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October 13, 2023

**VIA ELECTRONIC MAIL and
CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Taylor Davies-Mahaffey
Mastagni, Holstedt APC
1912 I Street
Sacramento, CA 95811
tdavies-mahaffey@mastagni.com

Re: Captain Jeremy Savitt Skelly / MMBA Request

Dear Ms. Davies-Mahaffey:

Per Government Code § 11517, the North Central Fire Protection District has adopted the administrative law judge's proposed decision dated July 7, 2023 in its entirety. A copy of the proposed decision was served on you on September 22, 2023.

The final decision was made public record at the NCFPD Board meeting on October 10, 2023. Enclosed herewith is a copy of the adopted final decision.

If you have any questions, please feel free to contact me. Thank you.

Sincerely,

Diane E. Coderniz
BAKER MANOCK & JENSEN, PC

DEC

Enclosure

cc: Jeremy Savitt (via certified mail, return receipt requested)
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Fresno CA 93711

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6 STATE OF CALIFORNIA, OFFICE OF ADMINISTRATIVE HEARINGS
7

8 JEREMY SAVITT,
9 Claimant,
10
11 v.
12 NORTH CENTRAL FIRE PROTECTION
DISTRICT,
13 Respondent.
14

OAH Case No. 2022120027

**NOTICE OF RECEIPT OF PROPOSED
DECISION**

Hearing Dates: April 11, 2023, April 12, 2023,
May 16, 2023, May 17, 2023, May 18, 2023

Before: Ed Washington

15
16 TO JEREMY SAVITT AND HIS ATTORNEY OF RECORD:

17 PLEASE TAKE NOTICE that a Proposed Decision was received by Respondent NORTH
18 CENTRAL FIRE PROTECTION DISTRICT on September 21, 2023. Although the Proposed
19 Decision is dated July 7, 2023, it was not received by Respondent due to a technical error until
20 September 21, 2023. A copy of the Proposed Decision is attached hereto.
21

22 DATED: September 22, 2023

BAKER MANOCK & JENSEN, PC

23
24 By: 

25 Diane E. Coderniz
26 Attorneys for NORTH CENTRAL FIRE
PROTECTION DISTRICT
27
28

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

JEREMY SAVITT, Appellant,

vs.

NORTH CENTRAL FIRE PROTECTION DISTRICT, Respondent.

OAH No. 2022120027

PROPOSED DECISION

Administrative Law Judge Ed Washington, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 11 and 12, 2023, and May 16 and 17, 2023, from Sacramento, California.

Attorney Diane E. Coderniz represented the North Central Fire Protection District (District).

Attorney Taylor Davies-Mahaffey represented Jeremy Savitt (Appellant).

Evidence was received and the hearing concluded. The record remained open through June 27, 2023, to allow the parties to submit written post-hearing briefs. All briefs were timely submitted. The record closed and the matter was submitted for decision on June 27, 2023.

FACTUAL FINDINGS

Procedural Background

1. At all times relevant to these proceedings, appellant was employed as a Fire Captain for the District.
2. Timothy Henry is the Fire Chief, Chief Financial Officer, Executive Fire Officer, and chief administrator for the District. He is the appointing authority in this matter.
3. On or about August 18, 2022, appellant was served with a Notice of Intention to Recommend Disciplinary Action and Right to Respond (Notice of Intent to Discipline) by the District. The Notice specified that Chief Henry intended to recommend that appellant be terminated from employment. The Notice set forth the bases for the proposal to terminate and advised appellant of his rights to respond pursuant to *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194.
4. On or about September 8, 2022, appellant attended and participated in a *Skelly* conference. On September 14, 2022, the District served appellant with a Notice of Termination, signed by Chief Henry in his official capacity.
5. The Notice of Termination specified that, after considering all information appellant presented, the District was terminating him based on findings in a recent Internal Affairs Investigation Report, which concluded appellant violated the District's Work Permit Policy, General Order Policy, General Conduct Policy, Duty of All Members Policy, and Fire Captain Policy.

6. The Notice of Termination described the factual bases for the alleged violations as appellant's: failure to obtain a work permit for an outside business; engaging in secondary employment while on injury status; violating legal requirements related to operating a business; using District resources to promote his personal business; asking his training officer to declare that he had demonstrated proficiency in tasks not performed in a formalized setting; and taunting his training officer for reporting policy violations.

7. The Notice of Termination also advised appellant of his right to appeal the decision to terminate his employment. Appellant timely exercised his right to appeal, and the matter was set for an evidentiary hearing before an administrative law judge of the OAH. The hearing was conducted pursuant to the Firefighters Procedural Bill of Rights Act, Government Code sections 3250 et seq., and 11500, et seq.

The History and Structure of the District

8. The District was formed in 1947 and provided fire protection to Fresno County and the surrounding area. In 2007, the fire protection responsibilities were contracted out to the City of Fresno. The District was reestablished in 2018 and began providing services to the area again in July 2019. The District is responsible for an area of approximately 230 square miles, which includes the unincorporated areas of Fresno County and the surrounding area.

