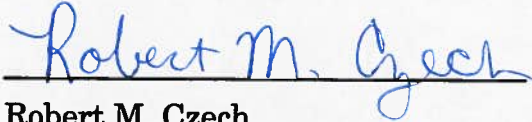


Re: Michael Schonzeit

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
FEBRUARY 5 2015**

A handwritten signature in blue ink that reads "Robert M. Czech". The signature is written in a cursive style and is positioned above a horizontal line.

**Robert M. Czech
Chairperson
Civil Service Commission**

**Inquiries
and
Correspondence**

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

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 0938-13

AGENCY DKT. NO.

2013-1832

**IN THE MATTER OF MICHAEL
SCHONZEIT, OCEAN COUNTY
HEALTH DEPARTMENT.**

Richard Schall, Esq., for appellant Michael Schonzeit (Schall & Barasch, LLC,
attorneys)

John J. Mercun, Esq., for respondent Ocean County Health Department (Citta,
Holzapfel & Zabarsky, attorneys)

Record Closed: April 1, 2014

Decided: November 12, 2014

BEFORE LISA JAMES-BEAVERS, ALJ:

STATEMENT OF THE CASE

Appellant, Michael Schonzeit, appeals the action of respondent, Ocean County Health Department (Department), removing him from his position as environmental health specialist on charges of incompetency, inefficiency or failure to perform duties; inability to perform duties; conduct unbecoming a public employee; misuse of public property; and other sufficient cause. He seeks reinstatement, back pay and attorney fees.

PROCEDURAL HISTORY

On September 20, 2012, the County issued a Preliminary Notice of Disciplinary Action (PNDA) against Schonzeit suspending him without pay. After a departmental hearing on October 11, 2012, the County issued a Final Notice of Disciplinary Action (FNDA) dated December 21, 2012, charging appellant with: N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency, or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(8), misuse of public property; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause.¹ The FNDA removed Schonzeit from his position effective December 21, 2012. The specification sets forth:

Between, on or about August 15, 2012 and on or about September 13, 2012, you operated an assigned Ocean County Health Department (hereinafter Department) motor vehicle improperly, inappropriately, without caution and in a fashion that posed a danger to the safety of others and yourself, some of which conduct included the following:

Your failure to stop said Department motor vehicle at a red traffic signal in violation of the motor vehicle laws of this State and Department policy; you unlawfully used a wireless communication device (mobile cellphone) while operating said Department motor vehicle in violation of the motor vehicle laws of this State and Department policy; you operated the assigned Department vehicle in excess of posted speed limits in violation of the motor vehicle laws of this State and Department policy; you failed to signal lane changes while operating said Department motor vehicle in violation of the motor vehicle laws of this State and Department policy; you operated said Department motor vehicle in an erratic fashion which caused a member of the public to verbally complain about your driving to the County of Ocean Department of Risk Management.

Furthermore, a review of the records of the Ocean County Health Department disclosed numerous documented failures by you to properly and appropriately operate Department issued motor vehicles, among which included

¹ The notices of disciplinary action reference N.J.A.C. 4A:2-2.3(a)(11), other sufficient cause. Effective March 5, 2012, former (a)(11) was recodified as (a)(12).

five (5) documented motor vehicle collisions. The ability to safely operate a Department motor vehicle consistent with the motor vehicle laws of this State and Department policy is crucial to the discharge of your duties as an Environmental Health Specialist, and because of your inability to do so, the Department is compelled to seek termination of your employment with the Ocean County Board of Health.

Schonzeit appealed to the Civil Service Commission on January 14, 2013, pursuant to N.J.A.C. 4A:2-2.8. The Commission transmitted the matter to the Office of Administrative Law (OAL), where it was filed as a contested case on January 23, 2013, pursuant to N.J.S.A. 11A:2-14 and N.J.S.A. 52:14B-2(b).

I heard the case on October 23, October 29 and November 19, 2013, and April 1, 2014. The record closed on April 1, 2014.

TESTIMONY

Donald Lee Mitchell testified that he is an employee of the Department of Defense. On August 15, 2012, between the hours of 1:00 and 2:00 p.m., he left his job early and took the Garden State Parkway to the Beachwood exit. The vehicle in front of him was a white Ford Taurus driving slowly. He could tell it was a government vehicle because it had an Ocean County license plate. He showed where he was on the map (R-1), and indicated that the vehicle in front of him swerved to the right and he thought that the driver had a medical condition. He stayed behind the vehicle on Dover Road and saw the driver's head going down and coming back up. Mitchell testified that he saw a pedestrian have to jump over the guardrail to avoid getting hit by the driver of the car as it drifted to the right. Mitchell marked the map with a "P" where he saw the pedestrian. He then saw the driver of the Taurus go through a red light at an intersection. At the next red light, the driver stopped; Mitchell caught up with him as the light changed and got out of his vehicle and confronted the driver. Mitchell went to the driver's window and asked if he was drunk. The driver replied, "No. Are you?" Mitchell looked in the car and saw that the driver had a map, and was surprised he did not have GPS. Mitchell told the driver that he needed to be careful.

