

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
February 10, 2026 Session

FILED

09/21/2026

Clerk of the
Appellate Courts

SHELBY COUNTY, TENNESSEE v. DAVID MCGRIFF

Appeal from the Chancery Court for Shelby County
No. CH-25-0320 JoeDae L. Jenkins, Chancellor

No. W2025-01041-COA-R3-CV

The Shelby County Civil Service Merit Board reversed the termination of the appellee’s employment with the Shelby County Sheriff’s Office. The trial court affirmed the decision to reinstate the appellee and ordered that he be paid as if he had returned to work on the date contemplated by the Merit Board. After reviewing the record, we conclude that the decision to reinstate the appellee was supported by substantial and material evidence and was neither arbitrary nor capricious. We therefore affirm the reinstatement. Because the order overturning the appellee’s termination did not contain an explicit return-to-work date, we vacate the trial court’s ruling that the appellee would be paid from a date certain, and remand the issue for consideration by the Merit Board.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed
in Part; Vacated in Part, and Remanded**

J. STEVEN STAFFORD, P.J., W.S., delivered the opinion of the court, in which W. NEAL MCBRAYER and CARMA DENNIS MCGEE, JJ., joined.

Pamela Williams Kelly and Katherine L. Frazier, Memphis, Tennessee, for the appellant, Shelby County, Tennessee.

Bryce W. Ashby, Memphis, Tennessee, for the appellee, David McGriff.

OPINION

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellee David McGriff (“McGriff”) was employed as a deputy sheriff with the Shelby County Sheriff’s Office (“SCSO”). On April 10, 2024, he was directed to

participate in a random drug screening. McGriff's urine sample tested positive for THC, leading to the collection of a hair sample, which also tested positive for cannabinoids, specifically carboxy-THC.¹ These positive drug screenings, and McGriff's alleged insubordination in failing to immediately obey the order to report for the testing, led the SCSO to charge him with the violation of multiple SCSO standard operating rules and regulations ("SORs").² After conducting an internal investigation, the SCSO terminated McGriff's employment effective July 9, 2024.

McGriff timely appealed his termination to the Shelby County Civil Service Merit Board ("the Board"), and an evidentiary hearing was held on November 7, 2024. McGriff testified that the positive test result did not arise from the use of any illegal drugs, but rather the off-duty consumption of legally purchased CBD gummies.³ The Board notified the parties of its decision to reverse the termination by letter on November 12, 2024. The letter stated the Board's conclusion that the SCSO "did not meet the burden of proof in disciplining Mr. McGriff" and its decision to overturn the termination. The letter included certain provisions on McGriff's return to work, including "Drug Treatment and Counseling class"; "No Back Pay"; and "Extensive Drug Testing[.]" The letter indicated that an "official order from the Board" was forthcoming.

The Board's decision was then memorialized in an order dated January 13, 2025. The order outlined the parties' positions, the testimony presented by the witnesses, and the evidence entered into the record. Beyond this recitation of the evidence and the signatures of two members of the Board, the remainder of the Board's order, in its entirety and without any alteration, stated the following:

VIII Findings of Fact

After the testimony presented, reviewing the exhibits, Mr. David McGriff had several disciplinary actions forms along with corrective actions that were presented to the board on behalf of Shelby County Sheriff's Office, the Board finds the following facts:

- The Petitioner requires to be extensively drug tested every 30 days for narcotics for 1 year.

¹ "THC" stands for tetrahydrocannabinol. The nature of THC and carboxy-THC will be discussed in detail, *infra*.

² McGriff was charged with violating SOR 101: Compliance with Regulations, to wit, Policy 325: Drug-free Workplace; SOR 104: Personal Conduct; SOR 111: Disobedience of an Order; and SOR 121: Narcotics.

³ "CBD" stands for cannabidiol. The nature of CBD and its relation to THC will also be discussed, *infra*.

- Any other policy violations within 6 months results in an immediate termination.
- Mr. McGriff will receive no back pay.

IX DECISION

Based on the findings of fact and policies violated, the Board finds did not meet the burden of proof for “cause” in the termination of Mr. David McGriff.

IT IS, THEREFORE, the unanimous decision of the Board to overturn the termination of Mr. David McGriff

On behalf of the SCSO, Appellant Shelby County, Tennessee (“the County”) filed a timely petition for certiorari, writ of supersedes, and judicial review in the Shelby County Chancery Court (“the trial court”) on March 11, 2025. The County argued that the Board’s decision was “in excess of the statutory authority of the Board, made upon unlawful procedure, arbitrary, capricious, illegal, not based on material facts or on just cause, and [] in violation of the Shelby County Charter, Shelby County Code of Ordinances, and the policies and procedures of Shelby County, Tennessee[.]” The County provided a series of alternate requests in its prayer for relief. First, the County asked that the trial court reverse the Board’s decision to reinstate McGriff. If the reinstatement was affirmed, the County asked that the trial court uphold the Board’s decision not to award McGriff back pay. And if the reinstatement was affirmed and back pay was ordered, the County asked that the trial court remand the matter to the Board for the back pay calculation, “including, but not limited to, any offset for earnings earned by [] McGriff from the time of termination to a specified date ordered by the Board for [McGriff] to return to work.” The County further argued that a writ of supersedes was necessary to “maintain the status quo” and “maintain public safety” while the trial court conducted its review and that granting the writ would “benefit the public to ensure that [SCSO] policies and procedures are followed to protect the community” without impacting the services presently provided by the SCSO.

McGriff opposed the County’s petition. He argued that the evidence in the record supported the Board’s conclusion that the SCSO had not met its burden to establish a violation of the charged SORs, and so the decision to reinstate his employment was neither arbitrary nor capricious. McGriff asked the trial court to order the SCSO to comply with the Board’s decision and return him to work. He also requested to be compensated for the time during which the SCSO failed to so comply. McGriff denied the necessity and propriety of a writ of supersedes.

The trial court entered a fiat for the issuance of a writ of certiorari on March 17, 2025. After a hearing, the trial court denied the writ of supersedes by order of May 7, 2025.

The trial court found that the County did “not have a strong case to overturn the Board’s decision and that the likelihood of success [was] not high.” The trial court also found that the SCSO’s drug-free workplace policy was “out of step with current law and science” such that any harm caused by the inconsistent application of the policy did “not outweigh the other considerations that the [c]ourt must balance.”

Following additional briefing and a hearing, the trial court affirmed the Board’s decision by order of June 16, 2025. The trial court explained that, between the testimony at the hearing, the Board’s deliberations, the November 2024 letter, and the January 2025 order, it could “see how the Board would make the decisions that it has made[.]” The trial court recognized that the record contained conflicting testimony both as to whether McGriff ingested an illegal substance or abused a legally obtained substance and as to whether McGriff disobeyed an order. Based on the inconclusive evidence, the trial court agreed that there was insufficient proof to establish a violation of the SCSO’s SORs that would justify termination. The trial court therefore concluded that the Board had substantial and material evidence to support its decision to reinstate McGriff’s employment and declined to substitute its judgment for that of the Board. As to McGriff’s request for back pay, the trial court concluded that the Board’s directive that he be reinstated on December 15, 2024 stood, and so McGriff “should be paid from that day forward [as] if he had actually returned to work.”⁴

The County filed a timely notice of appeal to this Court.

