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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Deonta L. Brinston,)
)
 Appellant,)
 vs.)
)
 South Carolina Department of Criminal)
 Justice,)
)
 Respondent.)

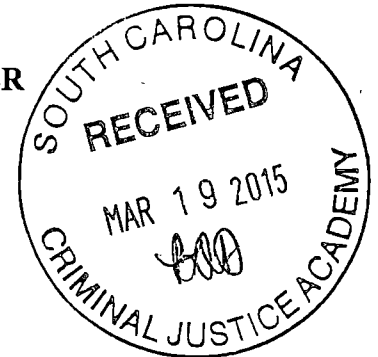
Docket No. 14-ALJ-30-0540-AP

ORDER

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SC Court of Appeals



STATEMENT OF THE CASE

This matter is before the Administrative Law Court (“the ALC” or “the Court”) for an administrative appeal pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2014). In this matter, Deonta L. Brinston (“Appellant”) appeals the South Carolina Department of Criminal Justice Academy’s (“the Academy’s”) final decision permanently denying him certification as a law enforcement officer due to substance abuse. After Appellant filed his Notice of Appeal, the Academy filed a Motion to Dismiss pursuant to ALC Rule 33, alleging the Notice of Appeal was not timely filed. Appellant filed a Response to the motion to which the Academy filed a Reply. After reviewing the parties’ filings, this Court found the Notice of Appeal was timely filed and served and denied the Academy’s motion to dismiss. On the merits, I reverse the Academy’s final decision because the Academy’s decision was arbitrary and capricious and characterized by an abuse of discretion and substantial evidence does not support the Academy’s determination.

BACKGROUND

Appellant was formerly employed by the Anderson County Sheriff’s Office as a deputy. In early 2014, Appellant was going through a divorce and custody battle. On April 2, 2014, Appellant’s soon-to-be ex-wife, reported to the Anderson County Sheriff’s Office via a phone call that Appellant and another deputy were using illegal steroids. No formal written complaint was filed. On April 9, 2014, as a result of the report, the Anderson County Sheriff’s Office required Appellant and the other deputy to take a specialized urine-based drug test for steroids at AnMed Laboratory Services in Anderson County. On April 24, 2014, the test results showed Appellant and the other deputy tested positive for Methandienone. Appellant also tested positive

for Nandrolone. Both substances are listed as anabolic steroids under section 44-53-1510(A) of the South Carolina Code (2002).

On April 29, 2014, Appellant met with SLED agents to discuss the results of the test. Appellant declined to speak to the agents officially until he talked to an attorney. Appellant then went to a different room, was given his *Garrity*¹ warnings, and spoke with Lieutenant Steven J. Reeves and Sergeant Jonathan Brown of the Anderson County Sheriff's Office pursuant to the office's internal investigation. Appellant gave a verbal and written statement; however, Appellant left to talk with Chief Smith before signing the written statement, which existed only as an electronic document at the time. After a short discussion with Chief Smith, Chief Smith terminated Appellant for use of anabolic steroids. Specifically, Appellant was terminated for violating General Orders - 107 Conduct Unbecoming an Officer (Alcohol and Controlled Substances). On May 13, 2014, the Anderson County Sheriff's Department submitted a Personnel Change in Status form to the Academy, as required by statute, which indicated Appellant was terminated because he engaged in the use of anabolic steroids.

Appellant contested the urine analysis findings, arguing he was taking three over-the-counter supplements for body building, which he was advised could lead to false-positive test results. Appellant went to a private physician and was retested for steroids on May 20, 2014. The test results, as documented in a May 27, 2014 SOAP² note, show Appellant tested negative for steroids, but had low testosterone – low enough to qualify for hormone replacement therapy.

On June 19, 2014, Calhoun Falls Police Department submitted a Personnel Change in Status – Hire Form to the Academy indicating it intended to hire Appellant as a deputy. Shortly thereafter, the Academy revoked Appellant's law enforcement certification due to substance abuse. Appellant contested the Academy's decision and a contested case hearing was held on August 26, 2014.