9. Chief Henry's direct reports include the personnel officer, manager of administration and finance, an administrative assistant, and Deputy Fire Chief Jacob McAfee. Deputy Chief McAfee's responsibilities include oversight of District operations and training. He oversees the District's Battalion Chiefs, who oversee the District's six fire stations, which are each operated by a Fire Captain. Each Fire Captain manages a

fire station, staffed by a company that includes a fire engineer, and one to two firefighters.

Appellant's Employment with the District

10. In or around May 2019, the District hired several Fire Captains, including appellant, to manage its fire stations. Appellant had previously worked for the California Department of Forestry and Fire Protection for 11 years. He has worked in fire protection since 1996.

11. Appellant received two performance evaluations while working for the District. His evaluation reports reflect that, on December 15, 2019, and July 23, 2020, he was rated as "Outstanding 50-74%," by his supervisor, Battalion Chief Michael Pavone. Appellant passed probation on July 31, 2020.

12. On or about August 19, 2020, appellant went on medical leave due to a workplace injury. He responded to the scene of a motor vehicle accident and tore his bicep while lifting the hood of a vehicle.

THE CAPN'S MUSHROOM COMPANY

13. While on medical leave, appellant researched alternative forms of healing. He did not like the way his pain medication made him feel. He grew mushrooms as a hobby to keep him busy and because of their beneficial health effects. Appellant's hobby grew quickly. He initially grew mushrooms in his garage for his own use and sometimes provided grow kits to friends and family. He also provided grow kits and dried mushrooms to coworkers. He sold mushrooms at farmers markets, online, and to local restaurants. Appellant also partnered with a local coffee shop to create and sell a coffee powder with mushrooms. He also produced and sold dried

mushrooms and mushroom coffee. Appellant, along with his business partner and friend, eventually created a mushroom farm in a dedicated structure and established an online marketplace to sell mushrooms.

14. Appellant named his mushroom company "The Capn's Mushroom Company," and used his position as a firefighter to promote mushroom sales. The logo for the company includes a bulldog wearing a firefighter's helmet. The main website for the company states that the company is "Firefighter Owned & Operated." The online marketplace, which includes a dedicated webpage and appellant's personal Facebook page, included photographs of firefighters eating mushrooms produced by appellant and references firefighters reportedly benefiting from The Capn's Mushroom Company products.

15. As a Fire Captain, appellant was aware that District policy requires approval to operate an outside business. However, appellant viewed The Capn's Mushroom Company as a hobby rather than a business and did not feel authorization from the District was necessary.

16. Appellant returned to work with light duty restrictions in April 2021. While on light duty assignment, appellant performed office tasks and reported his timekeeping to Chief Henry's executive assistant, Adelina Acosta-Fisher. He discussed his mushroom company with Ms. Acosta-Fisher and provided her with samples of his products. He also provided her with a mushroom grow kit, for which he reluctantly accepted payment. Chief Henry noticed the mushroom grow kit on Ms. Acosta-Fisher's desk and briefly joined in a discussion with her and appellant about the benefits of mushrooms and appellant's growing and selling activities. When Chief Henry left the room, appellant asked Ms. Acosta-Fisher if she thought he should seek a work permit from the District authorizing him to engage in outside work due to his sale of

mushrooms and mushroom products. Ms. Acosta-Fisher replied by whispering "if [Chief Henry] asks, just say it's a hobby."

17. Approximately three days after returning to work, appellant again went out on medical leave. The medication he was prescribed to treat nerve damage in his arm interfered with his ability to drive. His treating physician preferred to give the medication more time to work, rather than stop treatment to facilitate appellant's return to the office.

18. On or about September 15, 2021, appellant's physician authorized him to return to light duty, with restrictions that prevented him from lifting over 20 pounds, with the limitations decreasing over time as appellant continued to heal. The District did not approve appellant's return to work request, as there were no light duty assignments available.

19. Appellant continued to grow his mushroom company and engaged in the labor associated with cultivating and selling mushrooms and related products at farmers markets and online. Chief Henry continued to hear about appellant's enterprise and became concerned appellant was performing work while on leave outside of his medical restrictions. He informed the District's workers compensation insurance provider of his concerns. Chief Henry was also concerned that appellant was operating an outside business without authorization while on paid injury status, and that he was using his status as a firefighter and District resources to promote sales.

20. On February 11, 2022, appellant was released to return to full duties, effective February 15, 2022. The District approved appellant's return. Deputy Chief McAfee informed appellant that he would initially report to the training division and then join the fire academy the following week so his skills could be evaluated and

updated, as needed. Appellant objected to reporting to the training academy for new cadets by email, as he was an experienced Fire Captain. He described his assignment to the academy as "demeaning and ridiculous," and "100% discrimination and retaliation."

