

**BOARD OF CITY SERVICE COMMISSIONERS
CITY OF MILWAUKEE**

IN THE MATTER OF
JEFFREY D. DATKA
V.
CITY OF MILWAUKEE

FINDINGS AND DECISION

This is the written determination of the Board of City Service Commissioners on the administrative appeal hearing in this case. A timely appeal was received from Jeffrey D. Datka (hereinafter the "Appellant") challenging his discharge from the position of Equipment Operator 1, Operations Division, Sanitation Section, Department of Public Works (hereinafter "DPW" or the "Department") on February 21, 2025.

An administrative appeal hearing was held in hybrid format (both in-person and by video conference) pursuant to Sec. 63.43, Wis. Stats. and City Service Commission Rule XIV, Section 7, on Monday, April 14, 2025 at 9:00 a.m. The witnesses were sworn and all testimony was taken by a Court Reporter.

Appearances:

City Service Commission:	Francis Bock, President Marilyn Miller, Vice President Janet Cleary, Commissioner Steve Smith, Commissioner Harper Donahue IV, Executive Secretary Elizabeth Moore, Administrative Support Specialist
Commission Represented By:	Patrick McClain, Assistant City Attorney
Appellant Represented By:	Himself
Department Represented By:	Joshua Stranton, Human Resources Rep., DPW
Witnesses:	Lauren Torhorst, APNP Froedtert & Medical College of WI Emily Bergeaux, Compliance Officer Donald Laster, Safety Supervisor, DPW Dan Thomas, Administrative Services Director, DPW Jeffrey Datka, Appellant

ISSUE

The issue is whether or not there was just cause for the action taken by the Department in accordance with sec. 63.43, Stats.

Based upon the evidence in the record, the Commission finds as follows:

FINDINGS OF FACT

1. Appellant was first employed by the City as a Driver/Worker with DPW on March 7, 2022.
2. The DPW Standard Work Rules prohibit employees from being at work while under the influence of alcohol or a controlled substance, or while having detectable levels of alcohol or a controlled substance in their system.
3. The Standard Work Rules generally require progressive discipline for violations of the alcohol and controlled substance policy (hereinafter "Drug and Alcohol Policy").
4. A first violation of the Drug and Alcohol Policy results in a 10-day suspension, and referral to the City's Employee Assistance Program ("EAP") and/or Substance Abuse Professional ("SAP") program.
5. Upon successful completion of the EAP and/or SAP process, employees are required to pass a return-to-duty drug and alcohol test and may be subject to follow-up testing (consisting of at least six tests in the first 12 months).
6. A second violation of the Drug and Alcohol Policy will result in discharge.
7. In addition to the DPW Standard Work Rules, employees who are required to possess a Commercial Drivers License ("CDL") are subject to federal regulations under Title 49, Code of Federal Regulations (hereinafter "federal regulations").
8. Appellant's position requires him to possess a CDL.
9. On March 22, 2024, Appellant was given a post-accident test under the Drug and Alcohol Policy.
10. On March 25, 2024, the Department was notified that Appellant tested positive for cocaine, which is a controlled substance.

11. This constituted a first violation of the Drug and Alcohol Policy and Appellant was suspended for 10 days.
12. Appellant successfully completed the required SAP program and return-to-duty test.
13. During the return-to-duty process, Appellant was informed that a second violation of the Drug and Alcohol Policy will result in a discharge.
14. On January 31, 2025, Appellant was required to take a follow-up drug test.
15. Appellant claimed to be unable to provide the required 45 ml of urine within the time allotted.
16. Appellant was able to produce the required 45 ml of urine during previous drug tests.
17. Because Appellant failed to produce the required urine specimen, federal regulations required Appellant to complete a “shy bladder” evaluation.
18. The purpose of a shy bladder evaluation is to determine if there is evidence of a medical condition which explains an employee’s failure to provide a urine specimen.
19. The shy bladder evaluation process afforded Appellant five days to obtain “an examination by a licensed physician ... assessing the presence of clinical evidence of a medical condition that has, or with a high degree of probability could have, precluded [Appellant] from providing the required specimen...” (Exh. J-1).
20. Federal regulations require shy bladder evaluations to be completed by a medical doctor or a doctor of osteopathy.
21. Failure to complete a shy bladder evaluation is deemed a “refusal to test,” which is a violation of both the DPW Standard Work Rules and federal regulations.
22. Appellant was required to complete the shy bladder evaluation by February 5, 2025.
23. Appellant returned the shy bladder evaluation form on February 7, 2025—two days after the expiration of the five-day deadline.
24. The form was completed and signed by “Lauren Torhorst APNP, DNP,” who is not a medical doctor or a doctor of osteopathy.

25. On February 10, 2025, the Department's Medical Review Officer ("MRO") determined that Appellant had not complied with the shy bladder evaluation requirements, and issued a final disposition of "Refusal to test." (Exh. D-16).
26. In a letter dated February 10, 2025, the Department notified Appellant that a pre-discharge hearing would be held on February 11, 2025 to address Appellant's violation of City Service Commission Rule XIV, Section 12(Q) (failure to comply with departmental work rules, policies or procedures) based on Appellant's violations of the DPW Standard Work Rule 1.21 (Rules of Conduct - Misconduct), 1.28 (Alcohol and Controlled Substance), and 1.42 (Driver's License Policy/CDL License Policy).
27. A pre-discharge hearing was held on February 11, 2025.
28. During the hearing, the Department agreed to have the MRO contact Appellant's treating physician to retrieve more information regarding Appellant's medical evaluation.
29. On February 17, 2025, the MRO again confirmed a final disposition of "Refusal to Test," which constituted Appellant's second violation of the Drug and Alcohol Policy.
30. As a result of this violation, and in accordance with the Department's progressive discipline policy, Appellant was discharged on February 21, 2025.
31. Appellant eventually produced a shy bladder evaluation form signed by a medical doctor, but the five-day deadline had already passed.
32. Additionally, after reviewing Appellant's medical records, the MRO concluded that there was insufficient evidence to justify a finding of shy bladder.

CONCLUSIONS OF LAW

1. Appellant was an employee holding a classified position in DPW, the appointing authority within the meaning of Sec. 63.43, Wis. Stats., and City Service Commission Rules I and XI.
2. The Department demonstrated by a preponderance of the evidence that Appellant violated City Service Commission Rule XIV, Section 12(Q) by failing to comply with DPW Standard

Work Rules 1.21 (Rules of Conduct - Misconduct), 1.28 (Alcohol and Controlled Substance), and 1.42 (Driver's License Policy/CDL License Policy).

3. Based on the preponderance of the evidence, the Department did have just cause to discipline Appellant.
4. Based on the preponderance of the evidence, there was just cause to discharge the Appellant.

ORDER

By unanimous vote of the Board, the discharge of Appellant on February 21, 2025 is affirmed.

Dated and signed at Milwaukee, Wisconsin, this June 3, 2025.

FRANCIS BOCK, PRESIDENT