At the contested case hearing, Appellant, Lieutenant Reeves, and Sergeant Brown testified. Appellant was represented by counsel. Lieutenant Reeves testified first. Lieutenant Reeves recalled the Anderson County Sheriff's Office receiving a call from Appellant's wife reporting Appellant and another deputy were using steroids. He indicated the Sheriff's Office

¹ See *Garrity v. State of N.J.*, 385 U.S. 493, 500 (1967) (providing that state and local government officials are entitled to an advisement of rights during an internal investigation).

² SOAP stands for "subjective, objective, assessment, and plan" and is a method physicians use to document notes on a patient's chart.

determined there was reasonable cause to investigate the allegation and reached out to Anderson County to determine how drug tests are administered to personnel. The County connected the Sheriff's Office with AnMed Lab Services in Anderson County. Lieutenant Reeves stated that on April 9, 2014, Appellant and the other deputy were transported to AnMed and administered a urinalysis test for steroids, with the result that both deputies tested positive for steroids. Lieutenant Reeves testified Appellant specifically tested positive for Methandienone and Nandrolone, which are listed as prohibited steroids under statute. He stated the Sheriff's Office contacted the South Carolina Law Enforcement Division ("SLED") after the results came back positive, and two SLED agents attempted to interview Appellant, but Appellant refused and requested an attorney. He further stated that after the SLED interview, he and Sergeant Brown interviewed Appellant. Lieutenant Reeves testified Appellant filled out a form indicating he received his *Garrity* warnings and then gave a verbal statement to him and Sergeant Brown and typed a written statement on his computer. However, Lieutenant Reeves explained that before Appellant could print or sign his written statement, Appellant left to talk with Chief Smith. Lieutenant Reeves moved to enter the AnMed lab report, the internal affairs investigation report, the *Garrity* form, and Appellant's written statement into evidence.

Appellant's counsel objected to the admission of Appellant's written statement because it was unsigned. She also objected to the lab report because there was no affidavit of authenticity or any indication the results were confirmed by a method, specifically gas chromatography, to rule out over-the-counter supplements. She further objected to the internal affairs investigation report because it contained hearsay. She did not object to the *Garrity* form. The Hearing Officer marked Appellant's written statement, the lab report, and the internal affairs investigation report as exhibits and entered the *Garrity* Form into evidence.

On cross-examination, Lieutenant Reeves admitted the Sheriff's Office did not have a formal written and signed complaint from Appellant's soon-to-be ex-wife pursuant to Anderson County Sheriff Office's General Order 111. Lieutenant Reeves also denied Appellant at any time asked for a blood test to confirm the results of the urine analysis test. He further stated he was not aware if the urine analysis results were confirmed with gas chromatography. Lieutenant Reeves was not able to directly state that he could produce the chain of custody for the lab report. On Re-Cross-examination, Lieutenant Reeves testified that before the urine analysis was conducted, the only evidence the Sheriff's Office had pointing to Appellant's steroid use was the

ex-wife's tip. He asserted Appellant did not appear physically impaired, did not show a loss of judgment, and did not engage in risky activity or safety violations while on the job.

Sergeant Brown testified and confirmed Lieutenant Reeve's testimony. He stated he was present when Appellant was transported for the urine analysis, he was present the day SLED came to investigate, and he was present when Appellant gave his verbal and written statement to Lieutenant Reeves. Sergeant Brown asserted that during the verbal interview with Lieutenant Reeves, Appellant admitted to taking a steroid that he had leftover from his weight lifting days, but he was only taking it to "get his head back on straight and to help him get back into the gym, motivation, and things of that nature." Sergeant Brown confirmed Appellant exited the interview before he signed his written statement. He affirmed that after Appellant had a short conversation with Chief Smith, Chief Smith informed him and Lieutenant Reeves that Appellant had been terminated. Sergeant Brown took Appellant's firearm, badge, and keys to his vehicle, and drove Appellant home.

On cross-examination, Sergeant Brown admitted he did not recall if Appellant admitted to using an illegal steroid or a prescription steroid. He only remembered Appellant admitting to using a steroid, which Appellant had described as a "stack" that he formerly used in weight lifting competitions. Sergeant Brown testified he was not aware whether gas chromatography was performed to confirm the results of the urine analysis. He did not recall Appellant requesting a blood test.

