


DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 3RD DAY OF FEBRUARY, 2021



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 03156-20

AGENCY DKT. NO. n/a 2020-2170

**IN THE MATTER OF
TIMOTHY HUDDY, MONMOUTH COUNTY
DEPARTMENT OF CORRECTIONS.**

Frank C. Cioffi, Esq., for appellant (Sciarra & Catrambone, L.L.C., attorneys)

Steven W. Kleinman, Special County Counsel, for respondent (Michael D. Fitzgerald,
Monmouth County Counsel, attorney)

Record closed: December 18, 2020

Decided: December 30, 2020

BEFORE SARAH G. CROWLEY, ALJ:

STATEMENT OF THE CASE

Appellant Timothy Huddy (Huddy) was removed from his position as a Correctional Officer at the Monmouth County Sheriff's Office (MCSO) as a result of a random drug test. The appellant was selected for a random drug test on October 30, 2019. The test came back positive for methamphetamine and amphetamine. The appellant requested a split sample which was sent to an approved independent laboratory, which confirmed the positive results for methamphetamine and amphetamine. The appellant has challenged the collection and testing procedures that were utilized by the county as not being in conformity with the AG guidelines.

PROCEDURAL HISTORY

A Preliminary Notice of Disciplinary (PNDA) action was served on December 20, 2019, and after a departmental hearing on January 6, 2020, a Final Notice of Disciplinary Action (FNDA) removing appellant was issued on February 7, 2020.

Huddy appealed and the matter was transferred to the Office of Administrative Law where it was filed as a contested matter. A hearing was conducted via Zoom on September 11, 2020, and the record closed after written submissions by the parties on December 18, 2020.

FACTUAL DISCUSSION AND FINDINGS

For Respondent

Jeffrey Equils (Equils) works in Internal Affairs (IA) for the MCSO. He is familiar with the drug testing procedures and was in charge of the random drug testing that was conducted on October 30, 2019. The officers are selected randomly, and he is given the list of officers that have been selected. When they report for their assigned duty, they are advised to report to Equils for the random sampling. He was in charge and recalled the day that Officer Huddy was selected for random testing. The officers report and fill out paperwork which indicates if they are taking any medications which may show up on the test. They also fill out the laboratory labels which will go into the containers for the samples that they provide. Equils recalled that the officers often fill out the label form incorrectly, so he took one of the samples from the box and made a copy of the label and filled it out as a sample for the officer to see. It should have their Social Security number and not their name on it. He used a random sample from the box and did not use one from any of the officers or the appellant.

Equils discussed the process of getting the two samples from the officers and how they place them on a tray. They are then put in the refrigerator in the evidence room. It is a small refrigerator, like the size on one for a college dorm. It takes a while to get all the samples because the officers that are selected are from different shifts and some may have vacation or leave time. After they collect all of them, someone takes them up to the laboratory in Newark, New Jersey.

They usually wait until they have all or most of them, since it is a long drive to the laboratory in Newark and they have different hours. The samples in this testing were not delivered to the laboratory in Newark until November 13, 2019. It is not always two weeks, sometimes it is sooner. He is not sure of why it was two weeks, but the Attorney General (AG) guidelines give them thirty days to get them to the laboratory. Equils was not certain of the temperature of the refrigerator or if the AG guidelines address the temperature of the refrigerator.

Officer Equils and the three other members of IA are the only people who have access to the evidence room. If any other evidence comes in when they are not there, it goes into a lock box until one of the IA officers is on duty to unlock and log something into the evidence room. It is always locked, there are two locks and no one else has access to the evidence room. There is not a lock on the refrigerator. Officer Equils discussed the drug policy at the Sheriff's office. There are policies which relate to the notification and testing procedures. There are rules and regulations from the County as well as Attorney General guidelines for the testing. All of the officer's sign an acknowledgment of the policies relating to drug and random testing. Huddy signed the acknowledgment form. Officer Equils identified the test results from Officer Huddy's random and split sample, both of which came back positive for amphetamine and methamphetamine, which are prohibited substances for which he has no prescription. The split sample was sent to the independent laboratory selected by the appellant's attorney. Following receipt of the test results from the independent laboratory, appellant was served with a Preliminary Notice of Disciplinary Action (PNDA), and thereafter, a Final Notice of Disciplinary Action (FNDA) seeking his removal. The discipline of removal is consistent with the County policy.

