

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

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IN THE MATTER OF  
JASON P. REMBALSKI  
V.  
CITY OF MILWAUKEE

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**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 Jason Rembalski (hereinafter the "Appellant") challenging his discharge from the position of Municipal Services Electrician, Department of Public Works (hereinafter the "Department") on December 10, 2022.

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 XI, Section 2, on Tuesday, May 9, 2023 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 Kobena-Marcus Collins, Commissioner Steve Smith, Commissioner Kristin Hennessy Urban, Interim Executive Secretary Elizabeth Moore, Administrative Assistant Coordinator
Commission Represented By:	ACA Patrick McClain, Assistant City Attorney
Appellant Represented By:	Mark Schoenfeldt, Attorney for Appellant
Department Represented By:	Nicholas Cahala, Human Resources Analyst Senior
Witnesses:	Dan Thomas, Administrative Services Director, DPW Dr. Janelle Jaworski, Chief Medical Review Officer Appellant, DPW, Municipal Services Electrician Kayla Wendlake, Nurse Practitioner/APNP

## **ISSUE**

The issue is whether there was just cause for the action taken by the Department in accordance with Wis. Stat. § 63.43.

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 City Laborer Seasonal with the Department of Public Works on June 3, 1996.
2. Appellant was promoted to Electrical Mechanic Apprentice on January 5, 2014.
3. Appellant was promoted to Municipal Services Electrician on June 17, 2018.
4. On May 26, 2022, Appellant submitted a drug test sample under the City of Milwaukee Drug and Alcohol Testing Program ("DATP").
5. On June 5, 2022, the Department was notified that Appellant's test result was positive for Cocaine.
6. As a result of his positive drug test, Appellant was suspended for 10 days and was required to complete the Substance Abuse Program ("SAP").
7. Appellant was advised that he would be subject to further follow-up testing, and that a second violation under the DATP would result in discharge.
8. On November 17, 2022, Appellant again submitted a drug test sample under the DATP.
9. On November 22, 2022, the Department was notified that Appellant's test result was positive for Cocaine.
10. Appellant subsequently requested a "split sample" specimen test.
11. On December 5, 2022, the Department was notified that the split sample specimen test re-confirmed a positive result for Cocaine.
12. The Department held a pre-disciplinary hearing on December 9, 2022.
13. Appellant was discharged from City Service on December 10, 2022.

14. A timely appeal was filed by the Appellant on December 13, 2022.
15. Appellant admitted to voluntarily ingesting Cocaine prior to his positive drug test on June 5, 2022.
16. Appellant denied voluntarily ingesting Cocaine prior to his positive drug test in November, 2022, and asserted that one of his several prescription medications may have produced a false positive result.
17. Dr. Janelle Jaworski, Chief Medical Review Officer (“MRO”), is a medical doctor who has undergone additional training and certification related to the Department of Transportation (“DOT”) drug testing program.
18. Dr. Jaworski testified that DOT confirmation testing identifies the exact molecular structure of a controlled substance.
19. Dr. Jaworski reviewed Appellant’s prescription medication list and concluded that none of the listed medications could cause a false positive for cocaine.
20. Dr. Jaworski specifically testified that Amoxicillin cannot produce a false positive for cocaine on DOT confirmation tests.
21. Dr. Jaworski similarly testified that Non-Steroidal Anti-Inflammatory Drugs (“NSAIDS”) have been known to produce false positives for Marijuana on less-accurate screening-type tests, but cannot produce false positives for Cocaine. Furthermore, DOT confirmation tests are capable of eliminating the possibility of false positives from NSAIDS because they are designed to detect the exact molecular structure of a controlled substance.
22. Dr. Jaworski testified that it is a “medical fact” that Amoxicillin cannot produce a false positive for Cocaine on DOT confirmation tests.
23. Kayla Wendlake is a Family Nurse Practitioner at the VA Medical Center in Milwaukee. She is not a certified MRO, and does not have the same drug testing training as Dr. Jaworski.

24. Ms. Wendlake testified that she would not “take issue” with any of Dr. Jaworski’s testimony, but stated that any testing has the possibility of being affected by human error.

25. Ms. Wendlake did not present any evidence of human error in Appellant’s testing.

### **CONCLUSIONS OF LAW**

1. The Appellant was an employee holding a classified position in the Department of Public Works, the appointing authority within the meaning of Sec. 63.43, Wis. Stats., and City Service Commission Rules I and XI.
2. The Commission finds the expert testimony of Dr. Jaworski to be more credible than Ms. Wendlake’s based on Dr. Jaworski’s superior training and experience relevant to DOT drug testing.
3. Appellant’s November 17, 2022 DATP test returned a positive result for Cocaine in violation of departmental and work rules and pursuant to City Service Commission Rule XIV, Section 12, Paragraph Q.
4. Based on the evidence in the record, the Department demonstrated by a preponderance of the evidence that there was just cause to discipline the Appellant.
5. Based on the evidence in the record, the Department demonstrated by a preponderance of the evidence that there was just cause to discharge the Appellant.

### **ORDER**

By unanimous vote of the Board, the discharge of Appellant on December 10, 2022 is affirmed.

Dated and signed at Milwaukee, Wisconsin, this 23rd day of May, 2023.

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FRANCIS BOCK, PRESIDENT