



## STATE OF NEW JERSEY

In the Matter of Robert McCauley,  
Southern State Correctional Facility,  
Department of Corrections

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2021-1452  
OAL Docket No. CSR 04108-21

ISSUED: NOVEMBER 22, 2023

The appeal of Robert McCauley, Senior Correctional Police Officer, Southern State Correctional Facility, Department of Corrections, removal, effective March 26, 2021, on charges, heard by Administrative Law Judge Kathleen M. Calemme (ALJ), who rendered her initial decision on October 23, 2023. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on November 22, 2023, adopted the ALJ's Findings of Facts and Conclusions and her recommendation to uphold the removal.

The Commission makes the following comments. The Commission's review of the penalty is *de novo*. In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96 N.J.A.R. 2d (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown*, 191 N.J. 474 (2007).

In her initial decision, the ALJ found the appellant's infraction egregious, and, while noting that the appellant did have a prior disciplinary history, upheld his removal without regard to progressive discipline. The Commission agrees that the

nature of the misconduct in this matter is sufficiently egregious to support the penalty of removal. Suffice it to say, the appellant's testing positive for amphetamines and methamphetamines falls well short of what is expected of a law enforcement employee and the penalty imposed is neither disproportionate to the offense nor shocking to the conscious.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore upholds that action and dismisses the appeals of Robert McCauley.

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 22<sup>ND</sup> DAY OF NOVEMBER, 2023

*Allison Chris Myers*

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Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSR 04108-21

AGENCY DKT. NO. N/A

2021-1452

**IN THE MATTER OF ROBERT  
MCCAULEY, SOUTHERN STATE  
CORRECTIONAL FACILITY.**

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**Kevin P. McCann**, Esq., for appellant Robert McCauley (Chance & McCann, LLC,  
attorneys)

**Gary W. Baldwin**, Deputy Attorney General, for respondent Southern State  
Correctional Facility, New Jersey Department of Corrections (Matthew J.  
Platkin, Attorney General of New Jersey, attorney)

Record Closed: September 29, 2023

Decided: October 23, 2023

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

**STATEMENT OF THE CASE**

Appellant, Robert McCauley (McCauley), a Senior Corrections Police Officer (SCPO) at Southern State Correctional Facility (Southern), appealed his removal by the respondent, New Jersey Department of Corrections (DOC). DOC removed appellant after he tested positive for amphetamine and methamphetamine on a random urine drug screening. The sustained charges in the Final Notice of Disciplinary Action (FNDA) were violations of 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; Human Resources Bulletin (HRB) 84-17, C-11, conduct unbecoming a public employee; HRB 84-17, C-30, use, possession, or sale of any controlled dangerous substance (custody); HRB 84-17, D-7, violation of administrative procedures and /or regulations involving safety and security, and HRB 84-17, E-1, violation of a rule, regulation, policy, procedure, order, or administrative decision.

### **PROCEDURAL HISTORY**

On November 11, 2020, the DOC issued a Preliminary Notice of Disciplinary Action (PNDA) setting forth the charges and specifications. (R-1.) Appellant requested a departmental hearing, which was held on March 5, 2021. On March 25, 2021<sup>1</sup>, the respondent issued the FNDA removing appellant from employment. (R-2.) Appellant filed a direct filing removal appeal to the Office of Administrative Law (OAL), where it was filed on May 5, 2021, as a contested case pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52: 14F-1 to 13. The appeal was perfected on May 5, 2021. Appellant was returned to pay status on July 26, 2021.

The matter was initially assigned to another Administrative Law Judge (ALJ) but was reassigned to me in August 2022, after his appointment to the Superior Court.