21. On February 14, 2022, Ms. Acosta-Fisher issued a memorandum to appellant titled "RETURN TO WORK 40 HR. SCHEDULE." The memorandum specified appellant was being assigned to complete initial and refresher training on a variety of skills due to his extended absence. Appellant was directed to report to the training division to complete training or demonstrate proficiency in several tasks, including self-contained breathing apparatus (SCBA) fit testing individual performance evolutions (IPEs) on Friday, February 25, 2022, and hose loads and deployment IPEs the following week. IPEs are training documents that include a list of specific tasks that must be performed to correctly perform certain job functions.

22. On or about February 15, 2022, Deputy Chief McAfee met with appellant's union representative and clarified that appellant was required to demonstrate proficiency in certain tasks and complete specified training because he had been off work for an extended period. They agreed appellant would not participate in the training academy, but instead would be assigned to the training unit to establish his proficiency. However, the District's training unit was conducting the fire cadet training academy during the week of February 22, 2022. To best utilize its resources, the District decided to have appellant and another employee returning from an extended leave complete some of their return-to-work training requirements at the academy. Some tasks and training the employees were to complete were being taught at the academy and all training instructors and proctors would be present.

23. Captain Corey Cason is the District's training officer and oversaw the 2022 training academy. Captain Cason was aware that appellant was unhappy about attending the academy, as he overheard appellant openly voicing his displeasure. He took steps to ensure appellant was not treated like a new cadet during the training academy. This included making sure appellant did not have to participate in academy functions, processes, or procedures, and making it clear to appellant that he was there solely to capitalize on the training that was already occurring. Captain Cason made sure appellant was not to perform any IPEs simultaneous with the recruits and made sure all instructors in the cadre had this understanding as well.

THE TRAINING INCIDENT

24. On February 25, 2022, appellant completed the SCBA fit testing IPEs, as specified in the return-to-work memorandum previously issued to him. He performed the required tasks while at the training academy, under the observation of two proctors who thereafter signed the IPE confirming he performed the tasks as required.

25. On or about March 1, 2022, appellant asked Captain Josh Holden to sign the IPE specifying that appellant had demonstrated proficiency performing fire hose pulling tasks. Appellant told Captain Holden that he had completed the required tasks. However, appellant had not asked Captain Holden to observe him prior to reportedly completing the required tasks. Captain Holden refused to certify that he had performed the tasks proficiently, as he was focused on the new cadets and did not observe or evaluate appellant completing the required tasks.

26. Appellant then approached Captain Cason and asked him to sign the IPE. He informed Captain Cason that other instructors or proctors had observed him satisfactorily complete the fire hose pulling tasks. Captain Cason checked with the

other instructors. None of the instructors were comfortable verifying that appellant had proficiently performed the required tasks. Some instructors stated they noticed appellant was pulling fire hoses but were not told he was doing so to for evaluation, and therefore did not observe him to ensure he completed the tasks correctly.

27. Captain Cason refused to sign the IPE, as no one could confirm that appellant performed the tasks proficiently. Appellant responded that he did not appreciate him checking with the other instructors about the fire hose pulling tasks, as he felt Captain Cason either thought or implied appellant was lying.

28. Appellant continued to request that Captain Cason sign the IPE, despite what the other instructors claimed, and asked Captain Cason to extend him a professional courtesy. Captain Cason was offended by appellant's request as he understood appellant was asking him to misrepresent appellant's abilities to the District. The two raised their voices and argued in a manner that was loud enough to attract the attention of the cadets and interrupt training. Captain Cason ended the argument by walking to his vehicle and leaving. As he walked toward his vehicle, appellant yelled at Cason stating, "go ahead and run and tell your boss."

29. Following his argument, appellant complained to Deputy Chief McAfee that the District was arbitrarily changing his return-to-work requirements to discriminate against him for being an injured worker. He also complained that the District should have planned to have two superior officers observe him complete the IPEs, rather than lower ranking individuals. Deputy Chief McAfee reported the incidents to Chief Henry and had appellant's direct supervisor, Battalion Chief Pavone, observe appellant's fire hose pull IPE. Appellant successfully performed the hose pull IPE under Battalion Chief Pavone's observation the following day. Appellant ultimately

completed all return-to-work requirements and returned to his regular duties as a Fire Captain.

30. After learning of appellant's conduct during the training academy, Chief Henry grew increasingly concerned about appellant's fitness to serve as a Fire Captain. He was concerned that appellant, as a Fire Captain in a leadership position, behaved unprofessionally toward Captain Cason and insubordinately in response to written directives from his superiors. Chief Henry was particularly troubled that appellant displayed this behavior in front of a group of new cadets.

31. Chief Henry asked Ms. Acosta-Fisher to look into appellant's outside business activities on the internet and on social media platforms. Ms. Acosta-Fisher discovered information on appellant's Facebook page and business website detailing multiple products available for purchase from The Capn's Mushroom Company, utilizing online pay services such as Venmo and PayPal. The business website included video footage from a local news station in which appellant discussed the benefits of mushrooms and that he had sold his mushroom products to firefighters. There were also multiple images of the District's fire station on the business website.