II. ISSUES PRESENTED

The County raises the following issues on appeal, taken directly from its brief:

1. Whether the Civil Service Merit Board’s decision that Shelby County did not meet its burden of proof for “cause” to terminate David McGriff was arbitrary and capricious and unsupported by substantial and material evidence in the record?
2. Whether the Civil Service Merit Board’s decision not to uphold the termination provision of Shelby County Drug Free Policy #325 was arbitrary and capricious and exercised an unwarranted exercise of discretion when the Board reversed the termination of David McGriff despite undisputed and substantial material evidence that Mr. McGriff failed two (2) drug tests while on duty as a Shelby County Deputy Sheriff?
3. Whether Shelby County Chancery Court correctly concluded that substantial material evidence supported the Civil Service Merit Board’s decision to

⁴ As will be discussed, *infra*, the County contests the trial court’s characterization of the return-to-work date as part of the Board’s order, as it was included in neither written document produced by the Board, only its transcribed deliberations.

reverse the termination of David McGriff despite the absence of findings of fact or conclusions of law in the Board's Order?

4. Whether the Shelby County Chancery Court exceeded its judicial review by establishing a return-to-work date that was not included in the Board's Order and ordering backpay from a return-to-work date that was not included in the Board's Order?

III. STANDARD OF REVIEW

Tennessee Code Annotated section 27-9-114(b)(1) provides that “[j]udicial review of decisions by civil service boards of a county or municipality which affects the employment status of a county or city civil service employee shall be in conformity with the judicial review standards under the Uniform Administrative Procedures Act [(“UAPA”)], § 4-5-322.” Among the various guidelines for the judicial review of administrative agency decisions included in section 4-5-322, subsection (h) sets out the scope of review:

The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (5)(A)(i) Except as provided in subdivision (h)(5)(B), unsupported by evidence that is both substantial and material in the light of the entire record;
- (ii) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact[.]

Tenn. Code Ann. § 4-5-322(h) (exception contained in (h)(5)(b) omitted as not applicable).

The trial court's review is “narrow and deferential” to the agency decision, and this Court “applies the same limited standard of review as the trial court.” *StarLink Logistics Inc. v. ACC, LLC*, 494 S.W.3d 659, 668, 669 (Tenn. 2016). The standard of review “reflects the general principle that courts should defer to decisions of administrative agencies when they are acting within their area of specialized knowledge, experience, and

expertise.” *Id.* at 669. “Courts do not review questions of fact de novo and, therefore, do not second-guess the agency as to the weight of the evidence.” *Id.* (citation omitted). Additionally, “[i]ssues of credibility are for the trier of fact,” and “considerable deference” must be afforded to those factual findings based on the Board’s credibility determinations. *Davis v. Shelby Cnty. Sheriff’s Dep’t*, 278 S.W.3d 256, 266 (Tenn. 2009) (citing *Seals v. England/Corsair Upholstery Mfg. Co.*, 984 S.W.2d 912, 915 (Tenn. 1999)). “Whether or not there is any material evidence to support the action of the agency is a question of law to be decided by the reviewing court upon an examination of the evidence introduced before the agency.” *Watts v. Civ. Serv. Bd. for Columbia*, 606 S.W.2d 274, 277 (Tenn. 1980).

Tennessee courts have provided significant guidance for determining whether an agency decision is arbitrary and capricious:

A decision of an administrative agency is arbitrary or capricious when there is no substantial and material evidence supporting the decision. *Pittman v. City of Memphis*, 360 S.W.3d 382, 389 (Tenn. Ct. App. 2011); *Jackson Mobilphone Co. v. Tenn. Pub. Serv. Comm’n.*, 876 S.W.2d 106, 110 (Tenn. Ct. App. 1993). The statute does not define “substantial and material evidence,” but it is less than a preponderance of the evidence, *Wayne [County v. Tenn. Solid Waste Disposal Control Bd.]*, 756 S.W.2d [274,] 280 [(Tenn. Ct. App. 1988)] (citing *Consolo v. Fed. Maritime Comm’n*, 383 U.S. 607, 620, 86 S. Ct. 1018, 16 L. Ed. 2d 131 (1966)), and more than a “scintilla or glimmer” of evidence, *id.* (citing *Pace v. Garbage Disposal Dist.*, 54 Tenn. App. 263, 390 S.W.2d 461, 463 (1965)). A decision with evidentiary support can be arbitrary or capricious if it amounts to a clear error in judgment. *City of Memphis v. Civil Serv. Comm’n.*, 216 S.W.3d 311, 316 (Tenn. 2007) (citing *Jackson Mobilphone Co.*, 876 S.W.2d at 110). A decision is arbitrary or capricious if it “is not based on any course of reasoning or exercise of judgment, or . . . disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion.” *Civil Serv. Comm’n.*, 216 S.W.3d at 316 (quoting *Jackson Mobilphone Co.*, 876 S.W.2d at 111).

StarLink Logistics, 494 S.W.3d at 669–70 (last alteration in original); *see also Davis*, 278 S.W.3d at 265 (“We may reject the Board’s decision only if a reasonable person would necessarily reach a different conclusion based on the evidence.” (citing *Martin v. Sizemore*, 78 S.W.3d 249, 276 (Tenn. Ct. App. 2001))).

IV. ANALYSIS

A.

We begin with the County’s argument that the trial court erred in affirming the Board’s decision because the Board failed to make sufficient findings of fact and conclusions of law in its January 2025 order. The County argues that meaningful judicial review is not possible because the Board did not provide adequate reasoning for its decision. According to the County, the proper remedy is to remand the matter back to the Board for entry of additional findings and conclusions.

In making this argument, the County highlights that Tennessee Code Annotated section 4-5-314 requires an administrative body to include “conclusions of law, the policy reasons therefor, and findings of fact for all aspects of the order” in final decisions rendered in contested cases. But the County also correctly acknowledges that section 4-5-314 is wholly inapplicable to this case: while Tennessee Code Annotated section 27-9-114(a)(1) provides that “[c]ontested case hearings by civil service boards of a county or municipality which affect the employment status of a civil service employee shall be conducted in conformity with [UAPA] contested case procedures[,]” section 27-9-114(a)(2) expressly exempts “civil service boards of counties organized under a home rule charter form of government” from complying with the contested case procedures set out in the UAPA. *See Davis*, 278 S.W.3d at 263 (“Shelby County is a home rule jurisdiction, and as such, Tennessee Code Annotated Section 27-9-114(a)(2) exempts the Board from the UAPA’s contested case hearing procedures.”).

Of course, we agree that the Board’s order is rather sparse. Although not compelled by section 4-5-314 to provide a detailed explanation for its decisions, the deference reviewing courts are to afford an agency’s factual findings would seem to encourage the Board to include greater insight into its reasoning within its orders. But we simply cannot hold the Board to a standard the legislature has seen fit to excuse it from.

Still, the County relies on *County of Shelby v. Tompkins*, 241 S.W.3d 500 (Tenn. 2007) for the argument that “a reviewing court must have sufficient information regarding the agency action to determine whether that action comports with the law.” *Id.* at 504. In that case, the Board overturned the employer’s termination of the appellant, but the trial court reversed the Board’s decision and reinstated the employer’s decision to discharge the appellant. *Id.* at 502–03. For some reason, the Board’s final decision was not included in the administrative record provided to the trial court or on appeal to this Court, and the appellant raised concerns “about the impediment to judicial review posed by an incomplete administrative record.” *Id.* at 503. We noted that “the disputed issue under review is a narrow one of pure law, and there are no disputed material facts[,]” that neither party disputed what the Board decided or why it did so, and that the trial court “considered these factors in reviewing the case.” *Id.* at 504. Under these circumstances, we determined that the best course of action was simply to soldier on with our review, concluding that to remand the matter so that the order could be included in the record “would delay matters further without any corresponding benefit.” *Id.* So then, despite the limited scope of our review, even the total absence of the Board’s order from the record would not necessarily

prohibit judicial review. *See also Davis*, 278 S.W.3d at 260 n.16 (noting without discussion that the Board’s findings were not provided to the trial court or included in the record on appeal before reviewing the Board’s decision in full).