Appellant testified he has been in law enforcement since 2008. He asserted he was originally hired by the City of Easley as a police officer and then moved to Anderson County. Appellant described how he was a personal trainer and body builder before he became a police officer. Appellant recalled that during his time as a body builder, he took many over-the-counter substances to supplement his diet. He stated he had his own trainer who advised him to take several supplements, and he took the supplements without questioning the trainer. He described three specific over-the-counter supplements he took: Test PSI, ADT, and Mass X. He testified he bought all three of these products from a store like a GNC called Complete Nutrition. Appellant asserted he was advised that some of these supplements could produce a false-positive on a urine screen if he was tested for steroids. He also testified he was advised that if this happened, he should inform the tester of what he was taking and request a blood test to determine if the urine results were false-positive.

Appellant contended that once his AnMed test came back positive, he told Lieutenant Reeves and Sergeant Brown that it was a false-positive, and he wanted a blood test to confirm the results, but he never received a blood test. As a result, Appellant described how he went to a private physician and had a blood test performed, which came back negative for steroids and showed he had low testosterone. Appellant testified he would be willing to regularly submit to blood tests to prove he was not on steroids if the Academy did not revoke his certification. Appellant stated he does not have any other job opportunities if he can no longer be a police officer. He described his special skills as an officer in charge of a K9.

Appellant concluded his testimony by addressing the SOAP note. He identified the note as the note he received from his private physician reflecting the results of his blood test. The Hearing Officer asked whether Sergeant Brown objected to the note, and Sergeant Brown did not. Appellant's attorney then moved for the SOAP note to be put into evidence, and thereafter the Hearing Officer stated it was marked as Appellant's Exhibit Two. After its admittance, Sergeant Brown commented on the Record that there was approximately a month time gap between when Appellant was originally tested by the Sheriff's Office and when Appellant obtained the private test. Appellant's attorney further commented that the County had not provided any testimony about how long a steroid would stay in a person's system, which Sergeant Brown agreed with.

On September 15, 2014, the Hearing Officer issued his findings and recommendation. The Hearing Officer made four findings of fact: (1) Appellant tested positive for Methandienone and Nandrolone on April 9, 2014; (2) Methandienone and Nandrolone are statutory anabolic steroids; (3) the SOAP notes dated May 27, 2014, showed Appellant had low testosterone; and (4) "[i]t is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body." As a result of these findings, the Hearing Officer made the following recommendations:

Given [Appellant's] contention that his positive test results came from taking three (3) over-the-counter supplements and Anderson County Sheriff's Office's failure to contest that contention via expert testimony or testimony from qualified medical personnel from AnMed or Lab Corp, I recommend [Appellant] be recertified as a law enforcement officer with two (2) years of probation.

I further recommend that this probationary period include random drug testing, including specific testing for steroid use, at least every three (3) months on dates selected by the Academy. These testing date will be communicated to [Appellant's] employer on the day testing is to occur. Failure to complete the

testing on the dates required by the Academy may be grounds for reopening this case. Testing positive for any controlled substance during the probationary period may be grounds for reopening this case. All drug testing done during this probationary period shall include specific testing for steroid use and, if a test is positive for steroid use, the sample shall be further tested using gas chromatography to determine if the result is from anabolic steroids or over-the-counter supplements.

On October 14, 2014, the South Carolina Law Enforcement Training Council (“the Council”), the adjudicatory body of the Academy, issued a final decision in Appellant’s case in which it permanently withdrew Appellant’s law enforcement certification. In its final decision, the Council relied on the same findings made by the Hearing Officer. As a result of these findings, the Council stated in its decision:

It is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body. Given this result and the significant delay between the original testing performed by Anderson County Sheriff’s Office (April 9, 2014) and the follow up testing performed by [Appellant’s private physician] (May 20, 2014), the Law Enforcement Training Council find the [SOAP note] actually supports the allegations put forth by the Anderson County Sheriff’s Office against [Appellant].

