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STATE OF NEW JERSEY

In the Matter of Todd Sharp
Department of Transportation

CSC DKT. NO. 2014-1668
OAL DKT. NO. CSV 00783-14

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**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

ISSUED: DECEMBER 3, 2014 BW

The appeal of Todd Sharp, Maintenance Worker, Department of Transportation, removal effective December 13, 2013, on charges, was heard by Administrative Law Judge Patricia M. Kerins, who rendered her initial decision on September 9, 2014. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on December 3, 2014, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

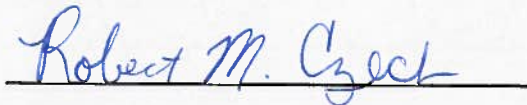
ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Todd Sharp.

Re: Todd Sharp

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
DECEMBER 3, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 00783-14

AGENCY DKT. NO. 2014-1668

**IN THE MATTER OF
TODD SHARP, DEPARTMENT
OF TRANSPORTATION.**

James M. Carter, Esq., for appellant (Hoffman Dimuzio, attorneys)

Nonee Lee Wagner, Deputy Attorney General, for respondent (John J. Hoffman,
Acting Attorney General of New Jersey, attorney)

Record Closed: July 29, 2014

Decided: September 9, 2014

BEFORE PATRICIA M. KERINS, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant Todd Sharp (Sharp) appeals his removal by respondent Department of Transportation (Department). The removal action arose out of the suspension of his driver's license for seven months and the suspension of his commercial driver's license (CDL) for one year due to a non work related incident.

On December 13, 2013, respondent issued a Final Notice of Disciplinary Action (FNDA) removing Sharp from his position. The basis for the removal in the FNDA was

an Inability to Perform Duties as set forth in N.J.S.A. 4A:2-2.3(a)3 and the Department Guidelines for Employee Conduct and Discipline Section II, A. The charge arose out of the suspension of his driver's license and CDL. On December 18, 2013, Sharp filed his appeal with the Civil Service Commission (Commission) and the matter was transmitted to the Office of Administrative Law (OAL) for hearing as a contested case on January 17, 2014. The matter was heard on July 29, 2014, at the OAL in Mercerville, New Jersey.

FACTUAL DISCUSSION

Most of the relevant facts in this matter are not in dispute. Todd Sharp has been employed as a Maintenance Worker I for the Southern Region of the Department since June 2012. He was assigned to the Buena Maintenance Yard. His work title required a driver's license and a CDL. By all accounts Sharp was an exemplary employee with no disciplinary history. On March 20, 2013, however, his driver's license was suspended for seven months and his CDL for a year as a result of a non work related motor vehicle infraction.

In support of its action, the Department presented the testimony of Charles Kingsland, its Director of the Southern Region Operations, and Edeltroud McQuaid, a Manager of Employee Relations. Kingsland oversees daily maintenance and engineering functions for seven southern counties. Staff at the maintenance yards are responsible not only for routine maintenance but also for snow and ice control in the winter season. The Buena yard typically operates with six or seven workers and two supervisors and is responsible for approximately 175 "lane miles." Kingsland allowed that many of Sharp's duties would not require a CDL, but particularly in inclement weather or emergencies, a maintenance worker must be ready to perform functions which required a CDL.

Kingsland stated that although Department policy allows for a voluntary demotion during the loss of a license, no such positions were available during Sharp's loss of license. Due to staffing cuts, even the rest areas which remain open have staff with CDLs and he simply had no positions to offer Sharp. He acknowledged that the

Department uses private contractors to help with snow and ice removal and has instituted the use of state employees as volunteers during weather emergencies. Nevertheless, it is Department policy to first use its own staff for such duties. While some winters may be mild, the Department must plan to have its staff available to operate equipment which requires the possession of a CDL. Kingsland stated that he felt removal was appropriate in this matter despite the request of Sharp's immediate supervisor to retain him. He cited the Department's high priority on the availability of personnel to deal with winter weather emergencies as a key factor in the application of the Department's policy.