Moreover, “[t]he sufficiency of an agency’s findings of fact must be measured against the nature of the controversy and the intensity of the factual dispute.” *CF Indus. v. Tenn. Pub. Serv. Comm’n*, 599 S.W.2d 536, 541 (Tenn. 1980) (involving an earlier version of the UAPA). Indeed, our supreme court has held that “[i]t is obvious that where there is no disputed issue of fact and the sole question before the agency is the proper conclusion to be drawn from the undisputed facts and the application of the correct legal rules, the record need not be burdened with detailed findings of fact.” *Id.* In this case, the majority of the facts are undisputed. For those remaining facts subject to conflicting evidence, the Board’s findings can be inferred from its decision. *See Morgan Keegan & Co. v. Smythe*, 401 S.W.3d 595, 608 (Tenn. 2013) (noting that “when construing orders and judgments, effect must be given to that which is clearly implied, as well as to that which is expressly stated”); *see also Madison Cnty. v. Evans-Barken*, No. W2024-01813-COA-R3-CV, 2026 WL 799038, at *7 (Tenn. Ct. App. Mar. 23, 2026) (soldiering on to review the merits despite the agency’s failure to comply with section 4-5-314 because “[i]n this case, many but not all of the facts are undisputed. But the Board’s reasoning is readily apparent from its order”). So too does the transcript of the Board’s deliberations inform our review. *See* Tenn. Code Ann. § 4-5-322(h)(5)(A)(1) (providing that whether an agency’s decision is supported by substantial and material evidence is to be determined “in the light of the entire record”); *Macon v. Shelby Cnty. Gov’t Civil Serv. Merit Bd.*, 309 S.W.3d 504, 511 (Tenn. Ct. App. 2009) (relying on *Tompkins* to reject the appellant’s argument that the Board’s order was insufficient to support judicial review, noting that “the basis of the Board’s determination is apparent from the content of the written decision and the record as a whole”).

Here, the record reveals that the Board reviewed each of the policies McGriff was charged with violating in considering whether the County had met its burden. Although the County takes issue with the Board failing to incorporate its findings into the January 2025 written order, the County does not deny the particulars of the Board’s findings as included in the transcript of its deliberations. Like the trial court, we conclude that the record contains sufficient insight into the reasoning behind the Board’s decision to allow for meaningful judicial review under these circumstances.

B.

We turn next to the County’s substantive argument. During his employment with the SCSO, McGriff was included in the classified service and subject to the provisions of the civil service merit system. Shelby County Ordinance § 14-28. Such employees may be dismissed from service or face other discipline “[f]or unsatisfactory performance of duties or other just cause[.]” Shelby County Ordinance § 14-41. “Cause” is not defined within the

ordinance, but it has been construed as “some substantial shortcoming which renders continuance in office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and sound public opinion recognize as good cause for removal.” *Knoxville Utils. Bd. v. Knoxville Civil Serv. Merit Bd.*, No. 03A01-9301-CH-00008, 1993 WL 229505, at *10 (Tenn. Ct. App. June 28, 1993) (quoting 67 C.J.S. *Officers and Public Employees* § 132 (current version at 67 C.J.S. *Officers* § 232)). The County acknowledges that it bore the burden of establishing just cause for McGriff’s termination. *See id.* (“The question of law before the hearing examiner and the trial court was whether KUB had just cause to terminate Mr. Burnette for violating KUB’s drug abuse policy.”); *Biggs v. Reinsman Equestrian Prods., Inc.*, 169 S.W.3d 218, 221 (Tenn. Ct. App. 2004) (“When cause is required for discharging an employee, the employer has the burden of proving the existence of good cause.”). The question we must answer then is whether substantial and material evidence supports the Board’s conclusion that the SCSO failed to prove that just cause existed for McGriff’s termination.

The County charged McGriff with the violation of several SORs in support of his termination: SOR 101: Compliance with Regulations, to wit, Policy 325: Drug-free Workplace; SOR 104: Personal Conduct; SOR 111: Disobedience of an Order; and SOR 121: Narcotics. In its deliberations, the Board considered each of these policies individually before determining that the County had proved only a violation of SOR 121. Despite finding that McGriff had violated SOR 121, the Board concluded that the County had not met its burden of establishing just cause for his termination. Instead, the Board determined that McGriff’s employment would be reinstated, subject to certain limitations. The County argues that the Board’s decision to reinstate McGriff’s employment was arbitrary and capricious and unsupported by substantial and material evidence. In particular, the County contests the Board’s finding that there was no just cause for McGriff’s termination despite his positive drug screenings.

On appeal, the County focuses on SOR 121 Narcotics and Policy 325 Drug Free Workplace.⁵ SOR 121 Narcotics provides, in full:

All employees will not use or possess drugs in violation of any statute or ordinance, whether on duty or off duty. An employee will not report for duty

⁵ The County does not offer any real argument related to the remaining two SORs McGriff was charged with violating, SOR 104 Personal Conduct and SOR 111 Disobedience of an Order, which the Board found were not violated. The County merely notes that, “[i]n addition to the SOR 121 Narcotics Charge, the record also revealed SCSO’s consideration of SOR 104 Personal Conduct” and quotes the portion of SCSO Assistant Chief Deputy Dallas Lavergne’s testimony where she states her opinion that McGriff violated all four charged SORs, including SORs 104 and 111. *See Sneed v. Bd. of Pro. Resp. of Sup. Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010) (“It is not the role of the courts, trial or appellate, to research or construct a litigant’s case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.”). We will therefore confine our review to the alleged violations of SOR 121 and Policy 325.

under the influence of any drug or narcotic which may interfere with the proper performance of their duty. Employees taking prescribed medication, which may hinder their ability to perform position requirements, must notify their supervisor before reporting for duty.

Policy 325 is a six-page document “establish[ing] guidelines that govern the Drug Free Workplace Program adopted by the [SCSO].” Section 325.05 sets out the following “Employee Responsibilities”:

SCSO employees / volunteers must not engage in: the unlawful use of illegal drugs; the use of drugs which are legally obtainable, but are being handled abusively or illegally; or the use of drugs which are legally obtainable, but have not been obtained legally. It is every employee / volunteer’s responsibility to comply with this policy.

Section 325.06 further provides that it is violation of policy for employees to (1) possess or sell illegal drugs or otherwise engage in the illegal use of drugs or alcohol on the job, (2) use or be under the influence of illegal drugs while on SCSO property, conducting SCSO business, or otherwise representing SCSO, or (3) use prescription drugs illegally. Section 325.10 states that all SCSO employees will be required to participate in random drug testing as a condition of their employment and that “cannabinoids” are among those substances included in such testing. And pursuant to section 325.13,

- C. Upon receipt of a positive test result for an employee or volunteer, disciplinary action may occur. The Human Resources Department will immediately notify the appropriate supervisor who will then notify the employee / volunteer. . . .
- D. Any violation of this policy by an employee / volunteer will be referred to the Bureau of Professional Standards and Integrity for investigation, which may result in disciplinary action up to and including termination. Unlawful activity will be investigated to the fullest and referral made for criminal prosecution when the facts warrant.