Mitchell testified that he went home, which was about four blocks from where he confronted the driver, and called Ocean County to report that the driver of a County vehicle was bobbing and weaving with the car and went through a red light. The operator transferred him to the safety division, which took the information and said that someone would be in contact with him. He called because he was a concerned citizen and thought that he would be expected to report it. It was stipulated that the vehicle that the driver was operating was vehicle #98, which was being used by Michael Schonzeit on that date. Mitchell did not need the license plate because he had the vehicle number. Mitchell did not call the police.

Mitchell explained on cross-examination that Schonzeit ran the red light at the second light. After the next light, after it changed to green, he sped up and stopped in front of Schonzeit. He believes that he stopped safely. Mitchell testified that he saw that Schonzeit was wearing a hat, and said that it looked like a cowboy hat. He has seen people wearing beards and darker clothing before, but to him they are just people. He did not feel it was any of his business what they were.

James Churchill testified that he is an employee of the Ocean County Prosecutor's Office, but prior to that he was a private investigator licensed by the State of New Jersey. He had forty years of law enforcement experience prior to that. In August 2012 he was retained by the Ocean County Department of Health to conduct an investigation on Schonzeit. He did not need a private investigator license at that time if he worked only for one attorney. He got his license in 2008 or 2009 and renewed it every two years. The Department gave him a schedule of stops Schonzeit was scheduled to make on August 30, 2012. He began surveillance at 8:00 a.m. and concluded at 12:30 p.m. He drove a pickup truck and had someone else with him recording Schonzeit driving. Churchill created a DVD from the surveillance. (R-2.) Churchill was paid \$80 per hour, for a total of \$1,500. He has done work for Mr. Mercun previously.

Churchill testified that the other person with him was Louis Maralla, whose private investigator license expired in May 2012. (P-1.) The Department paid Maralla also. Part of the investigation included getting a statement from Mitchell. Churchill also

delivered the discovery packet, but did not get involved in discovery otherwise. The second time he taped Schonzeit was on September 13, 2012, when Schonzeit had to go to Cook Campus in New Brunswick. Because Churchill was driving, he did not know when the videotape was running and when it was not. He knows that the camera was turned off when they were stuck behind traffic and could not see Schonzeit. On September 13, 2012, Route 1 and Route 18 were heavily congested. On that date, he asked Schonzeit's manager to call Schonzeit on his cell phone. Churchill did not know it was unlawful to call someone who is driving on his cell phone. He did not catch Schonzeit talking on his cell phone.

Churchill returned on October 29, 2013, to testify about the video surveillance, after I granted appellant's motion to exclude respondent's expert witness who was going to do so. Although there is talking between Churchill and Maralla on the DVD and Churchill narrated the DVD from the witness stand, I will recount mainly what I saw on the DVD and indicate where I am referencing Churchill's testimony or the discussion between Maralla and Churchill. Churchill testified that he watched Schonzeit get in vehicle #98 at about 8:58 a.m. on August 30, 2012. There are no real-time markers on the DVD; only the amount of time videotaping starting from "00." Churchill testified that he and Maralla were heading on Route 70 East. Churchill and Maralla observed that Schonzeit appeared to be talking on the phone. Although I could not see Schonzeit talking on the phone from the DVD, at approximately 4:50² into the first section of taping (there are four sections altogether), I saw the light turn yellow, and then red, and then Schonzeit drive through the red light. Maralla narrates that Schonzeit breezed through the light at Airport Road, appearing to be conversing on the phone. Churchill loses him at that point since his truck stops at the light. He again located Schonzeit at approximately 9:45 a.m. after getting a new battery for the camera. Schonzeit left his first location in Brick at approximately 10:02 a.m.

Churchill testified that there are no records as to whether Schonzeit was observing the speed limit while driving on Route 70 heading toward the second stop in Toms River. At approximately 10:50 into the video, I saw Schonzeit make a right turn

² "4:50" refers to four minutes and fifty seconds into the first segment of the first DVD. (R-2.)

without a signal. I could see Schonzeit looking down at something at approximately 11:35 into the videotape. Churchill testified that at approximately 11:50 into the tape, Schonzeit changed lanes from right to left without putting his left signal on. There was nothing else to report until sixteen minutes into the tape, when it ended. In the second segment, Schonzeit drifts over the line demarking his lane to the right a bit. At approximately 4:20 into the second segment, Schonzeit stops approximately a car length past where it is indicated one should stop. He is again leaning down looking at something on the seat beside him. Between 4:30 and 7:20 minutes into the tape, there is nothing remarkable to report, and I see that he is making lane changes appropriately. However, Churchill testified that at 6:15 Schonzeit is drifting, going toward the right side and then the left side. Churchill also testified that Schonzeit is driving 50 in a 55 mph speed zone at approximately 7:30 into the tape. Although I cannot see the speed of the car or the speed-limit sign, I can see all of the cars passing him. Also at that time, Schonzeit drifted a little to the left while driving. Between 8:30 and 10:01 minutes into the tape, I see Schonzeit drift from the right lane into the shoulder occasionally. Maralla thinks he is on his phone, but I do not see that. However, he appears to be distracted by something in the car. After pulling around him, the investigators note that he is not on the phone. Around 11:40 into the tape, Schonzeit drifted onto the shoulder again, and he drifted way into the shoulder at 12:00 into the tape. Churchill testified that he was way over the line on the left side at 12:17 into the tape. Around 15:15 into the tape, I can tell Schonzeit is driving really slowly because the brake lights of the car behind him keep illuminating. I cannot see the speed of the investigator's vehicle, nor a speed-limit sign.