32. On or about July 12, 2022, appellant submitted a completed work permit application for The Capn's Mushroom Company to the District. He attached a handwritten note to the application that included the following statements:

The hobby has grown and someone just recently pointed out that my hobby may be [sic] looked at like a business. I am also turning this in because my hobby is growing larger and may or may not become a full on business. I currently

make no profit, have no business license, or bank acct associated with my hobby.

Internal Affairs Investigation

33. On or about July 18, 2022, the District retained Steve Badilla Investigations, an independent investigation firm, to investigate appellant's outside business activities and the behavior appellant demonstrated during the training academy. On July 21, 2022, appellant was placed on administrative leave.

34. Mr. Badilla led the investigation himself. He is a retired Assistant Chief of the California Highway Patrol. He is also a private investigator and certified equal employment opportunity investigator and Peace Officer Standards and Training internal affairs investigator. Mr. Badilla has conducted approximately 300 to 400 workplace investigation in total.

35. The investigation included a review of appellant's conduct, witness interviews, a review of District policies, and a review of state and federal business requirements. Virtually all of the District employees interviewed stated that appellant frequently talked about his mushroom company at work and provided free samples of his product to employees. Both Ms. Acosta-Fisher and Fire Marshal George Mavrikas confirmed that they purchased products from appellant after trying his free samples. Additionally, Engineer Andrea Nakamura reported that her Fire Captain, appellant's friend and colleague, instructed her to make mushroom pasta for their station using appellant's mushrooms, at appellant's request. She was directed to do this so they could take photographs and video of the crew cooking with appellant's mushrooms to promote sales on his website.

36. Both Captain Cason and Captain Holden told Mr. Badilla that appellant asked them to certify on his IPEs that they observed him correctly and proficiently perform tasks, which they did not actually observe in a formal setting.

37. During appellant's interview, he acknowledged that he used his position as a Fire Captain with the District to give his mushroom company "legitimacy." He admitted he used photographs and video from the fire station to promote sales. Appellant stated that he and a friend from college, Darren Wherry, operated The Capn's Mushroom Company to sell mushrooms to friends and family, at farmer's markets, and online. They are sometimes assisted by Mr. Wherry's wife and also have an employee they pay \$20 per hour for his services. The company provides 24-hour customer support and a money-back guarantee for those who purchase their products.

38. Appellant admitted that he did not seek an outside work permit from the District until more than a year after he formed the mushroom company. Similarly, he did not obtain a business license or file state or federal tax reporting documents related to his mushroom company. However, he emphasized that he did not have to do these things because his mushroom company was just a hobby and until recently could not reasonably be considered a business.

39. Appellant claimed the company barely makes enough money to cover expenses. On one occasion, the company made \$4,000 in one night during a Hmong New Years Eve celebration. But that that was not the norm. Instead, appellant claimed the company would usually make about \$150 a night at the farmers market "if they were lucky."

40. Appellant denied that he ever asked anyone to certify that he completed tasks he had not performed during training. He claimed there was a lack of clarity and guidance as to what he was required to do at the academy, which led to a misunderstanding between him and Captain Cason. He believed Captain Cason questioned his veracity in front of subordinates and trainees due to the misunderstanding. He explained to Mr. Badilla that, in response, he asked to be shown some professional courtesy as a colleague and fellow Fire Captain.

41. Mr. Badilla established that appellant had received copies of all the District policies related to the concerns raised by Chief Henry, and that appellant, as a Fire Captain, was responsible for ensuring he understood and complied with those policies.

42. Mr. Badilla researched state and federal business reporting requirements and determined that the Internal Revenue Service (IRS) requires all business partnerships to obtain an Employer Identification Number (EIN) without exception. He also found that the California Secretary of State requires business owners to obtain a general business license in the city in which their business is located. Mr. Badilla determined that an entity is "doing business" in California if they actively engage in any transaction for the purpose of financial gain within the state. (Rev. & Tax Code, § 23101, subd. (a).)

43. On August 9, 2022, Mr. Badilla issued investigative reports that sustained the following allegations:

- While [appellant] was on leave for his injury, he established The Capn's Mushroom Company and engaged in the business of growing and selling mushrooms as a local vendor [without District authorization]. In doing so,

[appellant] violated policy when he failed to submit a work permit request for a business for which he received remuneration. [Appellant] also failed to comply with the work permit policy's section prohibiting secondary employment while on injury status.

- [Appellant] and his business partner ... failed to file required tax reporting documents (EIN) with the IRS and the State Franchise Tax Board, failed to file a Statement of Information with the Secretary of State, and failed to obtain a municipal business license.
- [Appellant] utilized District equipment and worked on his side business, The Captain Mushroom Company, while on duty at [the District].
- [Appellant] refused to participate in a required training program that was assigned to him by the District to ensure that he remain proficient in essential firefighting skills when he returned to work. During training, [appellant] asked his training officer to sign off on a task for him even though the proctors stated they had not seen [appellant] complete this task. When the training officer refused to comply, [appellant] became argumentative and then criticized the directive for him to train, command management for making him participate in the training, and the training officer for questioning whether he actually performed the task he claimed to have completed.