I conducted a telephone conference on August 23, 2022, and advised the parties that I could accommodate the previously scheduled hearing dates of September 26, 2022, and September 29, 2022. Due to scheduling difficulties, the hearings were rescheduled for December 7, 2022, and December 23, 2022. Appellant adjourned the December 23, 2022, hearing date due to illness. The hearing concluded on June 26, 2023. The parties requested time to obtain transcripts and submit written summations. Respondent submitted its written summation on August 25, 2023. I closed the record after receipt of appellant's summation brief on September 29, 2023.

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<sup>1</sup> The date on the FNDA was "3/25/20." This was clearly a clerical mistake as the departmental hearing was listed correctly as "3/5/21."

**FACTUAL DISCUSSION**

The following is not in dispute. Therefore, it is **FOUND** as **FACT**:

At the time of this incident, September 25, 2020, McCauley was a Senior Correctional Police Officer (SCPO) at Southern. McCauley began his employment with the DOC in December 2008.

All correction officers are subject to random drug testing as a condition of employment. The DOC uses a computer-based program of randomly selected social security numbers to generate a master donor notification list of its officers. The list is sent to the Special Investigation Division's (SID) field office at each institution. Throughout the month, SID investigators contact the officers on the list, who are required to submit to a random urine test. The Attorney General's Law Enforcement Drug Testing (LEDT) Policy applies to all law enforcement personnel in New Jersey. (R-28.) Contained within the LEDT Policy are the specific guidelines for obtaining, processing, documenting, transmitting, and administering the random drug testing program.

At the time of testing, the officer provides split samples. If one of the samples is confirmed positive, the officer has the option of having the other sample privately tested. Both samples are kept in the evidence freezer until transported to the State Toxicology Laboratory in Newark, New Jersey. (R-3.) The State Toxicology Laboratory is the only facility approved for the analysis of law enforcement drug tests conducted under the LEDT Policy. (R-28 at 446.)

On September 25, 2020, before providing his sample, McCauley was given the Drug Screening Program Monitor to review with his SID officer, Jesse Akers. (R-3.) The Drug Screening Program Monitor is in booklet form, with instructions and attachments. McCauley read the information and acknowledged receipt by his signature on Attachment A-1. (R-3 at 235.) Attachment E-A is a continuity of evidence for urine sample A. Id. at 238. Attachment E-B is a continuity of evidence for the second urine sample B. Id. at 239. Attachment D is a confidential form for the officer to provide information about the prescription and nonprescription medications used within fourteen days of testing. This

form is removed from the booklet and once privately completed by the officer, it is placed in a sealed envelope and sent to the lab with the samples. Attachment F is the summary which provides a checklist of each step throughout the process. Id. at 240.

As stated on Attachment E-A and E-B, McCauley reported to the SID office for his random test at 9:20 a.m., on September 25, 2020. McCauley was required to void two specimens; he submitted both specimen cups to Akers at 10:45 a.m. Akers checked both samples for adequate volume and temperature and took custody of both samples. At 10:47 a.m., Akers placed both samples in the evidence freezer. On September 30, 2020, both specimens were removed from the evidence refrigerator and transported to the State Toxicology Laboratory. (R-3 at 238-239.)

On September 30, 2020, McCauley's samples were received from "J. Pesce of the NJ DOC Southern State Correctional Facility" and accepted by the specimen receiver at the State Toxicology Laboratory. (R-7 at 242 and 359.) Upon receipt at the lab, McCauley's samples were blindly assigned specific identification numbers, 20L010378 and 20L010379, which numbers followed the samples throughout the process. The State Toxicology Laboratory must operate in accordance with the LEDT Policy. (R-28.) The LEDT Policy requires a split sample, labeled A and B. The A sample is tested by the lab. The B sample is frozen. If the donor requests confirmation testing, the lab within a strict chain of custody will release the B sample to an approved laboratory of the donor's choosing.