On the third segment of the first DVD (R-2), approximately 55 seconds into the tape, I can see Schonzeit reading off of a book or paper while driving. Schonzeit pulled into the water company in Toms River. Churchill got a call that Schonzeit was not going to be working a full day, so he believed that Schonzeit would be going back to the Health Department. At approximately 5:05 into the third segment, Schonzeit missed the right turn-off and made a right turn from the lane from which the cars were headed straight. Maralla says that, but I saw it as well. Churchill noted that Schonzeit turned right at a stop sign without stopping at 6:15 into the tape, but I missed seeing that. I did see Schonzeit drift into the shoulder again around 7:54 into the tape. At approximately

8:49 into the tape, I see Schonzeit enter half into the exit lane without putting his right signal on that he is exiting right. He flashed the signal on and off briefly before getting off at the Lakewood exit. I saw and Maralla narrated how close Schonzeit was driving to the car in front of him at 10:54 into the tape. At 12:15 p.m. in real time, Schonzeit went into a Wawa convenience store and came out at 12:25 p.m., according to Churchill's testimony and the narration. A fourth segment of the DVD started with Schonzeit making a left to go back to the Health Department. The DVD ended at that time, approximately four hours after Schonzeit left the Department. (R-2.)

The second DVD, R-3, taken on September 13, 2012, was fairly similar to the first. The investigators began filming at 7:20 a.m. on September 13, 2012, but stopped when it was taking a while for Schonzeit to get in his car. They started again at 7:45 a.m. according to them, since there is no real time noted on the DVD. At 4:21 into the DVD, Schonzeit drifted to the left. He did so again at 4:28 into the DVD, going over the double yellow line on a two-lane road. At approximately 5:14 into the DVD, his car is hugging the yellow line to the left. I saw that the speed limit was 35 and the narrator states that Schonzeit is driving 25 to 30 mph. At 5:36, Schonzeit drifted over the double yellow line on a two-lane road, with a car coming the opposite way. At 6:50 into the DVD, he made right-turn signaling just before turning. At 7:08, he made a left turn with no signal that I saw. He drove well along Route 9 until 12:41 into the DVD, when he switched from the left lane into the right between two cars and then put his signal on to go into a Wawa on the right. After he got back on Route 9, he drove fine again until 14:15 into the tape, when he made more lane changes without signaling. At 15:13 and 17:00 into the DVD, he drifted over the line to the right. The traffic was really heavy so he switched lanes to try to go faster.

Also on September 13, 2012, the DVD showed that Schonzeit made lane changes without a signal at 18:45 and 21:35 into the DVD, but the vast majority of the time was uneventful. At 24:48 and 26:03, he drifted over the right lane again a couple of times. The narrator stated that he crossed over the right lane six or seven times in a mile, but I had no way of knowing how far he drove while he was drifting. Similarly, the narrator stated that, at 26:45 into the DVD, Schonzeit was going 60 in a 45 mph zone. That is the only reference to Schonzeit speeding. Usually, the narrator says that

Schonzeit is going too slowly. In the last ten minutes of the DVD, I saw Schonzeit drift over the right line at 27:13 and 27:40. I saw him change lanes without any signal or a last-minute signal at 29:35, 30:30, 32:40 and 33:20 into the DVD. He continued switching lanes without signal at 35:19, 35:50, 36:28 and 37:50. The last lane changes occurred as he was driving in the far right lane and had to get all the way over to the left lane while getting to his destination. The investigators lost him at 38:15 into the tape and found him parked at Rutgers for the class he was to attend. Schonzeit did not drive through any red lights.

On cross-examination, Churchill testified that he did not edit the videotapes taken on August 30 and September 13, 2012. He gave them to Mr. Mercun three or four days after taking them. Churchill believes that Schonzeit was talking on his cell phone when he went through the red light on August 30, 2012. Schonzeit had made a call to say that he was going home early that day. There was only one instance of Schonzeit speeding, when he was doing 60 in a 45 mph zone. Maralla was operating the camera as an unlicensed investigator on the two dates. Churchill asked Matthew Csik to initiate a phone call to Schonzeit on September 13, 2012. Churchill believes that is when Schonzeit pulled over and got out of the car.

Matthew Csik testified that he is an environmental scientist with the Ocean County Department of Health. He is one of two supervisors under the department head. He supervises seven employees, including Schonzeit. Schonzeit's job as an environmental health specialist requires that he go to sites to investigate complaints referred by the Department of Environmental Protection (DEP) or citizens. Schonzeit must leave from the Health Department to go on site, and the Department gave him an assigned vehicle to do the inspections. The ability to drive is critical to Schonzeit's position.