There is no debate that McGriff’s urine sample was positive for THC or that his hair follicle sample was positive for cannabinoids, specifically carboxy-THC. The County argues that it was arbitrary and capricious for the Board to find that McGriff did not violate SCSO policy in the face of these uncontested facts. According to the County, “the issue [is] **not** how the cannabinoid THC entered into Mr. McGriff’s body” because “the presence of illegal drugs in Mr. McGriff’s body while he was on duty” is sufficient to establish a violation of SCSO policy. McGriff counters that the plain language of the policies makes the means by which the THC entered his system “critical to the causal determination.” He

argues that SOR 121 and Policy 325 prohibit using *illegal* drugs, which he did not do.⁶ The Board was presented with much testimony regarding the legality of THC.⁷

Ashundra Bernard, a registered nurse and the lab director for the company providing drug screening services to the SCSO, explained, somewhat circularly, on direct examination:

Q. Okay. So what is THC?

A. It is a chemical compound that can be extracted from marijuana.

Q. And to your knowledge, is marijuana illegal in Tennessee?

A. Yes.

Q. Can THC be extracted from hemp?

A. Yes.

Q. Okay. But THC, if it's extracted from hemp, could be legal in Tennessee?

A. Yes, because it's CBD.

Q. Okay. So if that's the case, then why did he fail the test for THC?

A. Because CBD has traces of THC in it.

Q. And the traces of THC in CBD is what?

A. Illegal.

She further defined cannabinoids and carboxy-THC as “Marijuana or THC.” On cross-examination, Nurse Bernard clarified that THC could be found in someone's system without them ingesting marijuana, including through the use of CBD products. She agreed that a positive drug screen result does not differentiate between illegal marijuana use or legal CBD use and therefore that she could not definitively say whether McGriff's positive result arose from the use of illegal drugs.

Nurse Bernard also offered her understanding of the threshold concentrations used by the testing facilities, i.e., the amount of a substance that must be present in the sample before the screening would return positive. She explained that the lab that tested McGriff's urine sample requires at least 300 nanograms per milliliter of a substance to flag the sample as positive. As for the lab that tested McGriff's hair sample, Nurse Bernard initially stated: “The cutoff is much lower than the urine. And it's cut off at 50 nanograms per milli[li]ter[.]” After refreshing her memory, she amended her answer to “.4.” She acknowledged that the labs do not report the specific concentrations used in their testing. Nurse Bernard could not remember the specific numbers, but she agreed that McGriff's

⁶ Indeed, from the testimony procured at the hearing and the arguments included in the County's brief, only the “unlawful use of illegal drugs” prong of Section 325.05 appears to be at issue, rather than either the “use of drugs which are legally obtainable, but are being handled abusively or illegally” prong or the “use of drugs which are legally obtainable, but have not been obtained legally” prong.

⁷ Our discussion of the legality of THC and CBD within this Opinion is based on the testimony produced at the hearing before the Board and the state of Tennessee law at that time.

hair follicle sample returned “high” levels that she opined indicated “frequent use.”⁸ However, she again conceded that she was unable to determine whether the result stemmed from legally consumed CBD or illegally ingested marijuana.

Detective Durrell Taylor with the SCSO Bureau of Professional Standards & Integrity was assigned to investigate McGriff’s failed drug screen. In his Report of Investigation, Detective Taylor concluded that McGriff violated SOR 121 and Policy 325. Both in the report and in his testimony at the hearing, his explanation for this conclusion was that McGriff testing positive for THC indicated the use of an illegal drug. But Detective Taylor also conceded that he did not know and was not qualified to say whether THC is only found in marijuana. He then acknowledged that CBD products, even those containing THC, are legal in Tennessee, such that some amount of THC can be found in legally purchased products. And when asked, “according to what you’ve learned, did [McGriff] ingest CBD gummies?” Detective Taylor replied in the affirmative. He similarly agreed that McGriff “ingest[ed] CBD gummies that contained THC” and that there was no proof that McGriff tested positive for THC through a means other than the CBD gummies. Detective Taylor further explained that it is difficult to prove whether the THC resulting in a positive drug screen “actually came from [CBD] gummies or marijuana.” He opined that the source of the THC is not relevant to the question of whether SCSO policy has been violated, while also stating: “It doesn’t say in the policy that it doesn’t matter where [the THC] came from. It states, use of illegal drugs.”

SCSO Assistant Chief Deputy Dallas Lavergne likewise maintained that McGriff testing positive for THC was a violation of the SCSO’s drug-free workplace policy, regardless of how the THC entered his system. She agreed that “the off-duty consumption of THC, in whatever form,” constitutes a violation of SCSO policy and that the discipline McGriff faced was “based on the fact that THC was found in his system[.]”⁹ Chief Lavergne acknowledged that there had been no suspicion that McGriff was using or under the influence of drugs or alcohol prior to his being directed to submit to testing. But she explained that “[i]t’s a violation to consume illegal drugs” and that the SCSO has “zero tolerance” for such violations, foregoing the standard “progressive discipline” process for employees charged with violating the narcotics policy. Still, Chief Lavergne also acknowledged that “the CBD that is sold that is legal in the state of Tennessee, it’s going

⁸ None of the documents entered into evidence assigned any numerical value to McGriff’s test results.

⁹ Chief Lavergne also pointed to the Shelby County Employee Handbook as supporting McGriff’s termination. As relevant, the handbook stated: “There are two types of disciplinary offenses: major and minor. Major offenses normally warrant a higher level of disciplinary action because of the severity of the offense.” Both the “[p]ossession, use, or being under the influence of illegal drugs or alcohol while on the job” and “[s]elling, distributing, using or being under the influence of alcohol or illegal drugs while on the job” were included among the non-exclusive list of major offenses. The handbook further provided that “[m]inor offenses cover other rule violations and conduct not categorized as major. Minor offenses usually require progressive discipline.”

to have traces of THC. It is legal as far as the law is concerned if it does not contain over 0.3 percent THC.” She agreed that a CBD product meeting the THC limit would not constitute an illegal drug and that SCSO policy does not prohibit taking a CBD product “if it doesn’t contain an illegal drug.”

Chief Lavergne stated that the SCSO would be able to determine an item’s THC potency, but no such testing was done in this case because McGriff did not provide a sample of the CBD gummies he said he ingested. While recognizing that the County bore the burden of proof, Chief Lavergne emphasized that she had no proof that McGriff had actually ingested CBD gummies, or that said gummies were within the legal THC limit and legally purchased. It was Chief Lavergne’s opinion that for a person consuming CBD gummies to test positive for THC, the gummies would have to contain more than the legal limit. She explained her understanding that some manufacturers claim their CBD products are within the legal THC limit despite containing more than the allowed amount. However, Chief Lavergne conceded that she did not work in the narcotics department and had not previously investigated businesses selling CBD and similar products.

The video deposition of Dr. Sherri Flax, a recently retired board-certified pathologist, was played at the hearing and the transcript was entered as an exhibit without objection. Dr. Flax explained that “CBD is a product that can be obtained from the cannabis plant. Cannabis is the source for THC and also for hemp. Most legal formulations of CBD or CBD oil come from hemp.” Dr. Flax defined carboxy-THC as the “typical metabolite” used to test for the use of cannabinoids, including THC. According to Dr. Flax, CBD is considered a supplement and therefore not regulated by the U.S. Food and Drug Administration “in terms of content.” She stated that CBD derived from hemp must contain less than 0.3 percent THC or carboxy-THC to be legal in Tennessee. Dr. Flax testified to her understanding that there is no requirement that manufacturers label the THC content of their CBD products. She agreed that it is possible that CBD usage could result in a positive drug test. Dr. Flax explained that the lack of standardization in the CBD market makes it difficult to determine the potency of a single product from batch to batch, and as such to determine whether use of a particular CBD product would result in a positive THC test. She described other factors that may impact whether usage of solely CBD products would produce a positive test, including the means of consumption and the frequency and length of use. She noted that the lab reports did not contain the specific concentration thresholds used in determining whether a sample returned positive for THC. She further agreed that it was not possible to discern from the documents in this case whether McGriff’s positive THC result was caused by marijuana usage or CBD usage. Dr. Flax reiterated this opinion in the report produced during her review of McGriff’s drug test results:

The [] test results indicate that THC and its metabolite, carboxy-THC, are present in the specimen (hair) however the test results cannot be used to determine the source of metabolites (for example, oral CBD versus inhaled THC substance). As a result, it is possible that the test results for Mr. McGriff

that I have reviewed reflect a positive presence of THC and its metabolite, carboxy-THC, as a result of CBD intake.