Dr. George Jackson is the Chief State Medical Examiner and Executive Director of Laboratories at the State Toxicology Laboratory. (R-8.) Dr. Jackson offered expert testimony at the hearing in the field of forensic toxicology. Throughout the tier one screening, quality control and quality assurance tests are continually run. The result of the tests after the first screening was a presumptive positive for amphetamines. (R-7 at 260.) All presumptive positive results must be confirmed by additional testing using gas chromatography mass spectrometry (GCMS). Dr. Jackson reviews each level of testing. As a result of the presumptive positive, the confirmation testing focused on four compounds. Only two compounds, amphetamine, and methamphetamine, were

confirmed by GCMS. The summary of the test results showed high concentrations for amphetamine and methamphetamine in the sample. Id. at 295.

After his fourth review of the entire testing process, Dr. Jackson approved the Toxicology Report that showed the presence of methamphetamine and amphetamine to be above the cut off number, 250 ng/ml. (R-7 at 358.) Dr. Jackson does not see or review the confidential Medication Sheet submitted by the officer with the samples. In this case, the B sample was not requested for confirmation testing by another laboratory. If the B sample had been removed from the lab, it would have been recorded in the chain of custody. There were no such recordings for the B sample.

Dr. Anthony Falzon is the Chief State Medical Examiner for the State Toxicology Laboratory. Dr. Falzon testified as an expert in forensic pathology. Only samples confirmed positive by GCMS are referred to Dr. Falzone for review. Dr. Falzone's role is to open the sealed envelope and review the Medication Sheet provided with the urine sample. He identifies whether any of the prescription or non-prescription medications listed would explain the positive finding.

Dr. Falzon reviewed McCauley's Medication Sheet. (R-10.) There was nothing listed on McCauley's Medication Sheet that explained his positive finding for amphetamine and methamphetamine.

On October 29, 2020, Akers received the Toxicology Report with confirmed positive results for amphetamine and methamphetamine. (R-4.) As stated on the Toxicology Report, the controlled substances of amphetamine and methamphetamine were not the result of anything listed by McCauley on his Medication Sheet. Id. After receiving the positive test results, Akers was required to begin a prescription investigation and detail his findings in an administrative investigative report. (R-6.)

On October 1, 2020, McCauley was off duty on approved leave until November 30, 2020, under the Family Medical Leave Act (FMLA). Between October 29, 2020, and December 3, 2020, Akers documented in his report that all attempts to reach McCauley by telephone were unsuccessful. (R-6 at 361.) On December 4, 2020, McCauley

contacted SID and agreed to come in for an interview. On December 9, 2020, Akers conducted a video recorded interview of McCauley, who had union representation. (R-5.) McCauley stated that he did not disclose all his medications because he was embarrassed and did not trust that the information would remain confidential. McCauley provided Akers with the names of his treating doctors and pharmacy and signed an authorization giving Akers permission to contact them.

On December 9, 2020, Akers contacted Hope Community Cancer Center and asked for McCauley's prescription medications that could result in a positive urine test for amphetamine/methamphetamine. (R-6 at 364.) Dr. Ahmad submitted a letter that stated, "I have not prescribed any medications for Robert McCauley, narcotic or otherwise, since June 2019. I prescribed Wellbutrin in 2018 and Prevacid in 2019. No other medications were prescribed for him by me or my office staff." (R-14 at 064.)

On December 10, 2020, Akers contacted Beesley's Point Family Practice and requested information about any medications prescribed for McCauley that could result in a positive urine for amphetamine/methamphetamine. (R-6 at 364.) On December 11, 2020, Jill McIntyre, Family Nurse Practitioner with Beesley's Point Family Practice contacted Akers by telephone and stated that McCauley was not prescribed any medications that would result in a positive urine for amphetamine/methamphetamine. Id.

On December 10, 2020, Akers also contacted Village Pharmacy and spoke with John Brittin, Registered Pharmacist. (R-6 at 364.) Mr. Brittin confirmed in an email to Akers that he conducted a two-year review of McCauley's prescription profile. Brittin wrote that "[h]e does not have anything that should come up positive for amphetamine or methamphetamine." (R-15 at 228.)