Csik continued testifying that on August 15, 2012, County vehicle #98, a Ford Taurus, was assigned to Schonzeit. (R-4.) A third-party vendor installed equipment on the vehicle in order to monitor it and see exactly the route that Schonzeit traveled. On that date, Csik was informed that a citizen complained that Schonzeit had been seen not driving safely. Csik set up surveillances for August and mid-September. He also

obtained the activity detail report from vehicle #98's GPS from August 30, 2012, another day the vehicle was assigned to Schonzeit. (R-5.) The report showed that Schonzeit had driven the vehicle over the speed limit on several occasions, specifically: 66 in a 50 mph zone at 9:08 a.m.; 60 in a 45 mph zone at 9:10 a.m.; 65 in a 50 mph zone at 9:17 a.m.; and 51 in a 40 mph zone at 10:36 a.m. (R-5.) Those speeds that Csik noted that were six mph or less above the speed limit are not noted here. The activity report for vehicle #98, which Schonzeit was driving on September 13, 2012, noted excess speeds as follows: 58 in a 50 mph zone at 8:11 a.m.; 58 in a 50 mph zone at 8:13 a.m.; 62 in a 55 mph zone at 8:25 a.m.; 57 in a 45 mph zone at 8:29 a.m.; 55 in a 45 mph zone at 8:31 a.m.; 52 in a 35 mph zone at 8:37 a.m.; and 48 in a 40 mph zone at 12:34 pm. (R-6.) There was no information from Schonzeit or any other source that the vehicle had any mechanical issues at that time.

Csik also testified about the Department's Policy on the Assignment and Use of Board Vehicles adopted April 20, 2011. It provides, in pertinent part: "Drivers must at all times obey all traffic laws and cooperate with law enforcement officials in all jurisdictions." It also sets forth, "Employees who are guilty of moving violations, observed in violation of traffic regulations and laws or operating vehicles in a reckless or unsafe manner shall be subject to disciplinary action." (R-7 at 2, paragraph VI.) He also identified the agreement reached between the County and Schonzeit on November 18, 2011, wherein Schonzeit pled to misuse of public property for an incident involving the motor vehicle assigned to him and he agreed to a fifteen-day suspension. (R-8.) He was accused of driving the vehicle with a flat tire rather than reporting it, which resulted in damage to the rim. Csik also identified an agreement the County made with Schonzeit on July 6, 2011, in which he was charged with and pled guilty to misuse of public property due to a car accident that occurred on April 11, 2011. (R-9.)

Csik continued testifying on cross-examination that Schonzeit is the only employee that he tracked exceeding the speed limit since May. He has seen other employees travel over 70 mph, but not that often. There are no written rules or policies that distinguish speeds or state how many times speeding requires disciplinary action. There is no policy that sets forth to what penalties an employee can be exposed. Csik believes he has a duty to recommend action when he sees speeding, but he runs it up

the chain of command to the department head or Miragliotta. If he saw a pattern of speeding among employees, he would issue a memo to the team to slow down. P-24 is a GPS record of an employee who consistently drove more than 10 mph over the speed limit, and even went as much as 22 mph over the speed limit on March 28, 2013. Csik does not know if the employee received a warning or discipline. Similarly, P-25 shows an employee who consistently drove more than 5 mph over the speed limit and went as high as 75 mph in a 45 mph zone, which is 30 mph over the speed limit. Csik does not know if that employee received a warning or discipline.

Csik knows that all field inspectors are issued a TomTom GPS, but he did not do the assigning or purchasing of them. He does not know if Schonzeit had a GPS when he was videotaped, but he is aware that Mitchell complained that Schonzeit was looking at a map. He was not involved in the decision to bring charges against Schonzeit. No one asked him what the appropriate discipline would be. Csik identified a work order dated July 15, 2011, indicating that vehicle #98 "pulls to right." (P-37.) He did not see anything indicating that work was done to correct the problem. Referencing the report indicating that Schonzeit lost consciousness while driving, he asked if medical condition was taken into account when deciding when to discipline. Csik never saw any policy or directive indicating that medical condition should be considered.

Csik testified regarding the flat tire that Schonzeit drove on in October 2011. Csik had to sign the report as Schonzeit's supervisor. (R-8.) The front tire was lacerated; the front wheel rim was bent. He is not aware of any policy that says that discipline is more severe if the employee is found at fault. He determined that the accident could have been avoided because he saw no debris, and the speed limit would have allowed the driver to avoid debris, in any event. He never asked Schonzeit why he drove the vehicle back to the shop. Csik was not around for the rest of that day. Csik has not driven on a flat tire once he knew it was flat. It was his decision to recommend Schonzeit's termination. He does not know whether further damage was sustained during the drive back to the shop. The reports indicated that the tire was destroyed, but the rim was only slightly damaged. It made no difference to him how much damage was done to the vehicle. He did not prepare the preliminary notice; that is done by the personnel department. He only signed it as server.

Victoria Rae Miragliotta testified that she is the director of Administration and Program Development at the Department. She handles finance, building and facilities, records retention, human resources, training and insurance risk and liability. She is also custodian of records. She prepares the notices of disciplinary action and maintains vehicle accident reports. The supervisor is responsible for determining that discipline given out for motor vehicle accidents is consistent. She does not review GPS records. When an employee complains about being treated unfairly, the complaint starts an investigation. How the matter is handled depends on the issue involved. She recalled that Schonzeit complained about an evaluation that he received and said it was unfair. She responded, and noted that her response was missing on the complaint letter that she was shown. (P-34.) Schonzeit specifically noted that he felt that he was being discriminated against. She recalled asking all of the department heads to get out their backlogged evaluations, which resulted in Schonzeit receiving two evaluations within a week.