The Academy further stated:

The unlawful use of controlled substances by an active law enforcement officer is reprehensible. In this case, the use particularly of anabolic steroids during active law enforcement service placed the public at great danger. At any moment [Appellant] may have suffered from dangerous side effects of these unlawful substances, for example, a “Roid Rage” incident. For the reasons stated above and due to the great danger [Appellant] placed the public in by taking these substances while an active law enforcement officer, [Appellant’s] request to have law enforcement certification reissued to him is permanently denied.

On November 14, 2014, Appellant filed a Notice of Appeal with this Court challenging the Council’s decision.

STANDARD OF REVIEW

The Academy assumed the powers of the South Carolina Criminal Justice Academy Division of the South Carolina Department of Public Safety. See S.C. Code § 23-23-10(D) (Supp. 2014) (“Upon the signature of the Governor, all functions, duties, responsibilities, accounts, and authority statutorily exercised by the South Carolina Criminal Justice Academy Division of the Department of Public Safety are transferred to and developed upon the South Carolina Criminal Justice Academy.”). Therefore, the Academy is an “agency” under the Administrative Procedures Act (“APA”). See S.C. Code Ann. § 1-23-310(2) (Supp. 2014).

Accordingly, the APA's standard of review governs appeals from decisions of the Academy and its Council. See S.C. Code Ann. § 1-23-600(D) (Supp. 2014) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380). Section 1-23-380 provides, in relevant part:

(5) The court may reverse or modify the decision [of an agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

"Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action." Trimmier v. S.C. Dep't of Labor, Licensing & Regulation, 405 S.C. 239, 246, 746 S.E.2d 491, 494 (Ct. App. 2013). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 321 S.C. at 226, 467 S.E.2d at 917.

A decision is arbitrary and capricious "if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure,

without adequate determining principles, or is governed by no fixed rules or standards.” Deese v. S.C. State Bd. of Dentistry, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985). Additionally, a decision is arbitrary and capricious when it is “not supported by competent, substantial, and material evidence, and [i]s based on opinion and speculation testimony.” Wyndham Enterprises, LLC v. City of N. Augusta, 401 S.C. 144, 151, 735 S.E.2d 659, 663 (Ct. App. 2012).

DISCUSSION

This Court has jurisdiction to hear this appeal pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2014). The Council is the governing and adjudicative body of the Academy. See S.C. Code Ann. §23-23-80 (Supp. 2014). The Council has the authority to “certify and train qualified candidates and applicants for law enforcement officers and provide for suspension, revocation, or restriction of the certification, in accordance with regulations promulgated by the [C]ouncil.” S.C. Code Ann. § 23-23-80(6) (Supp. 2014). A potential employer is not allowed to hire a law enforcement officer unless that officer has been certified by the Council. S.C. Code Ann. § 23-23-40 (Supp. 2014).

The Council sets the minimum requirements for certification and hire, but local departments and offices are encouraged to adopt standards higher than the minimum standards. See S.C. Code Ann. § 23-23-10(B) (Supp. 2014) (“It is the intent of this chapter to encourage all law enforcement officers, departments, and agencies within this State to adopt standards which are higher than the minimum standards implemented pursuant to this chapter, and these minimum standards may not be considered sufficient or adequate in cases where higher standards have been adopted or proposed.”). One of the requirements for certification is the requirement of good character. S.C. Code Ann. Regs. 38-003 (Supp. 2014). This requirement provides:

Every agency who requests certification of any class of law enforcement officer shall certify to the Council that, in the opinion of the employing agency, the candidate is of good character and has not engaged in misconduct as defined in R.38-004.

Regulation 38-004 describes how certification can be denied based on misconduct. It provides, in relevant part:

A. The Council may deny certification based on evidence satisfactory to the Council that the candidate has engaged in misconduct. For purposes of this section, misconduct means:

2. Unlawful use of a controlled substance;

B. In considering whether to deny certification based on misconduct, the Council may consider the seriousness, the remoteness in time and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct.