On cross examination, Kingsland admitted that in previous years employees had been reassigned to rest areas or other positions during the term of a license suspension. He admitted that an employee who was related to a supervisor and who was subject to suspension had been given another position during his suspension, but said that action would no longer comport with the Department's present policy. As to another employee with a suspension he stated that person was not subject to removal as his title did not require a CDL.

The Department then presented the testimony of Edeltroud McQuaid, a Department Manager for Employee Relations. In regard to Sharp, she had dealt with Jean Savage, a Personnel Coordinator for Buena staff. In her testimony she reviewed the Department's policy on license suspensions and the requirements of Sharp's position. According to McQuaid, she performed a search for a position for which Sharp could accept a voluntary demotion under the policy but none was available. While the search continued he was allowed to perform light duty for twenty weeks. Once it was determined that no position was available, the removal process was instituted. She stated that Sharp was considered a good employee and that within the confines of Department policy they tried to retain him.

In response to the Department's case, Sharp testified credibly. He described his usual duties in detail and said he rarely had duties that required the use of a CDL. As the truck drivers on his crew had the title for driving trucks, they would transport him to his work assignment on the road such as repairing potholes and road maintenance. He

testified that even during what the Department termed as "light duty", his daily duties did not change. He did state that prior to the institution of the removal proceedings he was not advised of his voluntary demotion option nor was voluntary resignation discussed until the decision was made to remove him. He was advised of the decision to terminate him by Jean Savage in a telephone call and did not fully understand the option to voluntarily resign prior to termination. When he attempted to contact her after the initial phone call, she did not respond to him.

LEGAL DISCUSSION

A public employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline, including removal. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied by a preponderance of the competent, relevant and credible evidence. N.J.S.A. 11A:2-2.1; N.J.A.C. 4A:2-1.4(a). Atkinson v. Parsekian, 37 N.J. 143 (1962); In Re Polk, 90 N.J. 550 (1982).

In this matter, Sharp is not charged with wrongdoing, but rather an inability to perform duties as a result of his license suspension. The Department policy on the loss or suspension of a driver license (R-2) provides:

For loss of license from two months to one year – Temporary voluntary demotion to a title that does not require the employee to drive, for which a funded vacancy exists in the organizational area, and the employee meets the eligibility requirement. If the temporary voluntary demotion is not available or appropriate, action will be taken to seek a voluntary resignation in good standing before proceeding with a removal for inability to perform duties. If this option is available, but rejected by the employee, action will be taken for removal for inability to perform duties.

In this matter, the record shows that a driver's license and CDL are a requirement of Sharp's job whether or not he was required to use them on a frequent basis. His loss of both brought him within the ambit of the Department's policy on loss

of license. The record further shows that the Department attempted to find a position in which to demote him as set forth in the policy but was unable to do so. While the application of the policy in a case such as this may result in the loss of a valued and productive employee, it is pursuant to a valid departmental policy.

While respondent may remove an employee in Sharp's circumstances, its policy also provides that the employee be given an opportunity to voluntarily resign. In this matter, Sharp was credible in his testimony that prior to the institution of removal proceedings his options under the policy were not fully explained to him. As a result, he should be provided with the opportunity to submit a voluntary resignation prior to the sanction of removal. Should he choose not to do so, the Department's action in removing him is upheld.

ORDER

Appellant shall be provided with an opportunity to submit a voluntary resignation for his position. If such resignation is not submitted, the decision of the respondent to remove him is upheld and his appeal is **DENIED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

September 9, 2014
DATE

Patricia M. Kerins
PATRICIA M. KERINS, ALJ

Date Received at Agency:

September 9, 2014

Date Mailed to Parties:

September 9, 2014

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APPENDIX
WITNESSES

For Appellant:

Todd Sharp

For Respondent:

Charles Kingsland
Edeltroaud McQuaid

EXHIBITS

Joint:

- J-1 Preliminary Notice of Disciplinary Action, dated October 8, 2013
- J-2 Final Notice of Disciplinary Action, dated December 13, 2013

For Appellant:

None

For Respondent:

- R-2 Department of Transportation Police/Procedure regarding Loss of Drivers License
- R-6 Abstract of Driver History Record
- R-8 Job Specification 42112, Maintenance Worker 1, Transportation