As part of the investigation, Akers sent the pharmacy list provided by Village Pharmacy to the medical review officer at the toxicology lab.

The DOC's policy is codified at HRB 99-01 as amended November 6, 2009. (R-17.) The consequences of a positive test for illegal drug use are termination from service and permanent debarment from future law enforcement employment in New Jersey.



The DOC's drug testing policy is modeled on the Law Enforcement Personnel Rules and Regulations. (R-18.) These Rules are given to the recruits at the Academy, and at mandatory yearly ethics training. Article IV, Section 1, subsection b, prohibits use, possession, or sale of illegal drugs on or off duty. (R-18 at 104.) Article III, Section 3, states that "[o]fficers are public servants twenty-four hours a day and will be held to the law enforcement higher standard both on and off-duty." (R-18 at 102.) On September 2, 2008, McCauley acknowledged receipt of the Law Enforcement Personnel Rules and Regulations. (R-25.)

HRB 84-17 is DOC's disciplinary action policy given to all trainees at the Academy and during yearly ethics training. McCauley acknowledged receipt of his copy on September 2, 2018. (R-25 at 387.) The policy contains all the different offenses and suggested guidelines for penalties. It also contains a table of offenses and the recommended sanctions. (R-21.) Under heading "C – Personal Conduct" at paragraph 30 is the offense for "use, possession or sale of any controlled substance." (R-21 at 159.) The penalty for a first offense is removal. Id.

The DOC's Office of Human Resources maintains a New-Hire Orientation Checklist. All new hires are provided with a binder containing copies of the rules and regulations. McCauley certified receipt of these documents on December 2, 2008. (R-19 at 401.)

All employees of the DOC also receive a Handbook of Information and Rules (R-22) wherein they are informed that violations of the general principles of the rules and regulations may subject them to termination of employment. Accordingly, an officer is informed at the Academy, on his first day of hire, and at yearly mandatory training that a positive drug test is a violation of the rules and regulations subjecting him to removal.

### **Testimony**

The following is not a verbatim recitation of the testimony, but a summary of pertinent testimony in areas of dispute.

**Dr. George Jackson**, the Chief State Medical Examiner and Executive Director of Laboratories at the State Toxicology Laboratory, testified as an expert in the field of forensic toxicology. Dr. Jackson does not determine how someone was exposed to the drug. His only role is to make sure every aspect of the testing is analytically sound. Regarding McCauley's samples, the testing was analytically sound as determined by Dr. Jackson after four comprehensive reviews. There was no discrepancy within the chain of custody records.

**Dr. Anthony Falzon**, the Chief State Medical Examiner for the State Toxicology Laboratory, testified as an expert in forensic pathology.

Dr. Falon explained that amphetamine and methamphetamine are stimulants in the amphetamine class. The confirming test by GCMS determines the specific drug not the class of individual molecules. The testing by GCMS confirmed that the drug was methamphetamine. Dr. Falzone opined that the non-prescription drug, Pseudoephedrine, could potentially give a false positive. However, there was no indication that McCauley was taking that non-prescription drug.

Dr. Falzone reviewed the five-year list of prescription drugs legally purchased by McCauley through his pharmacy. (R-13.) When asked on cross-examination, Dr. Falzone reviewed certain prescribed drugs from 2017, 2018, and 2019 that could produce a positive result for methamphetamines. He noted that certain medications for attention deficit disorders could produce a positive result. Opioids are not within the class of drugs that would produce a positive test for amphetamines. Methamphetamine and amphetamine are two totally separate drugs. The only way to test positive test for methamphetamine would be to consume methamphetamine. In Dr. Falzone's expert opinion, there was nothing in McCauley's pharmacy records that accounted for his positive drug test.

**Robert McCauley** testified on his own behalf and denied ever buying drugs, illegally. This was not McCauley's first random drug test for DOC. He recalled being

randomly selected approximately five times over the course of his career. In his previous drug testing, he also provided two urine samples.