Dr. Flax stated that the opinions offered in her testimony and her report were accurate to the best of her professional opinion.

McGriff explained that he had been a deputy with the SCSO since 2005, including several years assigned to “sheriff Special Ops, specifically narcotics, and then the multi-agency gang unit[.]” His most recent assignment was with the general sessions courts; after a judge “received some credible threats,” McGriff was put on the judge’s escort detail for several weeks leading up to the April 10, 2024 drug test and his termination. McGriff had received a competency rating of “exceeds expectations” for fifteen of his last sixteen annual performance evaluations.¹⁰ He acknowledged receiving six or seven disciplinary write-ups in the last five years, none of which related to the use or suspicion of use of illegal drugs. He had also “received numerous commendations throughout [his] career” and “dozens of what [they] call OBRs, positive observed behavior reports for . . . various outstanding performance in the line of duty.”

McGriff denied ever smoking marijuana, stating “I have never. Not only have I never smoked marijuana, I have never ingested, inhaled, or did any type of illegal or illicit street drug. The only drugs, Counselor; just to clarify, that I have ever done were prescribed by a doctor or bought over the counter.” He stated that he had been subject to at least twenty-five random drug tests during his career and had never before received a positive result. He explained that the THC in his system “could only be from the CBD gummies that were purchased at a reputable CBD store in Collierville, Tennessee[.]” McGriff stated that he purchased the CBD gummies “as a supplement that says on the bottle it’s to help with stress and sleeplessness.” He noted that he did not use the gummies during the day, but only “occasionally during weeknights and the weekends” to soothe the stress and sleeplessness caused by a work-related injury he had no longer wanted to take opioids for, the extended escort-detail assignment, and the recent news of his mother’s cancer diagnosis.¹¹ McGriff denied ever being “under the influence of anything while at work.” He did not recall the packaging of the gummies indicating that THC was an ingredient in the product and denied having any notion that they “contained the active ingredient of THC.” He stated that he would not have consumed the gummies if he had known they contained THC. McGriff agreed that he “deserve[d] to be disciplined for not doing [his] due diligence and looking at the total ingredients and researching what was inside these CBD gummies[.]” but he believed termination to have been too harsh a punishment. He

¹⁰ His most recent evaluation rated his competency at “meets expectation,” which he acknowledged “was in large part due to attendance.” The evaluation marked that McGriff’s attendance during the foregoing year was “unsatisfactory,” noting that he “had 8 sick occurrences during this period.”

¹¹ McGriff later testified that he had successfully recuperated from his injury and was no longer taking any sort of pain-relief product for it. He also testified that a recent drug screen returned “negative on all fronts[.]”

explained his understanding that the SCSO's progressive discipline process allowed for suspension without pay for up to thirty days as an intermediary sanction prior to termination. McGriff asked the Board to allow him to finish his career of almost twenty-three years and stated that he would "jump through whatever hoops [the] [B]oard would like [him] to."

From this testimony, the Board concluded that the County had not established just cause for McGriff's termination. In relation to Policy 325, the Board determined that the County had not met its burden, as there was no way to determine the THC content of the gummies McGriff testified that he ingested and so no evidence of the unlawful use of an illegal drug. The Board found that the County had met its burden as to a violation of SOR 121 even without proof of illegal drug use, however, with one member noting that "a favorable drug test is a favorable drug test." Even so, the Board held that this policy violation did not amount to cause for termination. The County argues on appeal that the Board's decision was arbitrary and capricious. In light of the record before us, we disagree.

i.

First, we consider whether the evidence supports the Board's determination that McGriff did not violate Policy 325. Despite the County's insistence otherwise, we conclude that the means by which the THC entered McGriff's system is indeed relevant to our analysis. By all accounts, McGriff was only charged with violating that portion of the policy prohibiting the "unlawful use of illegal drugs." The sole basis for the violation was repeatedly identified as his drug screens returning positive for THC, which the County has interpreted as being indicative of the use of an illegal drug, i.e., marijuana. However, there was no real dispute that CBD products may contain some amount of THC while remaining legally purchasable in Tennessee; even the County's witnesses testified to this fact. There was also a consensus that the drug tests could not determine the source of the THC found in a sample. Although Chief Lavergne opined that consumption of a CBD product within the legal THC limit would not result in a positive drug test, Dr. Flax testified that factors other than the product's potency could influence whether CBD use would cause a sample to test positive for THC. *See Arrow Elecs. v. Adecco Emp. Servs., Inc.*, 195 S.W.3d 646, 651 (Tenn. Ct. App. 2005) (noting that "the weight to be given to all the evidence is a question to be determined by the trier of fact" (citing *Stovall v. Clarke*, 113 S.W.3d 715 (Tenn. 2003))); *Holmes v. City of Memphis Civil Serv. Comm'n*, No. W2016-00590-COA-R3-CV, 2017 WL 129113, at *9 (Tenn. Ct. App. Jan. 13, 2017) ("Resolving conflicting evidence is a job for the Commission, not the courts." (citing *Wade v. Tenn. Dep't of Fin. & Admin.*, 487 S.W.3d 123, 134 (Tenn. Ct. App. 2015))). And there was no competent proof of the threshold concentration of THC or THC metabolite required for the samples to test positive or of the concentration actually found in McGriff's samples. Nor was there any evidence that the THC in McGriff's system came from the ingestion of marijuana or other illegal substances. So then, the evidence supports the Board's finding that the County did not prove that McGriff unlawfully used an illegal drug. We cannot say

that this evidence amounts to a mere scintilla or would necessarily cause a reasonable person to reach a different conclusion. See *Tenn. Solid Waste Disposal Control Bd.*, 756 S.W.2d at 280; *Davis*, 278 S.W.3d at 265.

On appeal, the County argues that once it established that McGriff had tested positive for THC, the burden shifted to McGriff to prove his defense that the THC had not come from an illegal source. The County relies on *Pruitt v. City of Memphis*, No. W2004-01771-COA-R3-CV, 2005 WL 2043542 (Tenn. Ct. App. Aug. 24, 2005) in its reply brief, after offering no law to support this argument in its initial brief. See *Augustin v. Bradley Cnty. Sheriff's Off.*, 598 S.W.3d 220, 227 (Tenn. Ct. App. 2019) (“Reply briefs, however, are generally not a vehicle to correct deficiencies in initial briefs.”). In *Pruitt*, the City of Memphis (“the City”) terminated a police officer’s employment after finding that he violated four of its disciplinary rules. 2005 WL 2043542, at *1. The officer appealed his termination to the City of Memphis Civil Service Commission (“the Commission”), and a hearing was held. Multiple witnesses testified regarding the incident leading to the officer’s termination, detailing both the circumstances of the officer’s one-car collision and his behavior after the fact; the officer testified that he had been diagnosed with a concussion as a result of the accident and “did not remember taking any of the actions on which the charges against him were based.” *Id.* at *5. The Commission sustained the officer’s termination, finding that the City had a reasonable basis for its decision. The Commission specifically found that it did not credit the officer’s testimony that injuries sustained in the crash caused his erratic behavior at the scene of the accident. The officer sought judicial review of the Commission’s decision. The trial court reversed the Commission’s ruling as not supported by material evidence, based on the officer’s un rebutted testimony that his cognitive abilities were impaired by the accident. *Id.* at *6.