Notice of Termination

44. Based on the results of the investigation, Chief Henry issued appellant a Notice of Intent to Discipline. After considering the information provided by appellant in response to the Notice of Intent to Discipline, he determined that termination of

appellant's employment was necessary given the nature and extent of policy violations. He issued a signed Notice of Termination to appellant on September 14, 2022.

45. Chief Henry testified that the decision to terminate appellant was not an easy decision. He generally prefers to engage in progressive discipline when addressing employee misconduct. However, claimant's behavior demonstrated that he lacked the core values necessary to serve as a Fire Captain. This included appellant's claim that his mushroom company was a hobby rather than a business even though he sold multiple mushroom products online through a website dedicated for that purpose and had contracts to provide mushrooms and mushroom products to a local restaurant and coffee shop on a continuing basis. Appellant also failed to obtain approval from the District to operate an outside business and use his position as a firefighter to promote sales for this unauthorized business. Most important, Chief Henry concluded that appellant's attitude regarding his retraining and behavior at the training academy were contrary to that of a Fire Captain.

46. Chief Henry believes appellant attempted to persuade his colleagues to engage in dishonest and unethical conduct by certifying that he performed tasks they had not observed. He also behaved in an unprofessional and disruptive manner when he argued with Captain Cason and made disparaging remarks about the District and his superiors in front of cadets.

47. Chief Henry emphasized that as a Fire Captain appellant was in a position of leadership and behaved in a manner that undermined the integrity of the District in front of new recruits. He testified that this behavior negatively affects appellant's ability to lead and can result in safety issues in the field that may jeopardize lives. As an alternative to termination, Chief Henry would have preferred to demote appellant

to a lower position within the District, such as engineer or firefighter. However, appellant has never held those positions with the District and could not be demoted to occupy positions with the District he has never held. Therefore, he determined that termination was the only option, in the interest of public safety.

Appellant's Defenses

48. Appellant's testimony at hearing was fairly consistent with the statements he made to Mr. Badilla during the internal affairs investigation. He insisted his mushroom company began as a hobby when he started to find natural alternatives to pain medication. He partnered with Mr. Wherry, and the company grew quickly. Mr. Wherry provided the logistical and financial support, and appellant grew the mushrooms and prepared products for sale. He used his status as a fireman to promote his business and sold products to his co-workers during off-duty hours.

49. Appellant testified he waited more than a year to submit a work permit application because Ms. Acosta-Fisher told him he did not need a permit if he claimed his mushroom company was just a hobby. He claimed sales from the company have never exceeded costs, and neither he nor Mr. Wherry have ever taken a salary. He then testified that his "gross sales" were only about \$20 a month when he started in early 2021 and were approximately \$100 a month in or around February 2022. When questioned about his statements to investigator Badilla that he earned \$4,000 at a single Hmong event in early 2022, appellant claimed that statement was an exaggeration and that he "possibly" made around \$1,000 instead. When asked how he estimated such low monthly earnings, considering that the average price of the items sold on the company's website averaged \$20 or more, appellant could provide no substantive information. Instead, he stated he was just the farmer and that his partner "deals with the money."

50. Appellant claimed there was confusion as to what his role would be at the training academy during his return-to-work process. He asserted he was never informed that he would have to complete any IPEs under formal observation until February 25, 2022. On that date, while at the training academy, one of the training captains informed him that Deputy Chief McAfee said he needed to complete IPEs for SCBA fit testing under the observation of two proctors. Appellant was "super confused" by the request but completed the SCBA required tasks "right then and there," to get it over with.

51. The following week was "hose week," at the academy. Appellant had completed several "hose pulls" while assisting cadets with their training on that function. Captain Cason and other trainers were in the area and saw him perform the tasks several times while demonstrating it to cadets. He believed the instructors would sign his hose pull IPE on that basis. When they did not and questioned whether he had completed the task under formal observation, he became upset and felt he was again being subjected to unlawful discrimination due to his injury.

52. Appellant asserted that when he approached Captain Cason to discuss the misunderstanding, Captain Cason became angry and accused him of "trying to be sneaky" by performing tasks when no one was watching when he knew he was to be observed to two proctors. He testified that, at this point, he realized "for the first time" that he was required to complete his IPEs under the formal observation of two individuals.

53. He claimed Captain Cason was challenging him, yelling at him, and accusing him of being a liar and calling him a "fucking a-hole," in a raised voice. He stated this was the behavior that prompted him to ask for some professional courtesy.

54. In March 2022, appellant returned to his duties as a Fire Captain on Engine 57. In addition to performing his regular duties, he also conducted a training for the entire District. No one mentioned the training academy dispute with him until he received the Notice of Intent to Discipline almost four months later.

Analysis

CAUSE FOR DISCIPLINE

55. To uphold the discipline against appellant the District must establish that he violated the policies identified in the Notice of Termination, and that those violations are sufficiently egregious to warrant termination. Many of the facts are undisputed.

