# *Fire Dep't v. Robinson*

OATH Index No. 1004/19 (Jan 24, 2020), *adopted*, Comm'r Dec. (Feb. 20, 2020), **appended**, *aff'd*, NYC Civ. Serv. Comm'n Case No. 2021-0296 (Sept. 28, 2021), **appended**

Petitioner proved that respondent, an emergency medical technician, tested positive for marijuana on two separate occasions. ALJ did not find mitigation in respondent's explanation as to why he used marijuana. Petitioner did not establish that respondent disobeyed orders to stay out of operational areas in the Emergency Medical Dispatch Unit. ALJ recommends that respondent be terminated from his employment.

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**NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*
**FIRE DEPARTMENT**
*Petitioner*
*-against-*
**HYRON ROBINSON**
*Respondent*

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## REPORT AND RECOMMENDATION

**INGRID M. ADDISON,** *Administrative Law Judge*

This is a disciplinary proceeding referred by the petitioner, the Fire Department ("Department"), pursuant to section 15-113 of the Administrative Code of the City of New York. Petitioner alleges that respondent Hyron Robinson, an emergency medical technician ("EMT") in petitioner's Emergency Medical Dispatch unit ("EMD"), tested positive for marijuana during a random drug test on June 21, 2018, and during a mandatory follow-up test on July 30, 2018, in violation of Department rules. Petitioner further charged that respondent was insubordinate on August 2, 2018, by failing to follow orders to stay out of operational areas in EMD (ALJ Ex. 1).

At a two-day trial which concluded on December 10, 2019, petitioner relied on documentary evidence and the testimony of two of its investigators who were involved in the collection of respondent's specimen samples, as well as the video testimony of Michael Morris, a certified scientist and laboratory manager at Quest Diagnostics ("Quest") in Kansas.

Respondent, who was represented by counsel, testified on his own behalf and presented documentary evidence. At his request, I held the record open for respondent to submit a brief on

the discrete issue of the likelihood of a positive follow-up test for marijuana in the absence of any further use by a chronic user, since the initial positive test. The record closed on December 30, 2019, after petitioner submitted a response to respondent's brief.

For the following reasons, I find that petitioner did not establish that respondent disobeyed orders to stay out of the operating areas of the EMD unit, but it established that respondent tested positive for marijuana on two separate occasions. As I find there to be no compelling mitigating factors for respondent's marijuana use, his first positive test for marijuana is sufficient to warrant his termination from employment, and I so recommend.

## ANALYSIS

Section 4.2.12 of the Department's Emergency Medical Service Operating Guide Procedures ("EMS OGP) 101-01 General Regulations (issued July 8, 2013), prohibits the use of illicit drugs by members of the bureau (Pet. Ex. 8). EMS OGP 113-02 (issued May 7, 2007), is the Department's Substance Policy for Drugs and Alcohol (Pet. Ex. 9). Section 6.1(D) strictly prohibits, among others, the use of illegal drugs that can lead to impairment while on duty. Section 4.2 includes marijuana amongst its definition of illegal drugs.

Petitioner charged respondent with testing positive for a prohibited substance, to wit, marijuana, on June 21 and July 30, 2018, in violation of the Department's rules (Pet. Exs. 8, 9).

June 21, 2018

Respondent has been employed as a call taker in the Department's EMD unit for almost five years. His job involves triaging two to three hundred calls per day to ensure that the callers/patients get the appropriate resources. On June 21, 2018, respondent was randomly selected for a drug test. His urine sample was collected by Scott Pizzo, an investigator in the Department's Testing Unit. Mr. Pizzo is familiar with the Department's procedures, and collects about 10 to 15 urine samples per week for random drug testing. He explained the procedure for random testing and testified that he followed all Department procedures in the collection of respondent's sample. On the same day that it was collected, respondent's sample was signed for by a courier from Quest (Pizzo: Tr. 57-61, 65-72, 75-92; Resp: Tr. 186-87, Pet. Exs. 1, 2, 15, 16).