After appealing the decision to this Court, the City argued that the trial court erred in finding a lack of evidence to support the termination, as the only proof of the officer’s purportedly exonerating concussion was his own testimony. *Id.* at *7. The officer argued that by not obtaining his medical records or investigating his claim, the City failed to meet its responsibility to rebut his testimony. We were unpersuaded by the officer’s argument. We concluded that the evidence was undisputed that the officer did commit the acts he was charged with, i.e., the post-accident behavior that violated City policy. We held that “[t]he onus at that point was on [the officer] to prove his defense, that the accident had so impaired his cognitive ability that he should not be held accountable for his actions.” *Id.* Contrary to the County’s argument in this case, our decision that the officer failed to carry this burden was not based solely on the fact that the only evidence of his concussion was his own testimony. Rather, we reached this conclusion in recognition of the Commission’s determination that the officer’s testimony was not credible and the deference afforded to such determinations. *Id.* We reinstated the Commission’s decision as supported by substantial and material evidence, without offering our own interpretation of the officer’s testimony or the other evidence. *Id.* (“Even if we do not agree with the Commission’s credibility determination or if we believe the decision to terminate was unduly harsh in

light of [the officer's] record prior to the accident, we are not free to substitute our judgment for that of the Commission.” (citing *City of Memphis v. Owens*, No. 02A01-9109CH00202, 1992 WL 227561, at *1 (Tenn. Ct. App. Sept. 18, 1992))).

Two key differences exist between the facts in *Pruitt* and those in the instant case. For one, although the text of the policies was not included in the opinion, it is clear that the officer's erratic post-accident behavior was the basis for the alleged policy violations. The officer did not dispute that he engaged in that behavior but instead argued that he should not be held responsible for that behavior due to the impairment of his cognitive abilities. Not so here. The portion of Policy 325 that the County alleges that McGriff violated prohibits the unlawful use of illegal drugs—the illegality of the drug and the unlawfulness of its use are central components of the charge. Only once the County established a prima facie case that the policy was indeed violated would the burden shift to McGriff to offer a defense. See *Leonard Plating Co. v. Metro. Gov't of Nashville & Davidson Cnty.*, 213 S.W.3d 898, 905 (Tenn. Ct. App. 2006) (concluding that once the governmental plaintiff provided evidence to make out a prima facie case that the defendant's business caused the damage, the burden shifted to the defendant to prove that the damage was caused by something else). As previously noted, substantial and material evidence supports the Board's conclusion that the County failed to meet this burden.

The second critical distinction between the cases is that here, the Board credited McGriff's testimony regardless of the lack of corroborative evidence. Even implicit credibility determinations are entitled to significant deference. See *Kautz v. Berberich*, No. E2019-00796-COA-R3-CV, 2021 WL 1034987, at *7 (Tenn. Ct. App. Mar. 18, 2021) (“We will not overturn a trial court's credibility determination—be it implicit or explicit—absent clear and convincing evidence to the contrary.”). The Board did not make any findings that McGriff's testimony was anything other than credible. Nor did the Board contemplate that the THC was introduced into McGriff's system through any means other than legal CBD gummies at any point in its deliberations, despite the County's efforts. See *Davis*, 278 S.W.3d at 265–66 (finding that the Board “clearly resolved issues of credibility” against the employee where the employee's testimony “directly conflicted” with the employer's evidence and the Board found cause for the employee's termination). The County's suggestion that McGriff's testimony lacked impartiality because he stated that he would “jump through whatever hoops [the] [B]oard would like [him] to” does not constitute sufficient evidence to overrule the Board's implicit credibility finding. Thus, even if McGriff did bear the burden of establishing that the positive THC result was not the product of illegal drug use, we cannot say that he failed to do so when his testimony to that fact was credited by the Board and went undisputed.

Based on our review, substantial and material evidence exists to support the Board's factual finding that McGriff did not violate SCSO Policy 325. And the Board's decision cannot be said to be a clear error in judgment or otherwise unreasonable in light of the entire record. See *Civil Serv. Comm'n*, 216 S.W.3d at 316. Therefore, the Board's decision

that Policy 325 did not provide just cause for McGriff's termination was neither arbitrary nor capricious.

ii.

Next, we consider whether the evidence supports the Board's determination that while McGriff violated SOR 121, the violation did not amount to just cause for his termination. Like Policy 325, SOR 121 contains multiple prohibitions. The first sentence of SOR 121 provides that SCSO employees cannot use or possess illegal drugs on- or off-duty. Our earlier analysis reveals that there was substantial and material evidence to support the Board's finding that the County had not established that the THC in McGriff's system came from the use of an illegal drug. The second sentence of SOR 121, however, is not limited to illegal drugs, instead merely prohibiting SCSO employees from reporting for duty "under the influence of *any* drug or narcotic which may interfere with the proper performance of their duty." (Emphasis added). As there is no question that McGriff reported for duty on April 10, 2024 with THC in his system, there is sufficient evidence to support the Board's finding that McGriff violated SOR 121. Although he asserts that this finding was improper because there was no evidence that he was intoxicated at work, McGriff expressly does not appeal this decision. Unsurprisingly, the County also does not contest this aspect of the Board's ruling.

Nonetheless, the County does contest the Board's conclusion that McGriff's violation of SOR 121 did not constitute just cause for his termination. The County argues that the Board abused its discretion in reinstating McGriff's employment in light of the SCSO's "zero tolerance" policy for narcotics. The County points to *Davis v. Shelby County. Sheriff's Department*, 278 S.W.3d 256 (Tenn. 2009) for its argument that the violation of the SCSO's narcotics policy is sufficient cause for termination. Respectfully, we do not find *Davis* to be controlling on this issue.

In that case, the officer was fired after a random drug test returned positive for THC. *Id.* at 259. The Board affirmed the termination despite the officer's assertion that the positive urine sample was not his. Throughout the multiple stages of judicial review, the officer maintained that the SCSO failed to meet its burden of establishing that the sample that tested positive for THC belonged to him, such that the sample was inadmissible. *Id.* at 261. Without the inadmissible drug test result, the officer argued there was no cause to terminate his employment and so the Board's decision was arbitrary and capricious. He put forth no argument regarding how the THC entered the sample at any point. Indeed, once the case came before the supreme court, the officer's attorney agreed that if the test result was admissible, the Board's decision was supported by substantial and material evidence and so was neither arbitrary nor capricious. The court therefore concluded that if it determined the test result was admissible, its "analysis end[ed] there and the decision of the Board [would] be affirmed." *Id.* at 265. True to its word, once the court determined that the facts reasonably established that the officer had provided the positive sample, it

conducted no further analysis before affirming the Board's decision. *Id.* at 268. The court was not called on to consider whether an employee testing positive for THC was just cause for termination and it offered no opinion on that point. A case simply does not stand for a decision not made. *Staats v. McKinnon*, 206 S.W.3d 532, 550 n.41 (Tenn. Ct. App. 2006) ("It is axiomatic that judicial decisions do not stand for propositions that were neither raised by the parties nor actually addressed by the court." (citing *Shousha v. Matthews Drivurself Serv., Inc.*, 210 Tenn. 384, 390, 358 S.W.2d 471, 473 (Tenn. 1962) ("It is familiar law that a decision is authority for the point or points decided, and nothing more. . . .")))).