56. Appellant admitted he formed The Capn's Mushroom Company while out on medical leave from his District employment and sold products online, at farmers markets, and entered into business agreements with at least one restaurant and a coffee shop. He admitted he used his position to promote sales for his company and provided free samples to coworkers for the same reason. He admitted he did not submit a work permit application for the District's approval until after his company had been operating for 16 months. He filed no tax documents, obtained no business license, and did not inform the Secretary of State of his business operations.

Failure to Obtain Authorization to Perform Outside Work

57. Work Permit Policy 108.004 prohibits District employees from engaging in outside work for compensation without prior authorization from the District. Both Work Permit Policy 108.004 and Work Permit Application (NC – 02) 106.011 provide

that outside work permits are invalid for the duration of the time an employee is on sick leave or receiving pay for a work-related injury.

58. Appellant claimed no work permit was required for The Capn's Mushroom Company because it was a hobby, rather than a business, that made little to no profit. Additionally, he asserted he believed he did not have to submit a work permit application to the District because Ms. Acosta-Fisher told him to just claim that his mushroom company was a hobby if Chief Henry inquired.

59. These claims were not persuasive for several reasons. First, appellant is responsible for ensuring he complies with District policies—not Ms. Acosta-Fisher. Second, appellant's testimony regarding his business sales and profits was vague, inconsistent, and unsupported by independent documentation that should be readily available to him. Therefore, it received no weight. Third, The Capn's Mushroom Company is operated by two and sometimes three individuals, has or had one employee on staff, and provides 24-hour customer support. These are not the characteristics of a hobby. Finally, whether appellant considers his company a hobby or a business, he engaged in outside work for remuneration without District authorization when he sold mushroom products online, at farmers markets, and to a restaurant and coffee shop on a recurring basis for compensation. This is what makes appellant's activities contrary to District policy, not whether he calls his enterprise a "hobby." Therefore, the District established that appellant violated Work Permit Policy 108.004 when he failed to secure an outside work permit prior to engaging in outside work for which he received remuneration and violated both Work Permit Policy 108.004 and Work Permit Application (NC – 02) 106.011 when he engaged in secondary employment while on injury status.

Failure to Comply with the Law Related to Business Practices

60. General Orders Policy 109.010, Section 12, provides that all members of the District adhere to all laws and ordinances. Appellant engaged in ongoing transactions in California for the purpose of financial gain while operating The Capn's Mushroom Company. He appears to have collected taxable earnings from this endeavor. He did not obtain a business license, nor file any tax documents with the IRS or California Franchise Tax Board related to his business operations. Appellant's explanation for these failures was essentially the same as those he proffered for his failure to obtain an outside work permit from the District: that The Capn's Mushroom Company is a hobby rather than a business based on the company's reported minimal earnings. This argument is rejected here on the same basis as before. The District established that appellant violated General Order Policy 109.010, Section 12, by failing to comply with the law requiring a business license and filing tax documents when operating a business in California.

Misuse of District Status or Prestige

61. General Conduct Policy 109.011, Section 3 prohibits members from using their employment with the District for personal gain. Appellant admitted he used his status as a firefighter and photographs and videos taken at the fire station to promote The Capn's Mushroom Company. These acts violated the prohibitions specified in General Conduct Policy 109.011, Section 3.

Inappropriate Behavior During Training

62. The District has multiple policies regulating employee behavior. General Conduct Policy, 109.011, Section 10, prohibits members from engaging in acts that disrupt District morale or discredit the District or any District employee. General Conduct Policy, 109.011, Section 20, prohibits members from willfully disobeying lawful orders issued by superior. All Officers Policy, 109.002, Section 19, requires that officers be supportive of District policy and refrain from making derogatory statements, while in the presence of subordinates. Fire Captain Policy 109.006, Section 1, provides that Captains must always set a good example for those under their command and require subordinates to meet District standards. Duty of All Members Policy, 109.009, Section 21, provides that all members of the District participate in drills and other training activities as directed.

63. The District established that during the Spring 2022 Training Academy, while in the presence of new cadets, appellant was critical of the return-to-work process ordered by his superiors and made derogatory comments about the directives issued to him by Deputy Chief McAfee and Chief Henry. Appellant also attempted to circumvent the retraining certification process by asking the trainers to certify that he satisfactorily performed tasks they had not formally observed.

64. Appellant claims his request was misunderstood due a lack of clear training directives. However, as a Fire Captain, appellant is expected to address any misunderstanding or ambiguity in his assignment in a courteous, professional, and respectful manner. He failed to meet this expectation and his conduct constituted violations of General Conduct Policy, 109.011, Sections 10 and 20; All Officers Policy, 109.002, Section 19; Fire Captain Policy 109.006, Section 1; and Duty of All Members Policy, 109.009, Section 21.

DISCIPLINARY CONSIDERATIONS

65. Although appellant only worked as a Captain for the District for a brief period before taking an extended medical leave, he has reportedly worked in fire protection service for more than 25 years. He held a leadership position with the District and knew he was expected to always exhibit the highest professional standards.

66. It appears that appellant resents District leadership, as he repeatedly disregarded District policy and directives from his superiors. Whether that resentment is justified or not is inconsequential to this action.