Miragliotta investigated his complaint and met with Schonzeit several times to address the issues. A memo was permanently attached to his file regarding the steps she took. (R-12c.) Schonzeit was given training and certain equipment that he asked for, even though management did not feel it was needed. Schonzeit said that he was satisfied. When asked if he wanted to further pursue his complaints, he said that he did not. Miragliotta is aware that Schonzeit is an Orthodox Jew, and that when he referred to being discriminated against, it was on the basis of his faith. She did not recall him saying that he was not comfortable with her doing the investigation into his complaints. Miragliotta disagreed with the first bullet point in Schonzeit's complaint that the evaluation that he received on March 19, 2010, was his first evaluation since he began work in October 2005. However, she agrees that the department heads were not keeping up with their evaluations. This was an agency-wide problem. She told him to ignore the catch-up evaluations and let the latest one stand. Regarding the lack of training, she found and he agreed that he did not attend the training because he had been given time off for religious observance when it was offered. She advised all employees that retaliation for filing a complaint is not permitted and that there is zero tolerance for such action.

Miragliotta recalled the incident of October 17, 2011, that led to Csik's memo to John Protonentis. (P-2.) Csik recommended disciplinary action against Schonzeit for misuse of County property. If Schonzeit did not already have a fifteen-day suspension on his record, Csik could have taken action himself. However, when an employee has a major suspension on his record, the decision goes to her. Miragliotta knows of another employee who was disciplined for misuse of a County vehicle. (P-36; R-13.) The employee received a two-day suspension for his first offense. (R-13.) She explained that Schonzeit was disciplined for several violations: not staying with the vehicle until help comes; driving the vehicle with a flat tire; getting another County vehicle under false circumstances when he used it only for personal business; having no benefit time to use to call out. She did not see anything in the attachment to the supervisor's report about using the car to go to the doctor. (P-3.) Csik recommended termination. She is aware of other supervisors who recommended termination for driving offenses, although not necessarily for driving on a flat tire. She did not prepare the PNDA for Schonzeit; she may have been away. When asked what Schonzeit misrepresented, she replied that he did not say he was in an accident; he just said he needed a pool car. Schonzeit ignored the procedure to call for assistance and let the Department send a tow truck. Miragliotta testified that Schonzeit was charged with misuse of public property not primarily for damaging the rim of the tire, but for not staying with the car and driving on the tire. The charges stated, "extensive damage to the front right tire and rim of the vehicle." (P-43.) The charges also included lying to staff and not reporting an accident. Although the damage was noted as \$148.92 (P-40), the repairs are at a discounted rate.

Miragliotta testified that Gerald Nearon was an inventory control clerk who, while employed, was involved in a number of accidents toward the end of his twenty years with the Department. Nearon received no disciplinary action when, according to the accident report from December 4, 2006, he struck the rear of one vehicle that then hit the vehicle in front of it. (P-11.) On April 17, 2007, Nearon, according to the police report, slid on a wet roadway and struck a vehicle. No box was checked for disciplinary action. Miragliotta testified that when deciding whether to impose disciplinary action, they take into account all the circumstances. Nearon had an accident on March 10, 2008, in which, according to the employee vehicle accident report, Nearon struck the

vehicle stopped at the stop sign due to sun glare. She did not recall whether he was disciplined for that incident, but he continued working. On November 7, 2008, Nearon had an accident when the cars were lining up in the parking lot and the airbag deployed. She did not recall whether discipline was issued. Nearon's fifth accident occurred on April 8, 2009, when he said that he blacked out, but skid marks were noted. Nearon offered his resignation at the hospital and she accepted it.

Miragliotta identified four vehicle accident reports involving County vehicles assigned on paper to Donna Deter-Gillich. (P-16; P-17; P-18; P-19.) Deter-Gillich is a registered environmental health specialist with a special license that Schonzeit does not have. No disciplinary action was issued on the first three. On her fourth accident in three years, on August 25, 2011, Deter-Gillich was given a written warning. The GPS records of a car under the name of Deter-Gillich for February 25, 2013, show that the driver exceeded the speed limit, including traveling 71 mph in a 45 mph zone. (P-23.) However, none of the cars are assigned to employees anymore so there is no way to know who the driver was. Miragliotta did not know whether discipline was issued against other drivers whose GPS records showed speeding. (P-24; P-25.) When asked if there is a policy that a certain number of speeding violations means discipline, she said, "No, because GPS is not always reliable." Employee Ivana Zabek was in her personal car driving while on her cell phone. Talking on a cell phone while driving was not against the law at that time. She was in her personal car and no accident occurred. She received a verbal warning. (P-28.) Employee Jacqueline Bygott had an accident in which the County vehicle sustained \$10,726 worth of damage. Bygott was not in her purview to discipline. (P-30.) The department heads are to review discipline to ensure consistency. They report to the public health coordinator. John Protonentis was involved in an accident, but she did not know whether he received discipline. He reports to the public health coordinator. (P-31.) Employee Susan Wittman received a verbal warning and was sent to a defensive-driving course. Wittman's supervisor wrote the May 27, 2008, disciplinary action and Miragliotta approved it. (P-29.) Employee Daniel Mullen was charged with eighteen violations of going over the speed limit during a three-month period and he was given a verbal warning. (P-29 at 4.)