McCauley was prescribed medication for anxiety, but he did not list it because he did not want his co-workers to know about it. He felt embarrassed. McCauley also takes Mucinex, Mucinex D, and Sudafed D for his allergies. He failed to list his allergy medications on the Medication Sheet submitted with his samples. McCauley admitted that it was a mistake not to list all his prescription and non-prescription medications.

**Dawn McCauley** testified on behalf of her husband. Mrs. McCauley testified that her husband takes seasonal allergy medications in the spring and fall. He has been taking allergy medications for many years.

Although I accept the testimony of appellant and Mrs. McCauley that appellant regularly used over the counter medications for allergies, there is nothing in the record that would equate his use of non-prescription allergy medication with a positive urine drug test for amphetamine and methamphetamine. While appellant may not have listed his prescription and over the counter medications accurately on his Medication Sheet, he had the opportunity to correct the sheet and disclose everything that he took within the month of September. Despite this opportunity, the medical information provided by Dr. Ahmad, Jill McIntyre, N.P., and Village Pharmacy did not provide anything to account for the presence of amphetamine and methamphetamine in appellant's urine. Therefore, I **FIND** that appellant has offered no explanation to account for his positive drug test.

In his summation brief, appellant argued that his second sample was not maintained in accordance with HRB 99-01 because it was released to the State Toxicology Laboratory on September 30, 2020, with the first sample. The chain of custody records showed that both samples were received at the State Toxicology Laboratory on September 30, 2020. (R-7 at DOC 242.) While appellant's reading of HRB 99-01 Section IV, 6(c) is correct, his argument is flawed.

On September 25, 2020, McCauley acknowledged reading the following information contained within the Drug Screening Program Monitor (R-3):

I understand that I must provide two urine samples, which will be forwarded to the NJ State Toxicology Laboratory (NJSTL). In the event I wish to challenge the results of the test, I or my legal representative must immediately notify the Department of Corrections and the NJSTL of my intentions to challenge the results, or frozen samples may be destroyed in accordance with NJSTL procedures.

Under the LEDT Policy, revised April 2018, the monitor "will ensure that all specimens, including second specimens, are delivered to the NJSTL in a timely manner." (R-28 at DOC445.)

Herein, there was no evidence presented that McCauley requested that his second sample be tested by a private laboratory. Therefore, appellant's argument solely based on the language of HRB 99-01, Section IV, 6(c) does not amount to a denial of appellant's due process rights or a basis to discredit the chain of custody of the second sample. I **FIND** appellant's argument to be without merit.

### **LEGAL ANALYSIS AND CONCLUSION**

A civil service employee's 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 inducement to attract qualified individuals to public service positions and is to be liberally construed toward attainment of merit appointments and broad tenure protections. Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972) (citing Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 145, 147 (1965)).

A civil service employee who commits a wrongful act related to their employment may be subject to discipline, which may be a reprimand, suspension, or removal from employment, depending upon the incident. N.J.S.A. 11A:1-2, 11A:2-20; N.J.A.C. 4A:2-2. Public entities should not be burdened with an employee who fails to perform their duties

satisfactorily or engages in misconduct related to their duties. N.J.S.A. 11A:1-2(a). Thus, a public entity may impose major discipline upon a civil service employee, including termination/removal from their position. N.J.S.A. 11A:1-2; N.J.A.C. 4A:2-2.2.

The appointing authority employer has the burden of proof to establish the truth of the disciplinary action brought against a civil service employee. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is by a preponderance of the credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); see Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

As set forth in the FNDA, the sustained charges were as follows:

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

Conduct unbecoming a public employee is an elastic phrase that 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. at 140.