Michael Morris is a certified scientist and Quest's laboratory manager in Lenexa, Kansas, where the Department's specimen samples are taken for analysis. He has worked for Quest for 21 years and has testified in almost as many proceedings before administrative tribunals regarding the integrity and validity of drug tests conducted by Quest. Mr. Morris is accredited by the National Laboratory Accreditation Program as an "alternate responsible person," which is designated to individuals responsible for all aspects of a laboratory. At Quest, he is responsible for "daily operations of forensic urine, oral fluid and hair drug testing laboratory" (Pet. Ex. 17 at 99). He testified that his job includes specimen accessioning and custody, initial testing, and record custodian (Tr. 104-07). Mr. Morris was not directly involved in testing respondent's urine sample but he reviewed the documents associated with the custody, control and testing of the sample and the results of the test. He testified that after the initial testing, the sample was presumptive positive for marijuana. Quest then conducted gas chromatography/mass spectrometry ("GC/MS") testing and confirmed the presence of marijuana metabolite at a level of 147.19 nanograms per milliliter ("ng/mL"), using the federally-recognized cut-off of 15 ng/mL (Tr. 128-33, 155-56, 159-74; Pet. Ex. 17 at 7, 23, 26, 39, 69).

Respondent acknowledged that on June 21, 2018, he was selected to have his urine tested. He did not dispute the positive test for marijuana. Instead, he admitted to using marijuana "a lot of times. [He] didn't count," when he was not at work. He also characterized himself as an "infrequent" user. When asked to quantify his use, he replied "like three times a week." Respondent resorted to marijuana use because he was stressed from: having to sit on a bench at work, in a hallway space "which is the size of a jail cell;" having only one scheduled break at 11:00 a.m.; dealing with his mother's cancer diagnosis[1]; and, being on restricted status[2] for three years, which precludes him from earning overtime. He explained that restricted status prevents him from patient care duties (Tr. 186-88, 192-95, 198; Resp. Ex. A).

Based on the evidence and testimony of petitioner's witnesses, as well as respondent's admission to marijuana use prior to June 21, 2018, I find that respondent violated the Department's rules which define marijuana as an illegal drug and prohibit illegal drug use.

This charge should be sustained.

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[1] In his closing, respondent's counsel noted that respondent's mother is now deceased (Tr. 199-200).

[2] A Department letter to respondent on July 27, 2018, noted that respondent had been restricted "from performing all patient care/field related duties and from driving any Department vehicles" since September 27, 2017 (Pet. Ex. 14).

July 30, 2018

Following the positive results of his random drug test on June 21, 2018, the Department served respondent with a letter dated June 27, 2018, suspending him for 30 days,[3] in accordance with Department rules and instructing him to report to the Department's Bureau of Health Services ("BHS") on July 30, 2018, and afterwards to its Bureau of Investigations and Trials ("BITS"), which he did (Tr. 188-89; Resp. Ex. A).

Miguel Correa is an investigator in BITS. Since 2013, his responsibilities have included collecting urine samples for drug testing of FDNY workers, and for prospective employees. On July 30, 2018, respondent submitted a urine sample for testing, which was required for his reinstatement following his suspension (Pet. Ex. 9 at 6). Prior to submission, respondent completed a questionnaire which he signed and dated, inquiring into any medications that he had taken during the preceding 72 hours, and any substances containing alcohol, as well as all food and drink that he had consumed in the preceding 24 hours (Tr. 9-11, 31, 39-40; Pet. Ex. 4). Upon collection of respondent's specimen sample, Mr. Correa signed, dated and inserted the time that the sample was collected on a Chain of Custody form which respondent also signed. Mr. Correa testified that respondent's sample was entered into the log book and locked in the refrigerator until the Quest courier collected it the same day (Tr. 39-42; Pet. Ex. 5).

Quest's laboratory manager, Mr. Morris, testified that he reviewed the documents associated with respondent's urine submission on July 30, 2018. The initial screening revealed that the sample was presumptive positive for marijuana and GC/MS confirmatory testing established the presence of marijuana in respondent's urine at a level of 23 ng/mL, using a cut-off of 15 ng/mL (Tr. 143-47; Pet. Ex. 18). This was a significantly lower level of marijuana in terms of ng/mL than the level confirmed in respondent's previous test on June 21, 2018 (Tr. 181). Mr. Morris testified that for infrequent users, marijuana may be detected in the urine for one to three days after use, while for chronic users it may be detected in the urine for up to thirty or more days.[4] He described a chronic user as one who engages in repetitive use of the drug on consecutive days. Mr. Morris' testimony regarding detection window periods is somewhat replicated in a charted publication of detection windows by Quest, captioned "Drug Testing Solutions At-A-Glance" (Tr. 147-153; Pet. Ex. 19). Mr. Morris acknowledged that the industry

[3] By letter dated July 27, 2018, that suspension was lifted (Tr. 47-49; Pet. Ex. 14).