Miragliotta reviewed another copy of Schonzeit's complaint on which he had handwritten to "Sharon," who was his union representative, that he did not want to initiate a grievance yet so he could see if an in-house solution could be crafted. (R-12a.) He could have had the matter investigated further by Dr. Ella Boyd, public health coordinator. As far as she knows, he did not. Dr. Boyd is Jewish. Mr. Nearon is Jewish, but she does not know if he is Orthodox. The Department has an anti-discrimination policy that advises of the procedure to follow should any employee feel that he has been subject to discrimination. (R-14.) The evaluation by Csik dated March 19, 2010, was allowed to stand as per their meeting on September 23, 2009. (P-41.) Schonzeit received salary increases after that on April 7, 2010, April 20, 2011, and June 20, 2011. He did not complain to anyone of discrimination on the basis of his religion after that until the present disciplinary action was brought. He was represented by counsel when he agreed to the fifteen-day suspension. (R-8.) Similarly, when he received the disciplinary notice for the event of April 12, 2011, he did not complain of being targeted because he is an Orthodox Jew. (R-9.) He had an attorney on that charge as well. Schonzeit's disciplinary actions have been based on the concept of progressive discipline.

Michael Schonzeit testified that he has a bachelor's degree from City University of New York and a master's degree in oceanography from Oregon State University. He began work with the Ocean County Health Department on October 27, 2005. He was hired as an environmental health specialist. His duties include investigating environmental complaints such as hazardous waste, solid waste and pollution. He dresses for work as he was dressed at the hearing, with a black hat and tie and fringes hanging from his shirt with knotted strings. He is an Orthodox Jew, which requires him to pray three times a day, at morning, midday and evening at nightfall. He is the only Orthodox Jew working at the Department. He always has to bring his own food to eat at work.

Schonzeit further testified that initially he had a good relationship with Matthew Csik. Csik and his wife attended his daughter's wedding. The relationship changed after Csik became the supervising environmental health specialist. Schonzeit wrote the letter to Miragliotta because he felt that he was being discriminated against and she was

the head of personnel. (P-34.) Initially, he received positive feedback about his work, but that totally stopped since 2009. He realized that there was a training gap between him and the other specialists. He also thought he got less equipment than other specialists. Usually training on identifying underground-storage leaks is given a few months after a person is hired, but he did not get it. Regarding equipment, he did not have a wireless communication device, so they gave him a pager.

Schonzeit testified that he also complained about not being evaluated. He believed that the other specialists were evaluated. On March 19, 2010, he received an evaluation from Csik dated September 23, 2009. (P-41.) He disagreed with the evaluation, which said that his work contains errors, when he is very meticulous. He did not feel it was a fair evaluation. Csik criticized Schonzeit's learning capability, checking the box that he "[r]equires repeated and detailed instruction and explanations," when his learning capability had never been criticized before. Also, under job knowledge, Csik wrote, "Michael displays consistent lack of knowledge in certain areas with no observed effort to obtain understanding of such." Schonzeit thought that the evaluation was negatively biased. Schonzeit also felt that his evaluation dated October 27, 2007, from Protonentis was not a fair assessment. (P-42.) In the narrative comments, Protonentis wrote, "Mr. Schonzeit operates at minimum efficiency and displays minimal base knowledge of job and use of resources." This had never been expressed to him before. His overall rating was "[a]pproaching OCHD Standards." He had only one air-pollution complaint returned to him as unacceptable. He received both evaluations in March 2010. He went through the evaluations point by point and asked Csik and Protonentis what it would take to improve. He wrote the letter because he felt that the evaluations were unfair and grossly prejudicial. He called the evaluations "tools of discrimination and harassment." (P-34 at 2.) He believed that there was divergence between how he was treated compared to everyone else.

Schonzeit testified that Miragliotta was willing to discuss the issues with him. He indicated that he was happy to discuss the training and equipment, but did not want to address allegations of bias with her. He thought he needed someone impartial. He went to Ms. Boyd after getting the second evaluation. She was very terse and said that she could not get involved. When asked if Miragliotta's attitude toward him changed, he

said, after a long pause, that it became more negative, but it was a gradual thing. His relationship with Csik changed in that he looked angry whenever he saw Schonzeit. A month could pass without Csik saying anything. Before the letter, he may have had two to four corrections to his work. After Schonzeit wrote the letter, 30–40 percent came back with big circles on it with corrections. Communication became limited.

Schonzeit testified to the two prior motor vehicle incidents, although they are a matter of record and not the subject of the present hearing. On April 12, 2011, he was driving and the next thing he knew, he heard a crash. He looked up and had hit a tree. (P-39.) Although his report said, "I apparently fell asleep," he says that he lost consciousness possibly brought on by the transient ischemic attack (TIA) and stroke he suffered in February 2011. The Preliminary Notice of Disciplinary Action sought removal, and he agreed to a fifteen-day suspension because he has a family to support. (R-9.) He was represented by counsel. Regarding the flat-tire incident, his tire hit a piece of concrete while he was driving and the tire rapidly deflated. There was no safe place to pull over so he continued driving, and eventually headed back to the Health Department. He realized he was driving on the rim and considered the damage, but understood that he would not damage the car if he drove slowly. He denied that he stated anything false as set forth in the specifications of the preliminary notice. (R-8.)

