

NOTICE
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2016 IL App (5th) 150303-U

NO. 5-15-0303

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

TIMOTHY HOLCOMB,)	Appeal from the
)	Circuit Court of
Petitioner-Appellant,)	Madison County.
)	
v.)	No. 14-MR-304
)	
ILLINOIS CIVIL SERVICE COMMISSION)	
and THE DEPARTMENT OF)	
TRANSPORTATION,)	Honorable
)	John B. Barberis, Jr.,
Respondents-Appellees.)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Presiding Justice Schwarm and Justice Cates concurred in the judgment.

ORDER

¶ 1 *Held:* Decision of the Illinois Civil Service Commission to uphold petitioner's discharge from employment with the Illinois Department of Transportation is affirmed where the findings of fact are not contrary to the manifest weight of the evidence and the decision is not unreasonable, arbitrary, or unrelated to the requirements of service.

¶ 2 The petitioner, Timothy Holcomb, filed a petition for administrative review against the respondents, Illinois Civil Service Commission (the Commission) and Illinois Department of Transportation (IDOT), seeking a judicial review and reversal of the Commission's approval of the proposal to discharge Holcomb from employment with

IDOT. The circuit court of Madison County affirmed the Commission's decision. Holcomb filed a timely notice of appeal. For the following reasons, we affirm the Commission's decision.

¶ 3

FACTS

¶ 4 On July 9, 2014, a hearing was conducted at the Commission regarding the appeal of the petitioner's employment discharge. The petitioner testified that he began working for IDOT in April 2010. On January 30, 2014, he underwent a random drug test, which resulted in a positive indication of cocaine metabolite. Petitioner's Exhibit 8 was admitted into evidence, which is a document with the petitioner's signature, acknowledging receipt of IDOT's alcohol and drug testing policy and procedures. The petitioner testified that he was aware that he was subject to random drug testing, and he did not contest that. He admitted that he ingested cocaine on Sunday, January 26, 2014, that he did not work on Monday, January 27, 2014, but he did work on Tuesday, January 28, 2014. Petitioner's Exhibit 2 was admitted into evidence, which is an outline of IDOT's Alcohol and Drug Testing Procedures. The petitioner agreed that, pursuant to the exhibit, a positive drug test would result in a suspension pending discharge.

¶ 5 Similarly, Petitioner's Exhibit 5 was admitted into evidence, which is an excerpt from the Agreement between the Downstate Teamsters of which the petitioner was a member and IDOT, *et al.* The excerpt is labeled "Article 14, Drug Testing." The petitioner acknowledged that there was an agreement between his union and IDOT and that the excerpt provides that a positive drug test would result in a 30-day suspension pending discharge. However, he contended there is a distinction between testing positive

for cocaine and testing positive for a metabolite of cocaine. The petitioner testified that he attended a predisciplinary hearing that resulted in a determination that there was just cause to discharge him from IDOT's employment.

¶ 6 Donna Kohlberg testified that she is employed by IDOT as the administrator of the Drug and Alcohol Program. As part of her duties, she oversees the drug testing for IDOT. Kohlberg explained that the petitioner's job with IDOT required him to have a valid CDL license, which made him subject to random drug testing. Kohlberg averred that Petitioner's Exhibit 2—Chapter 13 of the Personnel Policy on Drug and Alcohol Testing—provides that a positive drug test will result in suspension pending discharge. She stated that the petitioner tested positive for cocaine and "a positive for cocaine is a positive[,] and [i]t doesn't matter if it's metabolite." Accordingly, Kohlberg testified that the petitioner was properly discharged as a result of the positive test result.

¶ 7 Duane Beiser testified that he is employed by IDOT as a highway maintainer. He was a coworker of the petitioner and worked with him on January 30, 2014—the date of the drug test. Beiser indicated that he did not observe anything unusual on that date, nor did he, based on his observations, believe the petitioner to be under the influence of any substance. He qualified, however, that he had never been around anyone who is under the influence of cocaine and he ultimately was not qualified to make such a determination.

¶ 8 The petitioner again took the stand. Respondent's Exhibit 1 was admitted into evidence. It consists of four employment evaluations on which the petitioner received satisfactory or highly satisfactory rankings across the board. The petitioner testified he

was not under the influence of any drug when he reported to work on January 30, 2014, and in the five years of working for IDOT, he had never been in any accidents involving any IDOT vehicles.

