



an automatic ground for removal. He presents that his research indicates that there is a 2021 law that allows Police Officers to smoke marijuana recreationally.

S.D. states that at the time she was informed that her name was removed from subject eligible list, she did not have anything in her system. She highlights that after the subject drug test, she took a drug test with another jurisdiction to be a County Correctional Police Officer, which she passed.

D.K. asserts that he was shocked that his name was removed from the subject list because of a failed drug test because he has never used drugs in his life. He provides that he has passed urinalysis tests several times in the past for other jobs. He believes that the results were a false positive test. The appellant notes that he had taken over the counter cold medicine which contained pseudoephedrine, which is a stimulant that can sometimes trigger a false positive on a drug test.

Although given the opportunity, the appointing authority did not respond.

## CONCLUSION

*N.J.A.C. 4A:4-4.7(a)1*, in conjunction with *N.J.A.C. 4A:4-6.1(a)3*, states that an eligible who is physically unfit to effectively perform the duties of the position may be removed from the eligible list. *N.J.A.C. 4A:4-6.3(b)*, in conjunction with *N.J.A.C. 4A:4-4.7(d)*, provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

By way of background, in February 2021, the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA), *N.J.S.A. 24:6I-31 et seq.*, was enacted, and in April 2022, the Cannabis Regulatory Commission approved applications from Alternative Treatment Centers to expand into recreational cannabis sales, marking the opening of the regulated cannabis market in New Jersey. On April 13, 2022, the then Acting Attorney General issued a memorandum to all law enforcement chief executive officers indicating there should be zero tolerance for cannabis use, possession, or intoxication while performing the duties of a law enforcement officer, and there should be zero tolerance for unregulated marijuana consumption by officers at any time, on or off duty, while employed in this State. However, the memorandum noted that the CREAMMA further provides that law enforcement agencies may not take any adverse action against any officers because they do or do not use cannabis off-duty. In other words, the use of regulated marijuana should not subject a law enforcement officer candidate to adverse action. Thereafter, on January 20, 2023, the appellants were drug tested and subsequently found to have tested positive for Cannabinoids (THC). In February 2023, the Attorney General's Law Enforcement Drug Testing Policy was revised which indicated that marijuana/cannabis should only be included in the drug testing process

when: the officer is assigned to a federal task force; the officer holds a federally regulated license, which requires testing (e.g. pilot or commercial driver's license); the law enforcement agency is specifically required to test by the terms of a federal contract or federal grant; or as outlined in the reasonable suspicion sections II.C.2 and II.C.3 of the herein policy.

In these matters, it was appropriate for the appointing authority to test for marijuana/cannabis on January 20, 2023, as the revised guidelines indicating that marijuana/cannabis should not be tested except under limited inapplicable circumstances was not issued until shortly after the subject drug tests. However, J.B. acknowledged that his positive drug test was based on the use of regulated marijuana, which was permitted under CREAMMA. Further, D.K. denied using marijuana believing that there was a false positive test possibly caused by using over-the-counter medicine, and S.D. made no comment about whether she used regulated or unregulated marijuana but simply stated she did not have any marijuana in her system at the time she was informed of her removal from the subject eligible list.

Therefore, as the appointing authority did not respond to the subject appeals, the use of regulated marijuana was legal and off-duty use of regulated marijuana was permitted by law enforcement officers at the time of the drug tests, and there is nothing in the record that suggests that any of the appellants used unregulated marijuana at the time of the drug tests, the Civil Service Commission finds that the appellants have met their burdens of proof in these matters and the appointing authority has not shown sufficient cause for removing their names from the Police Officer (M0034D), East Orange eligible list.

### **ORDER**

Therefore, it is ordered that these appeals be granted and the list for Police Officer (M0034D), East Orange be revived in order for the appellants to be considered for appointment at the time of the next certification for prospective employment opportunities only.

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 20<sup>TH</sup> DAY OF MARCH, 2024

*Allison Chris Myers*

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