[4] This is referred to as a detection window which, as explained by Mr. Morris, is the length of time that a drug may be present and detected in a person's system, whether urine, oral fluid or hair drug testing (Tr. 147).

recognizes a standard variance of about twenty percent, even with the confirmatory tests following a presumptive positive result. He explained that the standard variance meant that the same test could result in a twenty percent higher or lower reading (Tr. 158-59, 182).

Respondent vehemently denied using marijuana between the date of his first positive test on June 21, 2018, and July 30, 2018 (Tr. 190-91). He submitted two articles post-trial, based on studies conducted, to advance that his positive test on July 30, 2018, was not due to continued use of marijuana after his first test, but was the residual effect of him being a chronic user prior to that first test. The first article, which I marked as respondent's exhibit B, was published in the National Drug Court Institute ("NDCI") in April 2006. In it, author Paul L. Cary[5] discusses the marijuana detection window and the length of time that cannabinoids will remain detectable in urine following smoking. Essentially, the article recognizes that there are many factors which can affect the detection window, such as: the concentration of the drug use; duration and frequency of use; the metabolic rate of the user; and, the testing cut-off (Resp. Ex. B at 3-4). Respondent pointed to a charted review of cannabinoid studies which demonstrated detection window times from 25 days to 67 days. The chart separated the detection window periods by study and noted that the 67-day detection window was based on a 1985 study of 86 individuals, in which an isolated case appeared to test positive at 67 days. At the same time, the article cautioned that while there are studies which indicate prolonged elimination times for cannabinoids from urine, "it is not recommended that drug courts manipulate their detection windows to include these **exceptional** (emphasis added) findings. Sound judicial practice requires that court decisions be based upon case-specific information" (Resp. Ex. B at 11).

Respondent's second post-trial submission, which I marked as respondent's exhibit C, is an October 2008 article written by multiple contributing authors and published in the National Institutes of Health. Captioned "Urinary Elimination of 11-Nor-9-carboxy-9-tetrahydrocannnabinoil (sic) in Cannabis Users During Continuously Monitored Abstinence," the article also explored the detection window in 60 cannabis users/participants who had self-reported daily to weekly cannabis smoking. The participants were separated into groups based on the concentration of their initial testing. One group comprised of twenty participants whose initial testing resulted in a positive test for marijuana in concentrations greater than 150 ng/mL.

[5] A footnote to the article reflects the following: "Paul L Cary, M. S. is the Director of the Toxicology & Drug Monitoring Laboratory, University of Missouri Health care, Columbia, Missouri; and NDCI Faculty Residential Expert on drug testing issues."

Of those, four presented with positive specimens on the 30th day of their monitored drug cessation, in spite of being in an environment where repeat ingestion of the drug was not possible since they were being continuously monitored (Resp. Ex. C at 3-5).

Based on Mr. Morris' concept of what constitutes a chronic user, respondent's admitted frequency of marijuana use would seem to qualify him as such. This was not disputed by petitioner which, in its closing submission (which I marked as petitioner's exhibit 20), characterized respondent as a "heavy drug user" (Pet. Ex. 20 at 2). But while Mr. Morris' testimony, Quest's publication of marijuana detection windows and respondent's submissions post-trial, all hold that for chronic users, marijuana may be detected in their urine for 30 days or more following a positive test, I note that the discussions about detection windows in respondent's submissions were based on drug users in controlled, closely-monitored settings. Respondent was not in an environment where he did not have access to drugs. Thus, while his second drug test was positive for marijuana at a considerably lower level than his first test, I was not convinced that as a chronic user, he went cold turkey after his first positive test and that his second drug test was positive because of the expanded detection window for chronic users, as opposed to decreased use of the drug.

I therefore find that petitioner proved by a preponderance of the credible evidence, that respondent tested positive for marijuana metabolite on July 30, 2018. Accordingly, this charge is also sustained.

Petitioner failed to address the charge that respondent was insubordinate on August 2, 2018, by failing to obey orders to stay out of operational areas in EMD. This charge is therefore dismissed.