Appellant’s status as a correction officer subjects him to a higher standard of conduct than an ordinary public employee. In re Phillips, 117 N.J. 567, 576–77 (1990). Law-enforcement employees, such as a correction officer, represent “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). In military-like settings such as police departments and prisons, it is of paramount importance to maintain strict discipline of employees. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971); Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967).

All correction officers are required to comply with the rules and regulations of DOC. In furtherance of this objective, the DOC has a zero-tolerance policy for drug use and requires that all "covered persons" submit to random urine drug testing as a condition of employment. (R-28.)

The facts in this case are undisputed that appellant, after submitting to a random drug test, tested positive for amphetamine and methamphetamine. (R-4.) Appellant provided no credible evidence explaining how these drugs were present in his system on September 25, 2020, either by legal prescription, over the counter medications, or accidental means.

As a senior correction officer, appellant represents law and order to the public and must present an image of personal integrity. Drug use among law-enforcement personnel is conduct that adversely affects the moral and efficiency of a governmental unit and can destroy public respect in delivery of governmental services. There is no question that appellant's conduct violates the implicit standard of good behavior that one would expect from a senior correction officer.

For the foregoing reasons, I **CONCLUDE** that the respondent has met its burden in establishing a violation of 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**

Appellant has been charged with other sufficient cause, specifically, violations of HRB 84-17 As Amended—C(11) conduct unbecoming an employee, HRB 84-17, C-30, use, possession, or sale of any controlled dangerous substance (custody); HRB 84-17,

D-7, violation of administrative procedures and /or regulations involving safety and security, and HRB 84-17, E-1, violation of a rule, regulation, policy, procedure, order, or administrative decision.

Having concluded that appellant's conduct constitutes a violation of conduct unbecoming a public employee under N.J.A.C. 4A:2-2.3(a)(6), I similarly **CONCLUDE** that his actions constitute a violation under HRB 84-17, C(11) conduct unbecoming an employee.

Having accepted Dr. Jackson's testimony that there were no irregularities with the testing conducted by the State Toxicology Laboratory and having accepted Dr. Falzon's testimony that there was nothing on the Medication Sheet or the Village Pharmacy records that accounted for amphetamine/methamphetamine in McCauleys urine sample, I **CONCLUDE** that respondent has meet its burden in proving McCauley's violation of HRB C(30) use, possession, or sale of any controlled dangerous substance.

The charge implicit within the violation of HRB 84-17, D(7), is that McCauley, by ingesting and not disclosing his illegal drug use, created a safety risk. The record established that on September 25, 2020, after a random drug test, appellant was found to have amphetamine and methamphetamine in his system. In general, having these drugs in your system, while on duty as a SCPO, raises valid safety and security concerns. However, because this was a random drug test and there was no evidence of reasonable suspicion, I **CONCLUDE** that DOC has not provided sufficient evidence of a safety and security concern to sustain its burden of proof on this charge.

On the charge of violation of HRB 84-17 E(1), on September 25, 2020, appellant submitted to a random drug screening as required under the DOC drug-testing policy, the result of which came back positive. Based on the foregoing, I **CONCLUDE** that appellant's conduct was in direct violation of the DOC drug-testing policy set forth in HRB 99-01 (R-17), and the Law Enforcement Personnel Rules and Regulation (R-18).

For the foregoing reasons, I **CONCLUDE** that the respondent has met its burden in establishing a violation of N.J.A.C. 4A:2-2.3(a)(12)—other sufficient cause, specifically,

violation of HRB 84-17 As Amended—C(11) conduct unbecoming an employee, HRB 84-17, C-30, use, possession, or sale of any controlled dangerous substance (custody); and E(1) violation of a rule, regulation, policy, procedure, order, or administrative decision.

### PENALTY

The next question is the appropriate level of discipline. A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. Progressive discipline is considered when determining the reasonableness of the penalty. West New York v. Bock, 38 N.J. 500 (1962). The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is that the nature, number, and proximity of prior disciplinary infractions should be addressed by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential.