William Beckenstein (Beckenstein) is in the Internal Affairs department at the County. He is familiar with the drug testing policies. He delivered the samples in question to the laboratory in Newark on November 13, 2019. He removed them from the refrigerator in the evidence room and placed them in the back of the van to deliver to the laboratory in Newark. Beckenstein took the samples to Newark and filled out all the appropriate chain of custody documents related to the samples. He is not sure why it was almost two weeks until they had all the samples from the list from October 30, 2019. Only he and three other IA officers have access to the evidence room where the samples are stored, and the room is always locked.

Dr. Robert Havier (Havier) is the head Toxicologist for the State of New Jersey. He has been employed by the State of New Jersey for forty-one years. He has been qualified as an expert in forensic toxicology many times and his resume was submitted and entered into evidence. Havier was accepted as an expert in forensic toxicology. He identified his report (Exhibit R-5) which indicates a positive test for amphetamine and methamphetamine for appellant. He explained that there are always two samples taken, so the second can be sent out to another laboratory if such a request is made. Appellant's laboratory result came back above the acceptable level for amphetamine and methamphetamine. Dr. Havier discussed the chain of custody process and the document which indicated the two specimens were delivered by Mr. Beckenstein from the evidence room at the County to the laboratory in Newark. He testified that the appellant likely ingested methamphetamine, and that amphetamine is a metabolite of the methamphetamine.

Dr. Havier identified the documents which he referred to as the "litigation package" which are sent out after a positive test. Appellant requested that the split sample be sent to the independent laboratory. He is familiar with NMS laboratory which it was sent to. They are a nationally and internationally known company, and they did an analysis of the split sample which likewise came back positive for methamphetamine and amphetamine. Dr. Havier was questioned about the containers that are used for the samples. They are sealed and cannot be unsealed before they get to the laboratory for analysis. He testified that touching the container would not contaminate the contents of the sample. He also opined that touching the label would not contaminate the contents of the sample. Havier discussed the chain of custody and that everything was in order for this sample.

Lieutenant Sean Reese (Reese) is employed by the MCSO. He testified that there were 265 officers, 35 supervisors, and 300 sworn officers in October of 2019.

For Appellant

Timothy Huddy (Huddy) was hired in August 2007 and has been with Monmouth County law enforcement for twelve years. He has never been selected for random or reasonable suspicion drug testing. He was notified the morning of October 30, 2019, that he

was to report for testing. There were about ten officers in the room with him. He testified that Officer Equils was in charge and that after handing him his random sample he used his label to make a copy and then returned it to him. He knows that he went to the copy machine, but he did not watch him. He then returned the label to him which he filled out and placed in the random sample bottle. There were a lot of other officers in the room, but he recalls that Correction Officers Michael Dolan and Thomas Walsh were there.

Huddy was taking some medication for his heart and was filling out the forms, so he was not paying attention. On December 18, 2019, he was advised to report on December 19, 2019, because there was a positive on his drug test. He testified that he has never taken any illegal drugs before and he has been suspended without pay since December 19, 2019. He is not aware of any personal animosity by other officers.

Thomas Walsh (Walsh) is a corrections officer for the County and has been there since 2001. He worked for the youth detention center prior to that and has been in law enforcement for twenty years. He is familiar with the process of drug testing. Walsh was selected for a random drug test on October 30, 2019, and was in the room with the appellant on that day. He does not recall if Officer Equils handed him the package or he picked it up out of the box. Walsh did not observe Equils take Officer Huddy's label and make a copy of it.

Michael Dolan (Dolan) has been at MCSO for twenty-three years. He was hired in 1998. He was selected for random drug testing on October 30, 2019. Dolan thinks that his name was called during roll call or the watch commander told him to report. He does recall that Equils was making copies of something, but he did not see what it was. Dolan does not recall him asking Huddy for a label or recall seeing him take or return a label to Huddy.