The County's reliance on *Shelby County Sheriff v. Shelby County Civil Service Merit Board*, No. 24, 1990 WL 84577 (Tenn. Ct. App. June 25, 1990), is likewise misplaced. There, the officer was terminated after being found guilty of violating five SCSO policies, including the possession and use of drugs; the officer did not argue that his positive drug test resulted from something other than the use of illegal drugs, but rather that he had consumed a small quantity of an illegal drug unintentionally and unknowingly. *Id.* at *1. The Board agreed that the officer had violated the policies but nevertheless determined that termination was too extreme under the circumstances. The Board therefore modified the officer's termination into a ninety-day suspension without pay and a six-month probationary period. The trial court found that the Board abused its discretion in reinstating the officer without any reasonable basis and restored the officer's termination. *Id.*

On appeal, we noted that the Board was within its discretion to modify the order of discipline appealed to it. *Id.* at *2. We explained that the modification of a disciplinary sanction "is a judgment call based upon the nature and severity of the employee's action." *Id.* (citing *Austin v. Shelby Cnty. Gov't*, 761 S.W.2d 298, 300 (Tenn. Ct. App. 1988)). While accepting the Board's power to modify the sanction imposed by the SCSO, we recognized that "there must be some basis for the exercise of such discretion." *Id.* at *3. Because the "totality of the circumstances in this case, depending upon the weight, faith and credit given to the testimony by the Board, would certainly have some effect on the Board's exercise of its discretion[.]" we concluded that the Board's failure to provide specific findings or reasoning to support its modification made meaningful review impossible. *Id.* So the matter was remanded for entry of an order containing the findings required by Tennessee Code Annotated section 4-5-314. *Id.*

Thus, *Shelby County Sheriff* cannot be read as establishing a bright-line rule that any violation of a narcotics policy is sufficient cause for termination. The Board specifically found that a violation of SCSO narcotics policy—even when combined with the violation of multiple other policies—did not automatically constitute just cause for the employee's termination. More than that, this Court recognized that modifying the disciplinary action faced by an officer was not an inherent abuse of the Board's discretion, regardless of the fact that the officer had been found guilty of violating SCSO narcotics

policy.¹² *See also* Shelby County Ordinance § 14-42(d) (providing that once an employee subject to discipline appeals to the Board, “[t]he board shall . . . commence a hearing . . . and *shall affirm, modify or revoke* such order of discipline.” (emphasis added)). So we do not find the County’s citation to this case particularly supportive of its argument.

¹² The County cites to “*Shelby County Sheriff v. Shelby County Civil Service Board*, 1990 WL 84577 (Tenn. App. Jun. 25, 1990)” in both its initial brief and its reply brief for the proposition that “An employer has just cause to terminate an employee who violates established drug policy.” In its reply brief, the County also states:

It bears repeating that “[o]ur courts have consistently held that an employer has just cause to terminate an employee who violates established drug policy.” *Shelby County Sheriff v. Shelby County Civil Service Board*, No. 118614, 1989 WL 118614 (Tenn.App. 9 Oct. 1989); *Butler v. Board of Commissioners of Chattanooga*, No. 55735, 1989 WL 55735 (Tenn.App. 2 June 1988).

It appears that the quotation in the second statement is not properly attributable to the 1989 *Shelby County Sheriff* case, as the language does not actually appear in that opinion. Instead, both the language and the subsequent string citation appear verbatim in *Knoxville Utilities Bd v. Knoxville Civil Serv. Merit Bd.*, No. 03A01-9301-CH-00008, 1993 WL 229505, at *11 (Tenn. Ct. App. June 28, 1993) (affirming the finding that the employer had just cause to terminate “an admitted drug user who regularly work[ed] with escaping gas”).

In any event, the identically named *Shelby County Sheriff v. Shelby County Civil Service Board* case from 1989 is also distinguishable from the instant case. There, the deputy jailer was terminated for the violation of two SCSO policies, the use and possession of drugs and unbecoming conduct. *Id.* at *1. The Board agreed that the deputy was guilty of violating these policies but found that termination was too severe of a sanction. The trial court affirmed the finding that the deputy had committed the charged policy violations but determined that the Board’s modification of the disciplinary action was arbitrary and capricious and so restored the deputy’s termination. *Id.* On appeal, we affirmed the trial court’s decision in full. Although we agreed with the deputy’s argument that there was conflicting evidence of the charges against him, there is no indication that this conflict involved the cause of his positive drug test, instead the discrepancy concerned the deputy’s description of the events related to his alleged improper disposing of illegal drugs found in the jail. On this point, we deferred to the Board’s weighing of the evidence. *Id.* at *3. In reviewing the Board’s decision to modify the deputy’s sanction, we acknowledged that “proof not only was introduced concerning the [SCSO’s] policy toward drugs, there was also proof introduced concerning jail procedures, and the duties of the deputy jailers and their relationship with prisoners.” *Id.* at *4. We also deemed “the established fact that [the deputy] was a cocaine user” and the Board’s finding that the deputy had mishandled contraband drugs relevant to the propriety of the Board’s reinstatement of the deputy. *Id.* We concluded that returning a confirmed illegal drug user into a position charged with supervising prisoners detained for their connection to the drug trade could not be satisfactorily explained, such that the modification was an abuse of discretion.

While testimony of the SCSO’s policy toward narcotics was also introduced in this case, there was no similar testimony that McGriff had failed to properly carry out his assigned duties or otherwise conducted himself in such a way as to embarrass the SCSO. Nor was there any proof that McGriff was likely to interact with persons connected to the drug trade in his present position with the general sessions courts. And again, the Board credited McGriff’s testimony and found that the County failed to establish that he had used an illegal drug. So although “the record reveal[ed] no actual support for the Board’s action” to reinstate the deputy in the 1989 *Shelby County Sheriff* case, the record does not similarly necessitate a conclusion contrary to the Board’s decision in this case. *See Davis*, 278 S.W.3d at 265.

Ultimately, in the instant case one member of the Board was “not quite sure whether [she] felt like [McGriff] should go back to work[.]” but she accepted that she was out-voted by the remaining two members who agreed that the violation of SOR 121 did not rise to the level of termination and could be adequately remedied with a lesser sanction.¹³ See Shelby County Ordinance § 14-42(d) (“Modification of the level of discipline shall be made by two-thirds vote of the members present and voting.”). The County argues that the Board failed to place proper weight on the fact that McGriff was found to have violated SCSO narcotics policy and the “zero tolerance” policy mandating termination for such violations in making its modification. But other than the Board’s denial that there was cause for McGriff’s termination, the County points to no evidence actually suggesting that the Board failed to consider all of the evidence before it. See *StarLink Logistics Inc.*, 494 S.W.3d at 672 (finding that this Court improperly substituted its judgment for that of the Board, where we based our reversal of the Board’s decision on its purported failure to consider evidence of an alternative option, noting that “[t]he Board did not ignore the testimony regarding the piping option, but considered and rejected it as a viable solution”). Additionally, while we found that the Board in *Shelby County Sheriff*, 1990 WL 84577, was required to provide specific findings to explain its decision based on the guidelines in Tennessee Code Annotated section 4-5-314, as noted, *infra*, that section is no longer applicable by virtue of section 27-9-1114(a)(2).

Although the Board did not explicitly set out its rationale for determining that McGriff’s violation of SOR 121 did not amount to cause for termination, we are able to glean insight into its reasoning from its deliberations. The Board noted that there had been no suspicion that McGriff was under the influence of any drugs while on duty and that there was “no bad conduct that prompted the drug test[.]” There was similarly no “testimony given that showed his conduct related to this case would cause an adverse view of the [SCSO].” The Board did question McGriff’s statement that he was not previously aware that the gummies he consumed could have THC in them but acknowledged that McGriff admitted his failure to do his due diligence prior to ingesting the gummies. So too did the Board consider McGriff’s testimony that he was no longer using the CBD gummies to ease his injury.