Schonzeit continued to testify that he disagreed with the description that Mitchell gave of the roadway on August 15, 2012. He does not know of a guardrail anywhere after the underpass to the first light. He did not recall any pedestrians walking along the highway. He noticed a black vehicle rapidly closing in on him. After passing the intersection, the vehicle followed him closely before the road went from two lanes to one lane, then back to two. He does not believe Mitchell that he went through a red light. The last time there were two lanes, Mitchell's vehicle started to pass him and Mitchell pulled up to his left and Schonzeit pulled to the right to let him go. Mitchell pulled ahead of him and Schonzeit stopped. Mitchell was animatedly walking toward him with a combative demeanor. Mitchell walked to his driver's side and said, "Are you drunk?" Schonzeit was incredulous because he felt Mitchell had come close to getting them in an accident, so he said, "No. Are you drunk?" According to Schonzeit, Mitchell said words to the effect of, "If I were an officer, I would report you." Mitchell made one or two

other comments and then walked back to his car. Schonzeit stated that no one from the Department ever interviewed him to get his side of the incident. He did not know that it had been reported. He did not use his cell phone to report the incident to his supervisor, despite describing Mitchell as combative and despite a previous incident in which an encounter being combative was the reason he wanted a cell phone.

On the investigation dates of August 30 and September 13, 2012, Schonzeit testified that he drove car #98, which was not his regular vehicle. He drove many different vehicles and could not be sure whether he had driven that vehicle before. He complained about two vehicles. He went on to say, after saying that he did not recall whether he had driven vehicle #98, that he remembered #98 because it handled poorly and he informed Csik. He said it had a tendency to veer right and had soft steering. He said he does not make cell-phone calls when he drives because it is unsafe and against the law. He generally ignores calls that he receives, but if he gets a call from a supervisor, he will flip the phone open and call out that he needs to pull over and will pick up as soon as he is able to do so. He did not initiate any cell-phone calls while driving on the dates he was followed. He received a call on September 13, 2012. He flipped open the phone and said he would pull over to talk to the caller. August 30, 2012, was the first day that Csik had written out a "router," which is a daily schedule of activities. That had never been done for someone in his position. Usually, he is in charge of what he does. August 30, 2012, was different. He is not aware if he complained of any problems with the vehicle pulling to the right and having soft steering before he drove it that day. On September 13, 2012, he was headed to Cook Campus of Rutgers University to take a test for his job. He was not particularly familiar with the route. Traffic was packed, as in rush hour. He did not report any problems with steering on those days that he testified he had problems.

Schonzeit could offer no explanation for going through the yellow light that turned red before he crossed the intersection, other than that it was poor judgment. He thought he could make it, but did not. He does not have any tickets or points on his license. He received memos from the Department on only two instances in seven years of employment that the GPS had recorded him as speeding. They were memos, not written warnings.

Schonzeit did not believe that he was represented by counsel when he pleaded guilty to careless driving in 2006 and 2011. He agreed that he got a cell phone from the Department on September 28, 2006, after having complained about not having one in spring 2006. (R-21.) He also was issued a replacement phone when the Department received new cell phones on July 2, 2008. (R-22.) He did not recall having to be rescheduled for the underground-storage-tank training because he was out on medical leave. However, he agreed that he received all of the training required to do his job by May 1, 2012. (R-23; R-24.) Regarding the letter to Miragliotta about the evaluations, he was advised of the grievance procedures, but decided not to pursue them. (R-12a.) He did not contact the Division on Civil Rights, but he contacted Robert Singer at the Board of Health, who viewed it as a conflict of interest. Schonzeit did not pursue his complaint elsewhere. Although he testified to having one inspection returned to him to be done over, he actually had seven inspections returned by the State. (R-25.) Schonzeit agreed that the Department gave him a religious accommodation that he would not have to be on call because he could not work on the Sabbath. (R-20.)

Regarding back pay, Schonzeit was last paid on November 16, 2012. He actively sought work and found employment in March 2014, working for a professional audio-equipment manufacturer for twenty-eight hours per week at \$13 per hour. He used to make four times that with the Department. He had about six interviews before getting the current job. He kept up his health insurance, paying through COBRA in the amount of \$1,900 when he started, and it is now up to \$2,122. His driving record was badly sullied by actions taken by the Department. He had only six years with the Department, so he was not vested in the pension system.

Claudia Lewandowski testified on rebuttal that she is the general supervisor of building services. Grant Umstadter assigns the vehicles in the pool. She memorialized her interaction with Schonzeit on October 17, 2011, and stated that Schonzeit told her that Grant knew about his request for a pool car as a result of the flat tire and that he notified the County garage. (R-32.) Her boss, Miragliotta, asked her to write the memorandum about the incident. She is able to assign pool vehicles, along with Grant Umstadter.

FINDINGS OF FACT

1. On August 15, 2012, Donald Mitchell witnessed a Department vehicle driven by Schonzeit dangerously drift to the right and drive through a red light.
2. Mitchell confronted Schonzeit and called the County as a concerned citizen to report what he witnessed.
3. On August 30, 2012, at the Department's request, James Churchill investigated Schonzeit's driving and, with the assistance of Louis Maralla, recorded Schonzeit's driving between the hours of 8:00 a.m. and 12:30 p.m. and made the recording into a DVD.
4. On August 30, 2012, Churchill recorded Schonzeit drive through a light that had turned red, and the action was clear on the DVD. Also recorded on the DVD was Schonzeit making a right turn without a signal, and changing lanes from right to left without signaling. Schonzeit is also seen drifting over the line to the right, as well as to the left, and going a car length past the line that indicates where a car should stop at the light.
5. Also on August 30, 2012, Churchill recorded Schonzeit making a right turn from a non-turning lane, having missed the right-turn lane. He was also recorded being half into the exit lane before signaling that he was exiting at the Lakewood exit, and driving very closely to the vehicle in front of him.
6. On September 13, 2012, Schonzeit was recorded drifting to the left many times. At 5:36 into the recording, he drifted over on the double yellow line with a car coming towards him on a two-lane road. He also made right and left turns and lane changes without signaling or signaling very late, although much of the DVD was uneventful.