S.C. Code Ann. Regs. 38-004 (Supp. 2014). Regulation 38-016 governs withdrawal of certification, and contains almost identical language, in pertinent part, to that of Regulation 38-004:

A. A law enforcement officer, certified pursuant to the provisions of R.38-007 and R.38-008, shall have his or her certification as a law enforcement officer withdrawn by the Council upon the occurrence of any one or more of the following events:

4. Evidence satisfactory to the Council that the officer has engaged in misconduct. For purposes of this section, misconduct means:

b. Unlawful use of a controlled substance;

Provided however that in considering whether to withdraw certification based on misconduct, the Council may consider the seriousness, frequency and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct.

S.C. Code Ann. Regs. 38-016 (Supp. 2014).

In the South Carolina Code, controlled substances include anabolic steroids as described in Chapter 53, which governs "poisons, drugs and other controlled substances." See S.C. Code Ann. §§ 44-53-10 *et seq.* (2002 & Supp. 2014). Section 44-53-1510 specifically lists substances that constitute anabolic steroids and Methandienone and Nandrolone are included in this list. Moreover, section 44-53-1530 provides:

It is unlawful for any person who is not a practitioner, pharmacist, or veterinarian to knowingly or intentionally possess anabolic steroids as defined in this article unless the steroids were obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his professional practice.

S.C. Code Ann. § 44-53-1530 (Supp. 2014).

Here, the Council permanently withdrew Appellant's law enforcement certification because it determined Appellant was using illegal anabolic steroids. Appellant contests this finding on two grounds: Appellant claims the Council's decision is not supported by substantial evidence and the Council's decision was arbitrary or capricious or characterized by abuse of discretion. In contrast, the Academy argues substantial evidence supported the Council's decision, which was not arbitrary, capricious, or characterized by an abuse of discretion. I agree with Appellant.

Appellant challenges the Council's decision based on its findings of fact. Appellant argues the Council's first finding of fact, that he tested positive for anabolic steroids on April 9, 2014, is in error because Anderson County Sheriff's Office did not correctly follow Anderson County procedures to obtain and verify the test results. While Appellant objected to the lab report coming into evidence, Appellant did not object to Lieutenant Reeve's testimony that Appellant tested positive for Methandienone and Nandrolone on April 9, 2014. Therefore, this evidence was properly before the Council for their consideration and could be relied upon to conclude Appellant tested positive for anabolic steroids on April 9, 2014, while he was employed as an Anderson County Sheriff's Office. However, Appellant testified, and it was uncontested by the Sheriff's Office, that a urine test could produce a false-positive result and a blood test was necessary to confirm the positive result was not due to use of over-the-counter supplements. Therefore, the evidence is conflicting as to how reliable the urine analysis test results were.

Next, Appellant argues the Council's third finding of fact, that the SOAP note indicated Appellant had low testosterone, was also error because the Council omitted the SOAP note's other finding that Appellant tested negative for anabolic steroids. Admitting the SOAP note itself, and its conclusion that Appellant had low testosterone at the time, was not error. However, the Hearing Officer and the Council then used the information in the SOAP note to make their fourth finding, that "it is well known that the use of anabolic steroids suppresses the naturally occurring testosterone in the body." Appellant argues this finding was error because it is not well known that anabolic steroids suppress the body's naturally occurring testosterone. I agree with Appellant.

Contrary to the Hearing Officer's and the Council's finding, it is not well known that the use of anabolic steroids suppress the naturally occurring testosterone in the body. It was

improper for the Hearing Officer and the Council to make this finding, which is a medical conclusion, in the absence of expert witness testimony.³

In Watson v. Ford Motor Company, the South Carolina Supreme Court held:

Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge. *Stated differently, expert evidence is required where a factual issue must be resolved with scientific, technical, or any other specialized knowledge.*

Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010) (emphasis added).

Moreover, “a lay witness may only testify as to matters within his personal knowledge and may not offer opinion testimony which requires special knowledge, skill, experience, or training.” Id. at 446, 699 S.E.2d at 175 (citing Rules 602 and 701 of the South Carolina Rules of Evidence).