¶ 9 The hearing continued on August 14, 2014. John Crum testified that he is a clinical psychologist at Addiction Treatment Strategies, which is a six-month outpatient medical detoxification and drug addiction treatment facility. After a lengthy recitation of his curriculum vitae, Crum testified that in January 2014, the petitioner came to him requesting services for cocaine addiction. Accordingly, Crum began treating him at that time and Crum anticipated that the treatment would continue another six months.

¶ 10 Crum testified that cocaine is quickly metabolized and is in and out of the user's system within an hour to an hour and a half. The metabolite, however, breaks down and remains in the system up to 23 days. Crum reported that a person using cocaine "may not have all of their response rates" and may not be able to safely operate a machine. He stated that withdrawal symptoms after using cocaine vary from person to person, but increased heart rate, palpitations, hallucinations, and delusions may occur. Crum described the petitioner as a "functioning addict" who is making very good progress in treatment. Crum opined that the petitioner could safely return to driving trucks for IDOT.

¶ 11 Christopher Knapp also gave a lengthy recitation of his curriculum vitae. He testified that he currently serves as a Medical Review Officer (MRO) for IDOT and has been certified as such since 1998. In his capacity of MRO, he reviews drug screening results for the legality of the collection, the chain of custody, and determines whether any discovered substances are due to a legal prescription or illegal drug use. Knapp testified

that he reviewed the results of the random drug test for which the petitioner was selected. When the result returned positive for cocaine metabolite, the petitioner requested a split, which was tested by a second, independent laboratory and also returned positive for cocaine metabolite. Knapp confirmed that the metabolite present in the petitioner's specimen was indicative of recent cocaine use and is present only if a person has used cocaine.

¶ 12 Knapp explained that the metabolite was present, but cocaine itself was not because cocaine is very difficult to detect in the urine and has a very short urinary detention window. For those reasons, the chances of detecting the actual drug in the urine are very small. In contrast, cocaine metabolite is present in the urine at a higher concentration and for a longer duration, thereby making it more readily discernible. Knapp attested to a reasonable degree of medical certainty that the petitioner's drug test was positive and it was above the cutoff level established by IDOT. Knapp testified that the withdrawal symptoms of cocaine can be more impairing than the effects of the actual drug and the withdrawal could potentially affect a person's ability to operate heavy machinery. He admitted that a positive result only confirms prior use and does not detect impairment.

¶ 13 On October 30, 2014, the ALJ entered a proposal for decision. In the proposal, the ALJ found, *inter alia*, that on January 30, 2014, the petitioner underwent a random drug test that returned positive for cocaine; that the petitioner acknowledged that he ingested cocaine on January 26, 2014; that the petitioner operated a dump truck on the morning of January 30, 2014, prior to the drug test; that discharge from employment with IDOT is

the required discipline for a positive drug test; that cocaine itself metabolizes quickly—staying in the body for only an hour to an hour and a half—and that the metabolite remains in the body up to 23 days and for that reason, it is common to test for the metabolite as opposed to cocaine itself; that the petitioner had used cocaine approximately eight or nine times since he began treatment in January 2014; that Crum testified that the petitioner could return to work and succeed in his job; that Duane Beiser testified that he worked with the petitioner and on the morning of January 30, 2014, did not see anything that led him to believe that the petitioner was impaired; and that since the petitioner began employment with IDOT, he had received satisfactory annual evaluations and was a good employee.

¶ 14 The ALJ concluded that IDOT proved by a preponderance of the evidence that the petitioner tested positive for cocaine on January 30, 2014. The ALJ acknowledged the petitioner's argument that the test indicated a positive result for cocaine metabolite and not cocaine itself. However, the ALJ found the argument unpersuasive because there was no evidence that the drug test was unacceptable, nor was there any authority stating that the term "metabolite" must be included in the definition of a "positive" drug test. The ALJ emphasized the testimony of both Knapp and Crum that indicated the testing for the metabolite is a common and acceptable way to test for cocaine and the evidence adduced at the hearing shows that the test was correct.