The Board also took into account both McGriff’s “track record” of being reviewed as exceeding expectations and his disciplinary file. Other cases have recognized that “more severe discipline is appropriate when a lesser disciplinary action will not end the disciplinary problem.” *Gluck v. Civil Serv. Comm’n*, 15 S.W.3d 486, 491 (Tenn. Ct. App. 1999) (citing *Tenn. Dep’t of Hum. Servs. v. Tenn. Civil Serv. Comm’n*, No. 01A01-9504-CH-00143, 1995 WL 581086, at *4 (Tenn. Ct. App. Oct. 5, 1995)) (finding demotion to be an appropriate punishment for the employee’s policy violations—which included, *inter alia*, failing to follow the chain of command and making defamatory statements about

¹³ All three members were involved in crafting the additional stipulations included in the Board’s decision.

police administration officials—where he “had previously been suspended twice for failing to obey direct orders and once for criticizing a superior officer” and so the prior attempts at lesser discipline had failed). Here, the Board credited that McGriff had been “very transparent” about those instances where he had received discipline, and there was no testimony that McGriff had previously faced any disciplinary action at all connected to the use or suspicion of use of illegal drugs. So there has been no relevant prior attempts at discipline that could have failed. And there is no written policy prohibiting the use of a lesser sanction in this case. To be sure, Chief Lavergne relied on the Shelby County Employee Handbook and its provision that major offenses warrant a higher level of discipline to support the decision to forego the typical progressive discipline process. However, the “major offenses” that the handbook states warrant a higher level of disciplinary action expressly relate to the use of *illegal* drugs. The handbook also provides that “[d]iscipline is usually given in a progressive manner unless the offense is severe[.]” and offenses not categorized as major “usually require progressive discipline.” Although the Board found that McGriff had indeed tested positive for THC, it did not find that he had consumed an illegal substance; the Board clearly determined that the five months that McGriff was suspended would suffice to remediate this less-severe violation of policy. The Board’s inclusion of additional stipulations with its modification of the disciplinary level applied by the SCSO further indicates a mindfulness of the purpose served by requiring compliance with regulations. But evidently at least two members of the Board found that their disappointment with McGriff’s failure to properly inspect the ingredients of the gummies was not so great as to outweigh his years of service, his contrition, and the nature of his offense.

In any event, our review of the Board’s decision is “narrow and deferential,” done without second-guessing the Board’s weighing of the evidence or substituting our own judgment for that of the Board. See *StarLink Logistics Inc.*, 494 S.W.3d at 669. “We accord significant deference to a merit board’s just cause determination.” *Moss v. Shelby Cnty. Civil Serv. Merit Bd.*, 665 S.W.3d 433, 442 (Tenn. 2023). And the County has not included any legal authority to establish that simply not concurring with the SCSO’s judgment amounts to an abuse of the Board’s discretion. Here, although the Board found that McGriff violated SOR 121, it determined that this violation did not amount to just cause for his termination. We conclude that there is substantial and material evidence in the record to support this decision and that the Board’s judgment on this issue was reasonable in light of the circumstances. See *Civil Serv. Comm’n*, 216 S.W.3d at 316. As such, the Board’s decision that the County had failed to establish just cause for McGriff’s termination was not arbitrary or capricious. We therefore affirm the trial court’s ruling and uphold the Board’s order reinstating McGriff’s employment.

C.

The final issue before us involves the trial court’s ruling that McGriff should be paid as if he had returned to work on December 15, 2024. The County emphasizes that the Board

did not include a specific return-to-work date in either the November 2024 letter or the January 2025 formal order. Nor was the County privy to the Board's deliberations at the time this date was ostensibly announced.¹⁴ Because the parties could therefore not have known that the Board contemplated that McGriff would be returned to work by a certain date, the County argues that it cannot be held responsible for the failure to ensure that McGriff was indeed reinstated by that date. Moreover, the County argues, it is not standard practice for new employees, re-hires or not, to be paid during the pre-employment process, such that the trial court's order would see McGriff receive a windfall to which he would not otherwise be entitled.

We agree that there is a clear distinction between relying on the Board's unpublished deliberations to review the rationale for a ruling included within its written order and doing so to enforce a specific return-to-work date not actually incorporated into the ruling or disclosed to the parties. There was simply no way for the County to divine a date certain from the information provided to it. Additionally, a closer review of the Board's deliberations on November 7, 2024 does not support the trial court's enforcement of December 15, 2024, as the relevant reinstatement date. After agreeing that the proper course of action would be to reinstate McGriff's employment, the following discussion was had:

Ms. Theresa Harris:	When do y'all want him to return back to work?
Acting Chairman Tyrone Hunt:	I think returning is returning, What do you think, Ms. Macklin?
Board Member Arnetta Macklin:	What's today? The 7th?
Acting Chairman Tyrone Hunt:	Uh-huh.
Board Member Arnetta Macklin:	Two weeks? Four weeks? I mean, how does your pay period go? Y'all biweekly?
Ms. Theresa Harris:	Oh, yeah. The 15th and 31st.
Board Member Arnetta Macklin:	Uh-huh. So in order to just start -- should we start in December, fresh start of the month, or do the middle of the month so he can start by December? How does --
Acting Chairman Tyrone Hunt:	I would think the middle of the month.
Board Member Arnetta Macklin:	Okay.

Thus, the Board seems to contemplate McGriff returning to work at the start of a new pay period, which end on the 15th and the 31st of each month. As such, on November 7, the

¹⁴ It was only once a transcript of the Board's deliberations was prepared that this date was known. At that time, the purported return-to-work date had passed. As the County could therefore not have re-hired McGriff by that date, the County argues that the trial court's decision essentially obligates it to provide back pay to McGriff, which the Board had expressly ruled was not appropriate in this case.

SCSO was in the middle of a pay period that would end on November 15. The following pay period would begin on November 16 and end on November 30. The subsequent pay period would then begin on December 1 and end on December 15. It would therefore appear that the Board was actually contemplating either November 16, 2024—“the middle of the month so he can start by December”—or December 1, 2024—“fresh start of the month”—as the possible dates for McGriff to return to work. The decision to have McGriff start in “the middle of the month” is more likely to refer to the middle of November, rather than the middle of December. So even beyond the question of whether the County should be held to a return-to-work date that it could not have been aware of, there remains some question as to what date was intended. The Board’s deliberations also seem to support the County’s contention that there is some gap between when a re-hired employee returns to work and when he is fully reinstated, raising additional concerns regarding the implications of enforcing a definitive return-to-work date.

While we were able to soldier on to address the central issues in this case, our review of the return-to-work date issue unfortunately leaves us with more questions than answers. As a result, we must conclude that in enforcing a December 15, 2024 reinstatement date, the trial court impermissibly substituted its judgment for that of the Board. *See StarLink Logistics Inc.*, 494 S.W.3d at 669 (directing the courts to “defer to decisions of administrative agencies when they are acting within their area of specialized knowledge, experience, and expertise”). Because we are unable to discern the Board’s intentions as to the timing of McGriff’s return to work from this record, we conclude that the best course of action is to vacate this aspect of the trial court’s ruling and remand the matter to the Board for the entry of written findings on this issue. Should the parties so desire, we see no reason that additional proof could not be presented to the Board concerning the relevant current circumstances.

V. CONCLUSION

The judgment of the Shelby County Chancery Court is affirmed in part and vacated in part. This matter is remanded to the trial court for entry of an order of remand to the Shelby County Civil Service Merit Board for further proceedings consistent with this Opinion. Costs of this appeal are taxed one-half to Appellant Shelby County, Tennessee, and one-half to Appellee David McGriff, for which execution may issue if necessary.

s/ J. Steven Stafford
J. STEVEN STAFFORD, JUDGE