67. Appellant was provided all relevant District policies shortly after he began working for the District. He is responsible for ensuring he understood those policies and remained in compliance with them. Nevertheless, appellant created and operated a company while on medical leave that sold mushrooms and mushroom products on a recurring basis for compensation—in an amount not established at hearing.

68. Appellant was aware that these outside business activities required advanced approval from the District. He was issued the Work Permit Policy 108.004 shortly after being hired, which expressly provides that District approval is required prior to engaging in outside employment. In or around April 2021, he discussed getting a work permit with Ms. Acosta-Fisher when telling her about his company and its products.

69. He continued to operate The Capn's Mushroom Company without requesting a permit for over a year. When he finally submitted the work permit application, he claimed he did so because his hobby had grown and "someone had

just recently pointed out that his hobby may be perceived as a business," despite having discussed this same issue with Ms. Acosta-Fisher more than a year prior.

70. When appellant returned to full duties, he resisted reporting to the training academy as directed by his superiors. When he reported to the academy, he tried to circumvent the certification process and engaged in a loud and unprofessional argument with his training officer. While appellant claims this dispute resulted from his failure to receive clear directives, his explanation seems disingenuous given that he was issued the return-to-work memorandum that specified the tasks he was to perform, prior to reporting to the academy. Additionally, there were several trainers nearby that could have clarified procedures, if asked, and appellant had demonstrated proficiency in performing SCBA fit tests while being observed by two proctors, as required, at the training academy the preceding week.

71. Chief Henry testified that appellant's conduct and failure to comply with several District policies demonstrated that he lacked the core values associated with District leadership. Particularly, he saw no way that appellant could continue to serve as a Fire Captain for the District given his dishonesty and attempts to coerce his colleagues to engage in misrepresentations that could jeopardize public safety.

72. Chief Henry testified that there is no mechanism to demote appellant to a position with the District he has never held before. Therefore, termination of appellant's employment was his only option.

73. That appellant worked as a Fire Captain, rather than in some capacity wholly unrelated to public safety has been strongly considered. Chief Henry's opinions that a lack of core values or integrity in leadership at the District can negatively affect public safety is given some deference, as he is a career firefighter with decades of

firsthand experience. He is also given some discretion as the District's appointing authority to be well suited to determine the impact of employee misconduct. (See, Legal Conclusion 15.). Chief Henry's concerns about dishonesty are well established for first responders.

74. In *Gee v. California State Personnel Board* (1970) 5 Cal.App.3d 713, the court considered the case of an employee disciplined for making false statements on a license application. The court held that "'Dishonesty' connotes a disposition to deceive." [citation] It 'denotes an absence of integrity; a disposition to cheat, deceive or defraud.' " (*Id.*, at pp. 718–719.) A single incident of dishonesty could justify termination of the public employee because "[h]onesty is not considered an isolated or transient behavioral act; it is more of a continuing trait of character." (*Id.*, at p. 719.)

75. In *Ackerman v. State Personnel Board* (1983) 145 Cal.App.3d 395, the court approved a dismissal for dishonesty of a Highway Patrol officer who stole State property and lied during the department's investigation, stating that the honesty of a peace officer is the essence of his function. A similar conclusion was reached by the court in *Paulino v. Civil Service Commission* (1985) 175 Cal.App.3d 962. There, the San Diego County Sheriff dismissed a deputy for falsification of sick leave reports and dishonesty in the internal affairs investigation of the matter. The court stated:

A deputy sheriff's position is a position of trust. A deputy sheriff is held to the highest standards of behavior. His honesty and credibility are crucial to the proper performance of his duties. Dishonesty in matters of public trust is intolerable.

(*Paulino, supra*, 175 Cal.App.3d at p. 972.)

76. All the evidence and arguments have been considered. Chief Henry's conclusion that appellant should be terminated from employment was reasonable and warranted given all of the surrounding circumstances and is upheld.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. The appointing authority has the burden of proving by a preponderance of the evidence all affirmative issues on which disciplinary action is based. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 175.)

Applicable Authority

2. The District may terminate any employee, in compliance with the Firefighters Procedural Bill of Rights, for violation of District policies. (Gov. Code §§ 3250–3262.)

3. The Guide to Corrective Action Policy 111.001, provides, in pertinent part, that "[t]ermination should be used [as a corrective action] when the offense or situation is so serious that retention is not acceptable"

4. Work Permit Policy 108.004 provides that "[n]o full-time employee is to engage in or work at any other remunerative occupation without first obtaining an outside work permit from the District."

5. Both Work Permit Policy 108.004 and Work Permit Application (NC – 02) 106.011 provide that work permits are not valid for the duration of the time an employee is on sick leave or receiving pay for a work-related injury.

6. General Orders Policy 109.010, Section 12, provides that all members of the District ... are subject to the rules and regulations and orders concerning the government of the District, particularly rules and regulations relating to conduct, discipline, and adherence to laws and ordinances."

