner signed the form certifying that the results were accurately recorded on the form. (R-7.)

Senior Investigator Randy Valentin (Valentin) is a certified Operator and Trainer in the proper use and operation of the Draeger Alcotest 6810. (R-10, R-11.) He trains new investigators on the machine and he is responsible for performing the calibrations. He testified that there is no separate certification for performing calibrations, just training. Over the course of six years, Valentin performed eighty to one-hundred Alcotests and at least forty calibrations on the machines. A Certification of Calibration was given by Draeger for the machine used on Ebner on August 9, 2012. (R-12.) Since then, the yearly calibrations are performed by qualified operators and the results of the calibrations are kept on the log book stored with the machine. (R-8.) In addition, accuracy tests are

performed once per month if the machine is not used. If the results are over the guidelines, a Draeger representative must be contacted.

On cross-examination, Valentin testified that only a select few investigators perform the calibrations on the machine. The DOC Internal Management Procedure #012, Titled: Prevention of Employee Alcohol Impairment and Related Testing, Chapter IV, Section C, Subsection B states:

ATD² Calibration – The ATD is required to receive calibration once per calendar year. Designated SID personnel trained and certified in the calibration process will perform the calibration at relevant intervals. (R-13.)

The log shows that Valentin performed the calibration on September 13, 2017. Before that it shows that a calibration was performed on September 9, 2016 by Eugene Johnson. (R-8.) Valentin testified that the canisters used for calibration are supplied by Draeger and the process is similar to the accuracy test. He also testified that the machine must be successfully calibrated each year or it will be locked. Officer Johnson did not testify and no Certifications of his training was presented. Valentin stated that Johnson retired from SID. According to Valentin, a select few members of SID are picked to perform the yearly calibration tests. The training received is the same as the Operator Trainer certificate.

Associate Administrator James Stigliano (Stigliano) testified about the reasons for the DOC policy against employee alcohol impairment. While the primary reason is safety, he also mentioned the emergent nature of the job, and the handling of fire arms. He referred to the DOC policy that states that an employee with a law enforcement title who has an alcohol test reading from 0.04% to 0.079% is deemed unavailable for work. Under the policy, if the officer's test is 0.08% or above, for a first offense, the officer is given the opportunity to enter and successfully complete an alcohol treatment program. A second offense is removal from office. (R-13 and R-16.) Stigliano testified that Ebner

² Alcohol Testing Device (ATD)

was provided with the policy regarding alcohol impairment and he signed the form acknowledging that he was given a copy of the policy, a pamphlet for services, and that the perimeters of his employment were explained to him. (R-15.)

FINDINGS OF FACTS

After carefully reviewing the exhibits and documentary evidence presented and after having had the opportunity to listen to testimony and observe the demeanor of the witnesses, I **FIND** the following to be the additional relevant and credible **FACTS** in this matter:

Ebner was aware of the Level I Policy PSM.001.023 referencing Alcohol Impairment and Related Testing. (R-14 and R-15.) Under the policy, an employee with a law enforcement title is deemed unavailable for work with an alcohol test result of 0.04% to 0.079%. In addition, the policy requires that an individual with an alcohol test result of 0.08% or higher shall be removed unless the employee successfully completes a thirty-day alcohol treatment program for the first offense. For a second offense, the employee is removed. By his signature on the form, I **FIND** as **FACT** that Ebner was provided a copy of the alcohol policy that set forth the perimeters of his employment and the consequences for violations.

When assessing credibility, inferences may be drawn concerning the witness' expression, tone of voice and demeanor. MacDonald v. Hudson Bus Transportation Co., 100 N.J. Super. 103 (App. Div. 1968). Additionally, the witness' interest in the outcome, motive or bias should be considered. Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963).

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).

Naughton and Valentin testified credibly about their knowledge of the Draeger Alcotest 6810. They are both certified as Operator Trainer which qualifies them to train and certify other Operators in the proper use and operation of the Draeger Alcotest 6810. Naughton described the process and testified that the accuracy readings were within the acceptable range before and after the testing. He also testified that the machine recorded the required zero before the test was administered to Ebner. Valentin testified about the calibration process and the log book (R-8) showed that this machine received the required yearly calibrations by designated SID personnel. Therefore, I **FIND** that the Draeger Alcotest 6810 was an adequate means of testing Ebner and such results are reliable and worthy of acceptance as testified to by Naughton and Valentin.