## FINDINGS AND CONCLUSIONS

1. Petitioner established that following a random drug test on June 21, 2018, respondent tested positive for marijuana use. This charge is sustained.

2. Petitioner established that respondent tested positive for marijuana after a follow-up test on July 30, 2018. This charge is sustained.

3. Petitioner did not establish that respondent was insubordinate on August 2, 2018, by failing to follow orders to stay out of operational areas in EMD. This charge is not sustained.

4. Respondent's drug use was in violation of petitioner's EMS OGP procedures.

## RECOMMENDATION

After making these findings, I requested and received respondent's personnel record. Respondent has been employed by the Department since January 26, 2015. On March 29, 2016, respondent received a one-day annual leave penalty for failing to verify the address and telephone number of a patient in cardiac arrest, causing the ambulance to arrive at the correct location approximately 43 minutes after the initial 911 call. On October 24, 2016, respondent executed a stipulation of settlement with the Department, in which he agreed to a penalty of six annual leave days for violating the Department's rules against the use of electronic devices while working in the EMD, as well as violating the Department's rules as they relate to grooming standards. On June 27, 2018, respondent was suspended for thirty days because of the June 21, 2018, positive drug test which is the subject of this proceeding. On January 9, 2019, respondent was suspended for ten days for "conduct underlying [his] arrest on or about January 4, 2019."

In so far as his performance evaluations are concerned, on September 28, 2015, respondent received an overall rating of "conditional," for the interim appraisal period of July 1 through September 30, 2015. For the annual appraisal period of January 1 through December 31, 2015, respondent received an overall rating of "conditional." For the interim appraisal periods of January 12 through April 12, 2016, and April 1 through June 30, 2016, respondent received overall ratings of "unsatisfactory" and "good," respectively. The latter evaluation contained a notation that he had shown some improvement. For the annual appraisal period of January 1 through December 31, 2016, respondent received an overall rating of "good." For the annual appraisal period of January 1 through December 31, 2017, respondent had an overall rating of "conditional." Effective September 27, 2017, respondent was restricted from performing patient care and field related duties, and from driving Department vehicles. As a result, for the annual appraisal period of January 1 through December 1, 2018, he received an overall rating of "unrateable," with a notation that because of his restriction from patient care, he could not perform the normal functions of his position, and therefore could not be evaluated.

The Department's rules provide that for a positive drug test for an illegal drug, the penalty for a first offense is termination. EMS OGP 113-02, section 9.3. In other words, the

Department has a zero-tolerance policy towards illegal drug use. Accordingly, it seeks respondent's termination. I find that to be appropriate.

Absent exceptional mitigating circumstances, this tribunal has invariably recommended termination for illegal drug use. *Fire Dep't v. Benson*, OATH Index No. 1638/06 (Sept. 5, 2006); *Fire Dep't v. Milano,* OATH Index No. 2029/05 (July 3, 2006); *Fire Dep't v. Kirk*, OATH Index No. 441/06 (Apr. 26, 2006), *aff'd,* 47 A.D.3d 406 (1st Dep't 2008); *Fire Dep't v. O'Sullivan,* OATH Index No. 1914/05 (Sept. 29, 2005); *Fire Dep't v. St. Cloud,* OATH Index No. 128/05 (Apr. 7, 2005); *Fire Dep't v. Reinhard*, OATH Index No. 647/05 (Oct. 21, 2004). *Fire Department v. Kelly*, OATH Index No. 804/06 (June 9, 2006), *modified on penalty,* Comm'r Dec. (Jan. 2, 2007), *aff'd,* 56 A.D.3d 475 (2d Dep't 2008) and *Fire Department v. Fahey,* OATH Index No. 1376/07 (Oct. 9, 2007), *modified on penalty,* Comm'r Dec. (Nov. 19, 2008), are exceptions. Kelly had been diagnosed with work-related PTSD well before 9/11. He had had a lengthy tenure with the Department and had displayed extreme heroism before and after 9/11. His testimony was graphic, horrific, and compelling. After 9/11, his PTSD became so severe that he experienced psychotic attacks. The expert testimony supported the gravity of Kelly's condition. Fahey was equally compelling. With a likewise lengthy tenure, Fahey was in Tower 1 when Tower 2 of the Twin Towers collapsed. At one point, he thought that he was buried and awaited his own death. The effects of the stress were also marked and severe, with Fahey pounding holes in the wall during his sleep. Accordingly, the judge in each case imposed the maximum permissible penalty short of termination, that is, 10 and 20 days suspension, respectively.