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 (2007) (Division of Youth and Family Services worker snapped lighter in front of five-year-old), in which the Court stated:

[J]udicial 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.

[192 N.J. at 33.]

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 (1980).

In addition to considering an employee's prior disciplinary history, other appropriate factors to consider include 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 and the employee's disciplinary history, major discipline may be imposed. Bock, 38 N.J. at 522–24. 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.

With the above in mind, and turning to the instant matter, appellant offered no explanation for his positive drug test. Moreover, his disciplinary history is significant.

Respondent contends that appellant's removal should stand because the DOC is bound by the LEDT Policy. (R-28.) That policy dictates, among other things, that if correction officers, who are law-enforcement officers with full police powers and held to a higher standard of conduct, test positive, they will be immediately suspended and terminated from service. It is a zero-tolerance policy that exists not only for the safety and security of the correctional institutions, but to ensure public trust in the agency. Maccio v. Mid-State Corr. Facility, OAL Dkt. No. CSV 2428-87, Initial Decision (June 8, 1987), aff'd, Merit Sys. Bd. (July 14, 1987); Ruiz v. Dep't of Corr., 2018 N.J. CSC LEXIS 596, Initial Decision (July 18, 2018), at \*11, adopted, CSC (August 15, 2018); In re Carter, 191 N.J. 474, 478 (2006); In re Phillips, 117 N.J. at 576.

For the foregoing reasons, I **CONCLUDE** and **AFFIRM** that removal is the appropriate discipline for the violations of N.J.A.C. 4A:2-2.3—General Causes—(6) conduct unbecoming a public employee, and (12) other sufficient cause, specifically, violation of HRB 84-17 As Amended—C(11) conduct unbecoming, HRB 84-17, C-30, use, possession, or sale of any controlled dangerous substance (custody); and E(1) (violation of a rule, regulation, policy, procedure, order, or administrative decision).

**ORDER**

For the reasons set forth above, it is **ORDERED** that the action of the appointing authority removing the appellant from his position as a senior correction officer 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.

October 23, 2023  
DATE

  
\_\_\_\_\_  
KATHLEEN M. CALEMMO, ALJ

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

KMC/sr

**APPENDIX**

**WITNESSES**

**For appellant**

Robert McCauley  
Dawn McCauley

**For respondent**

SID Inv. Jesse Akers  
Major Michael Ryan  
Dr. George Jackson  
Dr. Andrew Falzon

**EXHIBITS**

**Joint**

J-1 McCauley's Work History

**For appellant**

None

**For respondent**

R-1 PNDA  
R-2 FNDA  
R-3 Drug Screening Monitor Program  
R-4 Toxicology Report  
R-5 SID video recorded interview of McCauley  
R-6 SID Investigation Report  
R-7 New Jersey State Toxicology Laboratory Litigation Packet  
R-8 Curriculum Vitae, Dr. George Jackson  
R-9 Curriculum Vitae, Dr. Andrew L. Falzon  
R-10 Medication Sheet

- R-11 Not in evidence
- R-12 Not in evidence
- R-13 Village Pharmacy Records
- R-14 Email chain with RCCA – dated December 9, 2020 – December 16, 2020
- R-15 Email chain from Village Pharmacy
- R-16 See, J-1
- R-17 HRB 99-01 Drug Testing Policy
- R-18 Law Enforcement Personnel Rules and Regulations
- R-19 New Hire Checklist
- R-20 HRB 84-17
- R-21 HRB 84-17 Table of Offenses and Penalties
- R-22 Employee Handbook
- R-23 ADM. 010.001 Standards of Professional Conduct
- R-24 Acknowledgement Receipt Form
- R-25 Orientation Receipt Form
- R-26 Not in evidence
- R-27 Weingarten Administrative Rights form
- R-28 Attorney General's Law Enforcement Drug Testing Policy
- R-29 Photographs of urinalysis sample cups