LEGAL DISCUSSION AND CONCLUSION

Under the Civil Service Act, a public employee may be subject to major discipline for various employment-related offenses, N.J.S.A. 11A:2-6. In an appeal from a disciplinary action or ruling by an appointing authority, the appointing authority bears the burden of proof to show that the action taken was appropriate. N.J.S.A. 11A:2.21; N.J.A.C. 4A:2-1.4(a). The authority must show by a preponderance of the competent, relevant and credible evidence that the employee is guilty as charged. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). When dealing with the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and "penalty" on appeal, based on the charges. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Bock, 38 N.J. 500 (1962).

The first charge against Ebner is conduct unbecoming a public employee. N.J.A.C. 4A:2-2.3(a)(6). "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 Atlantic 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, supra, 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)).

Appellant’s status as a senior correction officer subjects him to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). A corrections 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.” Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Maintenance of strict discipline is important in military-like settings such as police departments, prisons and correctional facilities. Rivell v. Civil Serv. Comm’n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967). Refusal to obey orders and disrespect of authority cannot be tolerated. Cosme v. Borough of E. Newark Twp. Comm., 304 N.J. Super. 191, 199 (App. Div. 1997).

The need for proper control over the conduct of inmates in a correctional facility and the part played by proper relationships between those who are required to maintain order and enforce discipline and the inmates cannot be doubted. We can take judicial notice that such facilities, if not properly operated, have a capacity to become “tinderboxes.”

[Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305-06 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).]

In the present case, McCarthy testified credibly that after having received a report of suspected intoxication, he observed the smell of alcohol from Ebner, and observed red glassy eyes and slurred speech. Those observations were all noted in the reports generated because of the incident. (R-1 through R-4.) Baca and Naughton both testified that they could smell alcohol within five feet of Ebner's presence. Ebner contends that Bayside failed to meet its burden of proving that he violated a valid alcohol screening because there was no testimony offered or documents presented regarding the certification of Eugene Johnson who performed the calibration test on September 9, 2016. Valentin testified that he performed the calibration for September 13, 2017, after the machine was used on Ebner. Therefore, Ebner argues, Bayside failed to show that the calibration was performed in accordance with DOC's procedures that require a calibration test once per calendar year by a designated SID personnel "trained and certified in the calibration process." (R-13.) Valentin testified that there are no separate certifications for the SID personnel who are designated to calibrate the Draeger Alcotest 6810. He testified that designated investigators received training from Draeger on how to calibrate the machine. This particular machine received a Certification of Calibration from Draeger in 2012 and since that date it receives its yearly calibration from the Draeger trained designated SID personnel. (R-12.) Valentin testified that the calibration test is similar to the accuracy test with the only difference being the type of canister used. As with the accuracy test, the canister is supplied by Draeger. The log book, kept with the device, indicated that the machine was calibrated by Eugene Johnson on September 9, 2016. (R-8.) Valentin testified that Johnson was retired from SID. The actual machine was brought to the hearing and presented. There is also a computer log on the machine that records the calibration. Valentin testified that the machine must be calibrated successfully each year or it will lock.

Ebner seeks to impose a higher standard than what is required in the OAL. Bayside must prove by a preponderance of the credible evidence that Ebner was under the influence of intoxicating liquors while on duty. Bayside presented testimony and business reports that Ebner exhibited signs of intoxication and smelled of alcohol. Naughton testified that the accuracy tests for the Draeger Alcotest 6810 were within the

acceptable range. He received the required zero reading before the first sample. The first test reading was .173% and his second test reading was .167%. The log book showed that the machine was calibrated on a yearly basis.

Therefore, I **CONCLUDE** that Bayside proved by a preponderance of the credible evidence that Ebner's conduct was unbecoming a public employee by reporting for duty while under the influence of alcohol.

Appellant has further been charged with violating N.J.A.C. 4A:2-2.3(a)(12), "Other sufficient cause." Specifically, Ebner is charged with violating DOC Human Resource Bulletin (HRB) 84-17, including: C1, reporting to work unfit for duty; C2, reporting to work for duty while under the influence of intoxicating liquors or drugs; C11, conduct unbecoming an employee; and E1, violation of a rule, regulation, policy, procedure, order or administrative decision. (R-16.) Other sufficient cause is an offense for conduct that violates 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. Appellant's conduct was such that he violated this standard of good behavior. I deemed that the testimony showed that Ebner reported to duty smelling of alcohol, slurring his speech, and with red glassy eyes giving rise to a reasonable suspicion of alcohol use. Per department policy he was subjected to a breathalyzer test for alcohol. His initial reading and confirmation tests were positive. His initial reading of 0.173% and his confirmation test of 0.167% were significantly higher than the 0.04% allowable reading under the policy. As such, I **CONCLUDE** that Bayside proved by a preponderance of the credible evidence that Ebner violated Bayside's alcohol policy.