Rebuttal Witnesses

James Robertson (Robertson) is a corrections officer at Monmouth County and is in the Internal Affairs unit. He testified that the evidence room is always locked and only the Internal Affairs officers have keys, which is him and three others. If there is evidence that comes in when they are not on duty, it is placed somewhere else until one of them is in. He does not recall if he

was involved in the random drug testing that was conducted on October 30, 2019. Robertson is often involved in random testing and he gives out the bottles and tells them what to do with them. Robertson then collects and secures the bottles. The refrigerator in the evidence room is small but could easily fit sixty samples. He is not aware of what the temperature of the fridge is or who checks it. He thinks they check it twice a year, but was not sure. Robertson testified that sometimes it take a little time to collect all the samples and they usually wait to get them all to take them to the laboratory in Newark.

Edward Brett (Brett) is a supervising investigator in the Internal Affairs Unit. He has been in that position for six or seven years. He works with Officers Robertson, Beckenstein and Equils. If Equils is not there, Brett supervises the drug testing. He is not aware of anyone ever tampering with the urine samples. The room is always locked and there are two locks on the door. Only IA officers have keys to the evidence room. He does not check the temperature of the refrigerator every day. He was questioned about the samples that were collected and why they were not taken to the laboratory on October 31, 2019, since they had thirty-four containers at that time. He was not sure why they waited to go up to the laboratory, but they have thirty days to get them there.

FINDINGS OF FACT

The resolution of the claims made by the appellant requires that I make a credibility determination regarding the critical facts. The choice of accepting or rejecting the witnesses' testimony or credibility rests with the finder of fact. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, 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 experiences 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 considering its rationality, internal consistency and the way it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718,749 (1963). A fact finder is free to weigh the evidence and to reject the testimony of a witness, even though not directly contradicted, when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which

alone, or in connection with other circumstances in evidence, excite suspicion as to its truth. In re Perrone, 5 N.J. 514. 521-22 (1950). See, D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to carefully observe the demeanor of the witnesses, it is my view that the witnesses were all credible except for Officer Huddy. I **FIND** that Officer Huddy allegation with respect to Officer Equils using his sample label was not credible, and not supported by any of the other witnesses. Moreover, I found Officer Equils credible and the facts surrounding the testing do not support the allegations of Officer Huddy as there would be no reason to take the label from an individual after they had handed them out, especially when he had an entire box of them. Moreover, the expert testimony of Dr. Havier, whom I found credible was that touching a label would not taint a sample. Accordingly, I **FIND** as follows:

1. On October 30, 2019, appellant was selected for random drug screening.
2. Officer Equils was the monitor for the MCSO during the random drug screening.
3. Officer Equils followed all internal procedures as well as the AG guidelines for drug testing.
4. The samples were properly collected and stored in a secure evidence room, in a refrigerator, and transported within thirty days, as per the AG guidelines.
5. The chain of custody documentation for such samples were provided and there was no break in the chain of custody.
6. The results of the laboratory test were positive for the presence of methamphetamine and amphetamine above the permitted limit, as was the split sample which was sent to an independent laboratory.
7. The appellant does not have a prescription for any such medications and the presence of the foregoing drugs violates the County policy.

8. The analysis, performed by the state toxicologist as well as the independent laboratory was positive to amphetamine and methamphetamine, above the permitted levels.

LEGAL ANALYSIS AND CONCLUSION

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 were 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 appointing authority 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 was positive for methamphetamine and amphetamine. A split sample was sent to an independent laboratory selected by the appellant, which also came back positive for methamphetamine and amphetamine. Appellant has attacked the general testing procedures arguing that the officer giving the test had made a copy of the label from his sample bottle, which somehow tainted his sample. However, this was not confirmed by any witnesses in the room. Moreover, I found Officer Equils' testimony credible that he did not use the appellant's label to make the copy. Moreover, there has been no evidence presented that even if someone had touched the label that this could somehow result in tainting the sample. On the contrary, the expert testimony of Dr. Havier, whom I accepted as an expert and found credible was that touching the label would not taint the sample.

The appellant also raised some doubt as the handling of the samples, such as the security of the evidence room, the length of time the samples were in the evidence room and the temperature of the refrigerator. However, there is no evidence that the samples were compromised in any way, and I have found as fact that all internal and AG protocols were followed and the samples in question were not compromised in any way. The expert opinion of Dr. Havier and the result of the tests were not challenged, nor was the split sample which likewise came back positive for amphetamine and methamphetamine. This tribunal is not swayed by the arguments, all which lack any supporting evidence that the drug testing procedure and testing protocols were compromised in any way.