In a case that did not involve a member of the Fire Department, but a police officer whose PTSD was caused by his work as an undercover officer for many years, the Appellate Division held termination to be disproportionate to the proven offense of the officer's refusal to submit to a drug test. The court found that the many years of undercover work that resulted "in a severe sense of disorientation" were mitigating circumstances that led to the officer's admitted drug use. *Puig v. McGuire*, 121 A.D.2d 853, 856 (1st Dep't 1986).

In another case before this tribunal involving a Department of Sanitation worker, the Department, which does not have a zero-tolerance policy like the Fire Department, sought to establish that a positive result on a drug test of the respondent's urine resulted from new usage of marijuana, separate and apart from previously established usages for which the respondent had

already been disciplined. *Dep't of Sanitation v. Hernandez,* OATH Index No. 125/03 (July 8, 2003). The Department based its charge on the fact that the level of marijuana metabolite in the respondent's urine had increased rather than decreased, over a seventeen-day period. The respondent denied further use of marijuana that could have resulted in his positive test. The Department's expert witness opined that the only plausible explanation for the increase was that the respondent had used marijuana since the prior test. The respondent's expert countered that the most reliable method of distinguishing between new and prior ingestion of marijuana in a chronic user was by charting the level of cannabinoids against the level of creatinine in the urine. He cited to three scientific studies and posited that the respondent's urine specimen showed a decreased level of cannabinoids. The respondent's expert therefore disagreed with the petitioner's expert. Given the testimony of the expert witnesses and the documentary evidence, Administrative Law Judge Faye Lewis found that the Department did not meet its burden and recommended dismissal of the charge.

Respondent here did not present an expert witness to testify in depth as to the level of cannabinoids versus his creatinine level in the first and second tests, and as previously stated, I am not compelled by the scientific studies which he submitted given the distinction between his situation and the closely-monitored settings of the subjects of those studies.

Nonetheless, respondent argues for a penalty less than termination, noting Mr. Correa's concession at trial that the Department has occasionally entered into agreements with uniformed members who tested positive for an illegal drug, where penalties short of termination were imposed (Tr. 54-56). As mitigation for his misconduct, respondent claims that the stressors in his life caused him to use marijuana off-duty, on occasion. Respondent further cites to this tribunal's decision in *Fire Department v. Perez*, OATH Index No. 621/04 (Apr. 29, 2004), *modified on penalty,* Comm'r Dec. (May 24, 2004), *modified on penalty,* NYC Civ. Ser. Comm'n Item No. CD06-104-M (Sept. 11, 2006).

In *Perez*, the respondent, an EMT, tested positive for marijuana use at a level of 33 ng/mL in August 2003. The respondent admitted to resorting to marijuana use after the unexpected loss of his mother, who had lived with him and who went to the hospital for minor surgery the previous year and never woke up. In January 2004, the respondent enrolled in a rehabilitation program which he attended three days a week, and which tested him weekly for drugs, with such tests presenting negative results. He was also being treated by a psychiatrist on

an as-needed basis for depression, and was hospitalized the following month after reporting to his counselor that he had suicidal ideations. *Perez,* OATH 621/04 at 2-3. While recognizing that the respondent only sought treatment after the Department brought disciplinary charges against him for his positive drug test, the trial judge expressed that extraordinary mitigating factors such as tenure, record and prognosis must be considered, even in positive drug test cases. *Perez,* OATH 621/04 at 4. In light of those considerations and the respondent's lack of a prior record, the trial judge recommended that he be suspended without pay for 60 days. Rejecting the judge's recommendation, the Department terminated the respondent. On appeal, the Civil Service Commission found termination to be excessive and ordered the respondent's reinstatement to his job, but without backpay.