PENALTY

In West New York v. Bock, 38 N.J. 500, 522 (1962), which was decided more than fifty years ago, our Supreme Court first recognized the concept of progressive discipline, under which "past misconduct can be a factor in the determination of the appropriate penalty for present misconduct." In re Herrmann, 192 N.J. 19, 29 (2007) (citing Bock,

supra, 38 N.J. at 522). The Court therein concluded that “consideration of past record is inherently relevant” in a disciplinary proceeding, and held that an employee’s “past record” includes “an employee’s reasonably recent history of promotions, commendations and the like on the one hand and, on the other, formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously brought to the attention of and admitted by the employee.” Bock, 38 N.J. 523-24.

“Although we recognize that a tribunal may not consider an employee's past record to prove a present charge, West New York v. Brock, 38 N.J. 500, 523 (1962), that past record may be considered when determining the appropriate penalty for the current offense.” In re Phillips, 117 N.J. 567, 581 (1990). Ultimately, however, “it is the appraisal of the seriousness of the offense which lies at the heart of the matter.” Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994). The question to be resolved is whether the discipline imposed in this case is appropriate.

This is Ebner's second violation of the following sections of HRB 84-17: C1 – reporting to work unfit for duty; C2- reporting for duty under the influence of intoxicating liquors or drugs; and C11- conduct unbecoming a public employee. On March 24, 2016, Bayside issued a FNDA to Ebner, stemming from a February 2, 2016 incident of suspected intoxication. At that time, Ebner's Alcotest results were 0.118% and 0.105%. (R-18.) Ebner accepted a settlement agreement involving his attendance at an alcohol treatment program and thirty-day suspension. (R-17.) As set forth in HRB 84-17 – Table of Offenses and Penalties, a second violation of C2 and C11 is removal. There is no doubt that Ebner understood the policy regarding alcohol impairment while on duty. (R-15.) The Associate Administer of Bayside, Stigliano, credibly testified about the alcohol policy and its justifications. Accordingly, I **CONCLUDE** that Bayside's action in removing Ebner from his position was justified.

DECISION AND ORDER

Respondent Bayside has proven by a preponderance of credible evidence the following charges against Ebner: N.J.A.C. 4A:2-2.3(a)(6), Conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(12), Other sufficient cause; and the following violations of DOC Human Resource Bulletin (HRB) 84-17: C1, reporting to work unfit for duty; C2, reporting to work for duty while under the influence of intoxicating liquors or drugs; C11, conduct unbecoming an employee; and E1, violation of a rule, regulation, policy, procedure, order or administrative decision. Accordingly, I **ORDER** that these charges be and are hereby **SUSTAINED**. Furthermore, I **ORDER** that the penalty of removal 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. 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.

January 31, 2018
DATE

Kathleen M. Calemno
KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

January 31, 2018

Date Mailed to Parties:

January 31, 2018

cmo

APPENDIX
WITNESSES

For Appellant:

None

For Respondent:

Lieutenant Timothy McCarthy
SID Investigator Ruben Baca
Deputy Chief James Naughton
SID Investigator Randy Valentin
Associate Administrator James Stigliano

EXHIBITS

For Appellant:

None

For Respondent:

- R-1 Special Custody Report of SCO Meyers – 3/9/2017
- R-2 Special Custody Report of Sgt. McCarthy – 3/9/2017
- R-3 Special Custody Report of Lt. Barnes – 3/9/2017
- R-4 Investigation Report of Inv. Baca – 3/13/2017
- R-5 Draeger Operator Trainer Certificate of Naughton – 8/13/2012
- R-6 Draeger Operator Certificate of Naughton – 7/8/2016
- R-7 Alcotest Forms of Ebner – 3/9/2017
- R-8 Log of Draeger Alcotest 6810

- R-9 DVD of Ebner being administered the Alcotest
- R-10 Draeger Operator Trainer Certificate of Valentin – 9/14/2017
- R-11 Draeger Operator Certificate of Valentin – 7/12/2016
- R-12 Draeger Certificate of Calibration for Alcotest Device 6810 – 8/9/2012
- R-13 Special Investigations Division Management Procedure #102
- R-14 DOC Policy Number PSM.001.023
- R-15 Ebner's receipt of Policy Number PSM.001.023
- R-16 DOC HRB 84-17
- R-17 Ebner Settlement Agreement
- R-18 FNDA – 3/24/2016
- R-19 Work History of Ebner
- R-20 FNDA – 6/13/2017 and PNDA (These documents were marked for identification as Exhibit A and moved into evidence as R-10. However, during the hearing, R-10 was inadvertently used for Exhibit J – Draeger Operator Trainer Certificate for Valentin. To avoid confusion of these documents, I changed the designation of the FNDA – 6/13/2017 and PNDA to R-20.)