The Hearing Officer and the Council are not medical experts, but took it upon themselves to make a medical conclusion that a test result of low testosterone indicated Appellant was using steroids. Even if a correlation between steroid use and low testosterone is common knowledge, there are factors present in these circumstances that still require expert medical testimony for proper interpretation. For example, Appellant tested positive for steroids on April 9th and negative for steroids on May 20th. This is over a month time-gap. How long does the correlation between steroid use and low testosterone last? – Does a person have to be currently taking steroids for the correlation to be present? Moreover, would it be possible that Appellant has naturally low testosterone, a condition that is widely recognized and marketed to in today’s society? Additionally, could over-the-counter supplements cause the same correlation? These questions cannot be answered without the assistance of expert medical testimony.

Further, it is clear from the Council’s decision that it, at least in part, *relied* on its own improper medical conclusion in making its decision to permanently deny Appellant law enforcement certification:

Given this result and the significant delay between the original testing performed by Anderson Country Sheriff’s Office (April 9, 2014) and the follow up testimony performed by [Appellant’s private physician] (May 20, 2014), the Law Enforcement Training Council find the [SOAP note] actually supports the allegations put forth by the Anderson County Sheriff’s Office against [Appellant].

³ Upon entering the SOAP note into evidence, Appellant’s counsel noted the County had not introduced evidence about how the time gap between the initial test and the private test could have impacted the results or interpretation of the results. Appellant did not introduce testimony on this issue either. Furthermore, neither party introduced testimony concerning whether low testosterone is indicative of recent steroid use.

Most disturbing, the Council *interpreted* the time gap, without any evidence, to support its conclusion that Appellant's low testosterone was the result of steroid use. Further, in its decision the Council also commented about the dangers of Appellant suffering from a "Roid Rage," which was, likewise, never discussed, described, or testified to. In conclusion, I find the Council abused its discretion by relying on its own medical conclusions in the absence of expert medical testimony. See Wyndham Enterprises, LLC, 401 S.C. at 151, 735 S.E.2d at 663 (holding a decision is arbitrary and capricious when it is "not supported by competent, substantial, and material evidence, and [i]s based on opinion and speculation testimony.").

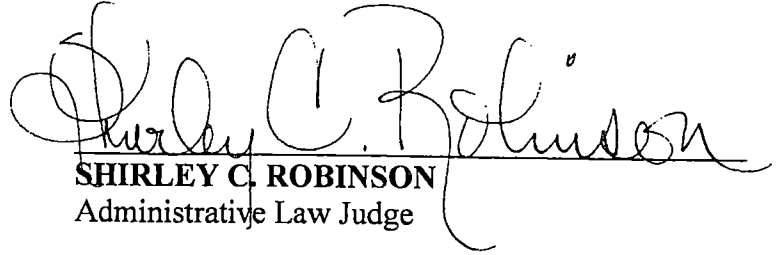
Moreover, while the Council has great latitude in making its decision to withdraw certification - all the regulation requires is "[e]vidence satisfactory to the Council that the officer has engaged in misconduct" - the Council's decision cannot be arbitrary or without evidentiary support. S.C. Code Ann. Regs. 38-016. Even disregarding the Council's improper medical conclusion, the evidence of Appellant's misconduct is tenuous. The only evidence of misconduct entered into evidence is Lieutenant Reeve's testimony that Appellant tested positive for Methandienone and Nandrolone on April 9, 2014, and the reliability of this evidence is questionable in light of Appellant's uncontroverted assertion that a urine analysis cannot always distinguish between anabolic steroids and over-the-counter supplements. Therefore, not only is the Council's decision tainted by an abuse of discretion, it also is not supported by substantial evidence. See § 1-23-380(5)(e) (providing a decision may be reversed if it is "clearly erroneous in view of the *reliable*, probative and substantial evidence on the whole record" (emphasis added)); see Trimmier, 405 S.C. at 246, 746 S.E.2d at 494 ("Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action.").

Accordingly, I find the Academy's decision cannot stand because the decision resulted, at least in part, from an abuse of discretion, and it is not supported by substantial evidence. Accordingly, the Academy's decision is reversed.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED** that the Academy's decision shall be and hereby is **REVERSED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

March 18th, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail postage paid or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 18 day of March 2015
By: Jecklyn Henderson
Administrative Law Judge