I **CONCLUDE** that the Department has demonstrated by a preponderance of the credible evidence that the samples were properly collected, preserved and transported, and the test results were proper. I therefore **CONCLUDE** that the appellant tested positive for an illegal substance and removal was warranted.

ORDER

The termination of appellant is hereby **AFFIRMED**, and the appeal is **DISMISSED WITH PREJUDICE**.

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.

December 30, 2020

DATE



SARAH G. CROWLEY, ALJ

Date Received at Agency:

Date Mailed to Parties:

SGC/nd

APPENDIX

WITNESSES

For Appellant:

Timothy Huddy
Thomas Walsh
Michael Dolan

For Respondent:

Jeffrey Equils
William Beckenstein
Dr. Robert Havier
James Robertson
Edward Brett

EXHIBITS

For Appellant:

None

For Respondent:

- R-1 Final Notice of Disciplinary Action, Removal Effective and Retroactive to December 19, 2019, dated February 7, 2020
- R-2 Preliminary Notice of Disciplinary Action, Proposed Removal, Effective and Retroactive to December 19, 2019, dated December 20, 2019
- R-3 Drug Testing Officer Notice and Acknowledgment Executed by Appellant, dated October 30, 2019
- R-4 Drug Testing Random Number Selection Form, Acknowledged by Appellant, dated October 30, 2019
- R-5 Results of Appellant's Random Drug Test Issued by the New Jersey State Toxicology Laboratory, dated December 9, 2019

- R-6 Medical Review Officer Certification Issued by Dr. Andrew Falzon, dated November 25, 2019
- R-7 Correspondence from Frank Cioffi, Esq., to Steven Kleinman, Special County Counsel, Requesting Independent Lab Testing of Appellant's Second Specimen, dated January 3, 2020
- R-8 Emails between JoAnn Shaughnessy, Forensic Toxicologist of the State Lab, and Jeffrey Equils, Chief Investigator, dated January 7, 2020
- R-9 Emails from Steven Kleinman, Special County Counsel, to Frank Cioffi, Esq., Regarding the Testing Process for Appellant's Second Specimen, dated January 8, 2020
- R-10 Correspondence from Frank Cioffi, Esq., to Jo Ann Shaughnessy, Forensic Toxicologist of the State Lab, Requesting Appellant's Second Sample be Submitted to NMS Labs for Testing and Enclosing Sample Submission Form, dated January 10, 2020
- R-11 Toxicology Report Issues by NMS Labs on Appellant's Second Sample, dated January 21, 2020
- R-12 Notification to the Central Drug Registry of Appellant's Positive Drug Test, dated February 19, 2020
- R-13 Email from Dr. Robert Havier of the Sate Lab to Steven Kleinman, Special County Counsel, with Attached Litigation Package, dated May 12, 2020
- R-14 Dr. Robert Havier, Curriculum vitae
- R-15 Photographs of Sample Drug Testing Specimen Collections Containers taken by Chief Investigator Jeffrey Equils
- R-16 Photographs of Drug Testing Specimen Collection Area at Monmouth County Correctional Institution taken by Chief Investigatory Jeffrey Equils
- R-17 Monmouth County Sherriff's Office Corrections Division Substance Abuse Policy (1.25), dated February 4, 2020
- R-18 Appellant's POWER DMS Acknowledgment of Receipt of Monmouth County Sheriff's Office Corrections Division Substance Abuse Policy (1.25)
- R-19 Monmouth County Sheriff's Office Corrections Division Code of Ethics (3.13), dated April 2, 2019

- R-20 Appellant's POWER DMS Acknowledgment of Receipt of Monmouth County Sheriff's Office Corrections Division Code of Ethics, dated April 13, 2019
- R-21 Monmouth County Sheriff's Office Corrections Division Rules and Regulations (3.20.010, 3.20.030, 3.20.260, 3.35.060), dated January 2018
- R-22 Appellant's POWER DMS Acknowledgment of Receipt of Monmouth County Sheriff's Office Corrections Division Rules and Regulations, dated April 1, 2018
- R-23 Monmouth County employee Guide (Policies 501, 701, 702 and 714), dated February 15, 2019
- R-24 New Jersey Attorney General's Law Enforcement Drug Testing Policy, dated April 2018