The only parallel between *Perez* and this case is that both respondents lost their mothers. The enormity of such a loss can, no doubt, significantly impact and indeed test an individual's coping mechanisms. But, while *Perez* tested positive for marijuana at 33 ng/mL, respondent tested positive at approximately four and one half times that amount, at 147 ng/mL. Respondent also testified that he was a frequent user, not an occasional user, as he argued in closing. *Perez* entered a rehabilitation program. There was no indication that respondent here, made any attempts at rehabilitation. *Perez* had no prior discipline while respondent has two prior instances of discipline. Moreover, respondent's job performance is far from stellar. In fact, in his short tenure with the Department, respondent has received ratings of primarily "conditional" on his performance evaluations. The Department did not offer an explanation as to why respondent was restricted from performing patient care and field related duties, and from driving Department vehicles. But respondent's claim that his restricted status, his mother's illness, and his cramped workspace were his primary stressors which caused his frequent use of marijuana were not sufficiently compelling for me to consider them as mitigation for his drug use.

Accordingly, I find that termination from his employment is not only in accordance with the Department's rules, but it is appropriate, and I so recommend.

Ingrid M. Addison
Administrative Law Judge

January 24, 2020

SUBMITTED TO:

**DANIEL A. NIGRO**
*Commissioner*

APPEARANCES:

**STAS SKARBO, ESQ.**
*Attorney for Petitioner*

**LEN SHRIER, ESQ.**
*Attorney for Respondent*

In the Matter of Disciplinary Charges by the
**NEW YORK CITY FIRE DEPARTMENT**

Petitioner

-against-

**HYRON ROBINSON**
Emergency Medical Technician
PSAC-1

Respondent

**COMMISSIONER'S DECISION**

OATH Index No. 1004/19
FDNY No. 175/18D

I have had an opportunity to review and consider the Report and Recommendation issued by Administrative Law Judge Ingrid M. Addison ("ALJ Addison"), the transcript of the OATH trial, and exhibits introduced at the trial. Additionally, I have had an opportunity to review the submissions from Respondent's Counsel, who elected to rest upon his closing argument and the letter brief to ALJ Addison, dated December 23, 2019, in lieu of a post-trial submission. I also have had an opportunity to review post-trial submissions from the Department's attorney.

In her Report and Recommendation dated January 24, 2020, ALJ Addison held that the Department proved by a preponderance of the credible evidence that you tested positive for marijuana metabolites on June 21, 2018 and on July 30, 2018. ALJ Addison sustained two (2) counts of use of illicit drugs, in violation of EMS OGP 101-01 § 4.2.12, and two (2) counts of use of illegal drugs that can lead to impairment while on duty, in violation of EMS OGP 113-02 § 6.1(D). I concur with ALJ Addison's findings of fact and of guilt.

In her Report and Recommendation ALJ Addison found that your first positive test for marijuana is sufficient to warrant your termination from employment. She also found that you admitted to smoking marijuana "three times a week" prior to your June 21, 2018 positive test, and were therefore a chronic user of marijuana, whose denials of marijuana use after June 21, 2018 were not convincing. Furthermore, ALJ Addison found that you made no attempts at rehabilitation, and did not present mitigation for your drug use. ALJ Addison recommended a penalty of termination, and after careful consideration I concur with her recommendation as to penalty.

THEREFORE, for your misconduct, I am imposing a penalty of termination from your employment with the Department, which will be effective immediately.

By order of,

[redacted]

Daniel A. Nigro
Fire Commissioner

Date: 02.20.2020

**THE CITY OF NEW YORK**
**CIVIL SERVICE COMMISSION**

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*In the Matter of the Appeal of*

**HYRON ROBINSON**

*Appellant*

*-against-*

**FIRE DEPARTMENT**

*Respondent*

*Pursuant to Section 76 of the New York State Civil Service Law*

CSC Index No: 2021-0296

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# DECISION

**HYRON ROBINSON** ("Appellant") appealed from a determination of the Fire Department ("FDNY") finding Appellant guilty of incompetency and/or misconduct and imposing a penalty of termination following disciplinary proceedings conducted pursuant to Civil Service Law ("CSL") Section 75.

The Civil Service Commission ("Commission") requested written arguments from the parties on July 7, 2021. Appellant's brief was received on August 13, 2021, and FDNY's brief was received on August 21, 2021.

The Commission has reviewed the record below, which we incorporate by reference into this decision, as well as arguments submitted on appeal, and find that there is sufficient evidence to support the final determination and that the penalty imposed is appropriate.

Therefore, the final decision and penalty imposed are hereby affirmed.

**SO ORDERED.**

Dated: September 28, 2021