¶ 15 Having established that IDOT proved the petitioner tested positive for cocaine, the ALJ stated that—despite the petitioner's positive evaluations on the job—his discharge from employment with IDOT was warranted because a positive drug test of a person working

in a safety-sensitive position is good cause for discharge and IDOT rules require discharge for a positive drug test. Accordingly, the ALJ concluded that the petitioner's discharge was warranted.

¶ 16 The Commission affirmed and adopted the ALJ's proposal and entered its final decision reflecting the same on November 21, 2014. On December 18, 2014, the petitioner filed a petition for administrative review in the circuit court and an order was entered on July 1, 2015, affirming the Commission's decision. The petitioner filed a timely notice of appeal.

¶ 17 ANALYSIS

¶ 18 The petitioner raises the following issues on appeal: (1) whether the Commission erred in finding that a positive indication for cocaine metabolite constituted a violation of IDOT's drug policy; and (2) whether the Commission erred in upholding the petitioner's discharge, given his past work history, rules of the Commission, and recommendation of the MRO.

¶ 19 In an administrative appeal, "[w]e review the decision of the administrative agency and not the decision of the circuit court." *Williams v. Illinois Civil Service Comm'n*, 2012 IL App (1st) 101344, ¶ 9. "In cases of discharge, the scope of review is a two-step process." *Id.* "We must first determine whether the agency's findings of fact are contrary to the manifest weight of the evidence." *Id.* "If the agency's findings of fact are not contrary to the manifest weight of the evidence, we must next determine whether the findings of fact provide sufficient basis for discharge." *Id.* "The latter consideration is

measured by whether the decision is arbitrary, unreasonable, or unrelated to the requirements of service." *Id.*

¶ 20

I. IDOT Drug Policy

¶ 21 The first issue is whether the Commission erred in finding a positive indication for cocaine metabolite constituted a violation of IDOT's drug policy. The Commission adopted the ALJ's judgment, which incorporated the following pertinent findings of fact: the petitioner underwent a drug test on January 30, 2014, which yielded a positive result; the petitioner admitted that he used cocaine four days prior to the drug test; the petitioner operated a dump truck on January 30, 2014; the customary and acceptable practice is to test for cocaine metabolite rather than for cocaine itself because the metabolite remains in the body much longer than the actual drug; and discharge from employment with IDOT is the required discipline for a positive drug test.

¶ 22 Upon review of the record, we cannot say that these findings of fact are contrary to the manifest weight of the evidence, as they are based on testimony presented and there was no evidence to the contrary. Chapter 13 of IDOT's Personnel Policy on Drug and Alcohol Testing provides that a positive drug test will result in suspension pending discharge. The record reflects evidence that testing for the metabolite rather than cocaine itself is usual and customary. For these reasons, we affirm the Commission's findings of fact and conclusion that the petitioner violated IDOT's drug policy.

¶ 23

II. Petitioner's Discharge

¶ 24 The final issue on appeal is whether the Commission erred in upholding the petitioner's discharge, given his past work history, rules of the Commission, and

recommendation of the MRO. The ALJ noted the testimony that the petitioner was never perceived to be under the influence of any substance while on the job, that he consistently received favorable employment evaluations, that he was never involved in any accidents while operating any IDOT vehicles, and that he is making substantial progress in substance abuse treatment. However, the petitioner was employed by IDOT in a safety-sensitive position, and the IDOT drug policy states that a positive drug test requires a suspension pending discharge. There are no noted exceptions. Moreover, the MRO testified that withdrawal symptoms from cocaine use are potentially more impairing than the effects of the actual drug itself and the withdrawal could affect a person's ability to operate heavy machinery. Accordingly, despite the petitioner's stellar performance while working for IDOT, we find the Commission's decision to uphold the petitioner's discharge is not arbitrary, unreasonable, or unrelated to the requirements of service. See *Williams v. Illinois Civil Service Comm'n*, 2012 IL App (1st) 101344, ¶ 9.

¶ 25

CONCLUSION

¶ 26 Because the findings of fact adopted by the Commission are not against the manifest weight of the evidence and the Commission's decision to uphold the petitioner's employment discharge is not arbitrary, unreasonable, or unrelated to the requirements of service (see *Williams v. Illinois Civil Service Comm'n*, 2012 IL App (1st) 101344, ¶ 9), we affirm the decision of the Commission and the judgment of the circuit court of Madison County.

¶ 27 Affirmed.