7. General Conduct Policy 109.011, Section 3, prohibits members from using their uniform, badge, or prestige of the District for personal gain.

8. General Conduct Policy, 109.011, Section 10, provides that members "will not be a party to any ... activity that would tend to disrupt the District morale or bring discredit to the District or any member thereof."

9. General Conduct Policy, 109.011, Section 20, provides that members "will not willfully disobey any lawful order issued by superior officer, or speak disrespectfully of, or to, any superior officer. All are cause for disciplinary action."

10. All Officers Policy, 109.002, Section 19, provides that "in the presence of subordinates, officers will be supportive of District policy and refrain from making statements of a derogatory nature."

11. Fire Captain Policy 109.006, Section 1, provides that "a Captain, as the only officer whose command is at all times under their immediate supervision and control, must remain constantly vigilant and while setting an especially good example, require their commands measure up to the standards of the [District]."

12. Duty of All Members Policy, 109.009, Section 21, provides that all members of the District participate in drills and other District training activities as directed and perform related work as required.

Cause for Discipline

13. By reason of the matters set forth in Findings 55 through 64, it is determined that appellant engaged in conduct in violation of Work Permit Policy 108.004; Work Permit Application (NC – 02) 106.011; General Orders Policy 109.010, Section 12; General Conduct Policy 109.011, Section 3; General Conduct Policy, 109.011, Section 10; General Conduct Policy, 109.011, Section 20; All Officers Policy, 109.002, Section 19; Fire Captain Policy 109.006, Section 1; and Duty of All Members Policy, 109.009, Section 21.

Termination is Appropriate

14. When all the evidence is considered, termination of appellant's employment is appropriate to ensure public safety. Although appellant has no record of serious discipline, Chief Henry persuasively testified that allowing appellant to remain a Fire Captain with the District, which is a position with significant leadership, could undermine the integrity of the District and pose a significant risk to public safety in light of the critical duties firefighters perform daily.

15. In civil service employment, the appointing authority has broad discretion to select an appropriate penalty for a violation of civil service rules, and the exercise of that discretion should not be disturbed unless the penalty is unreasonable, clearly excessive, or constitutes an abuse of the appointing authority's discretion. (*Cummings v. Civil Service Com.* (1995) 40 Cal.App.4th 1643; *Talmo v. Civil Service Com.* (1991) 231 Cal.App.3d 210.) This reflects an important policy consideration: the employing agency—not the reviewing body—is in the best position to judge the impact of employee misconduct on the operations of an agency, the prospects for the employee's rehabilitation and improvement, and the need to maintain and encourage

high standards of conduct by all employees. (*Beard v. General Services Admin.* (D.C. Cir. 1986) 801 F.2d 1318, 1320-21; *Weiss v. United States Postal Service* (1st Cir. 1983) 700 F.2d 754, 758–59.) Here, the District’s action in terminating appellant was reasonable and it did not constitute an abuse of its discretion.

RECOMMENDATION

The appeal of Jeremy Savitt of his dismissal by the North Central Fire Protection District is DENIED. The termination of Jeremy Savitt from employment as a Fire Captain is AFFIRMED.

DATE: July 7, 2023

Ed Washington

ED WASHINGTON

Administrative Law Judge

Office of Administrative Hearings

1 **PROOF OF SERVICE**

2 **OAH Case No. 2022120027—Jeremy Savitt v. North Central Fire Protection District**

3 **STATE OF CALIFORNIA, COUNTY OF FRESNO**

4 At the time of service, I was over 18 years of age and not a party to this action. I am
5 employed in the County of Fresno, State of California. My business address is 5260 North Palm
Avenue, Suite 201, Fresno, CA 93704.

6 On September 22, 2023, I served true copies of the following document(s) described as
7 **NOTICE OF RECEIPT OF PROPOSED DECISION** on the interested parties in this action as
follows:

8 Jeremy Savitt (by mail only)
9 1362 W. Tenaya Way
Fresno CA 93711

10 Taylor Davies-Mahaffey, Esq. (by email)
11 MASTAGNI HOLSTEDT A.P.C.
12 1912 I Street
13 Sacramento CA 95811
tdavies-mahaffey@mastagni.com
rramirez@mastagni.com

14
15 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
16 persons at the addresses listed in the Service List and placed the envelope for collection and mailing,
17 following our ordinary business practices. I am readily familiar with the practice of Baker Manock &
18 Jensen, PC for collecting and processing correspondence for mailing. On the same day that
correspondence is placed for collection and mailing, it is deposited in the ordinary course of business
with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident
or employed in the county where the mailing occurred. The envelope was placed in the mail at
Fresno, California.

19 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an
20 agreement of the parties to accept service by e-mail or electronic transmission, I caused the
21 document(s) to be sent from e-mail address jlewis@bakermanock.com to the persons at the e-mail
addresses listed in the Service List. I did not receive, within a reasonable time after the transmission,
any electronic message or other indication that the transmission was unsuccessful.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing
23 is true and correct.

24 Executed on September 22, 2023, at Fresno, California.

25 

26

Janice L. Lewis