7. The ability to drive is critical to Schonzeit's position as an environmental health specialist.
8. Schonzeit did not report that vehicle #98 had any mechanical issues prior to September 13, 2012, or even after. The record that exists of the car pulling to the right dated July 16, 2011, (P-37) would seem to indicate that it was in the shop to have the problem fixed. The same notation, "pulls to right," does not appear again in records closer in time to the incidents in question. Further, the record does not explain the times that Schonzeit drifted to the left.
9. Schonzeit complained to Miragliotta that he felt he was being discriminated against based on age or religion by letter dated June 18, 2010. He cited as reasons the facts that he had not been evaluated since beginning employment at the Department in October 2005; he received two evaluations within six days of each other that were backdated; and he was supposed to achieve objectives that were never communicated to him. In addition, he believed the evaluations were unfairly negative; he received less training than any other environmentalist or inspector; and no other inspector received two evaluations in March 2010.
10. Miragliotta investigated Schonzeit's complaint of discrimination. She met with Schonzeit and concluded that, regarding the training he did not receive, he was out on leave during all available trainings, on either family medical leave, a leave of absence or personal leave. She concluded that religion was not the reason. Nevertheless, his supervisor, Csik, would see that he received the training for which he had asked. The old evaluations of him were to be ignored; only the one dated September 23, 2009, and given to him on March 19, 2010, was to be his true evaluation.
11. Schonzeit did not file a grievance regarding the evaluations and did not pursue a discrimination claim or seek further investigation of the issues. (R-12c.)

12. The Department's Policy on Assignment and Use of Board Vehicles adopted April 20, 2011, provides, at paragraph VI: "Drivers must at all times obey all traffic laws and cooperate with law enforcement officials in all jurisdictions." It also sets forth, "Employees who are guilty of moving violations, observed in violation of traffic regulations and laws or operating vehicles in a reckless or unsafe manner shall be subject to disciplinary action." (R-7 at 2.)

13. Other employees of the Department have been in accidents with Department vehicles and not been disciplined at all or disciplined less harshly than Schonzeit. In addition, they have been admonished for inappropriate use of the vehicle, but not disciplined. (R-27 through R-33; R-36.)

14. A verbal warning given to Schonzeit after an accident was determined not to be discipline, but it was involving a car accident that the accident report notes occurred on October 2, 2009. He was given a notice for failing to report the accident for four hours. (R-10.) Similarly, the motor vehicle accident report for an incident occurring on October 19, 2006, was not discipline, but showed the need for an auto-body repair after Schonzeit hit the rear of a car that came to a quicker-than-expected halt. (R-11.)

15. Schonzeit's prior disciplinary actions consist of:

15-day suspension, misuse of public property, N.J.A.C. 4A:2-2.3(a)(8), July 6, 2011 (R-9);

15-day suspension, misuse of public property, N.J.A.C. 4A:2-2.3(a)(8), November 18, 2011 (R-8).

CONCLUSIONS OF LAW

In appeals concerning major disciplinary actions brought against classified employees, the burden of proof is on the appointing authority. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is a preponderance of the credible evidence. In re Polk License Revocation, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37

N.J. 143 (1962). Appellant has been afforded a de novo hearing in accordance with the holding in Borough of East Paterson v. Department of Civil Service, 47 N.J. Super. 55, 64 (App. Div. 1957). Appellant's guilt or innocence of the charges in the present matter rests largely on a credibility determination regarding the evidence and witnesses. In a de novo civil service disciplinary matter the burden is on the appointing authority to establish a violation by the preponderance of credible evidence. Atkinson, supra, 37 N.J. at 149. Under this standard a litigant must establish that a desired inference is more probable than not. The preponderance may also be described as the greater weight of credible evidence in a case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). Testimony, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546, 554-55 (1954).

In the present case, Schonzeit was charged with N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency, or failure to perform duties; N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(8), misuse of public property; and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause. Although the same specifications support each of the charges and they are not compartmentalized, I will discuss each charge in turn.

I found the testimony of Donald Mitchell, a member of the public, to be credible. After driving behind Schonzeit, he was concerned that Schonzeit's driving was so bad that he needed to pull over and talk to him. He also reported Schonzeit's driving to the County. Mitchell gave no testimony during cross-examination that could point to a reason for him to take such action other than that he truly believed that Schonzeit was a danger to himself and others on the road. Schonzeit's testimony, however, was not very credible. He did not report the encounter with Mitchell to anyone at the Department despite calling Mitchell "combative" and having a cell phone that he could have used to make such a report. Further, Schonzeit denied conduct to which he previously admitted, having signed settlement agreements attesting to his guilt for misuse of public property. With Mitchell's testimony, the Department proved that Schonzeit failed to stop his vehicle at a red traffic signal in violation of the motor vehicle laws of this state and Department policy and operated the vehicle in an erratic fashion.

Although Mitchell's recollection of the road on which they traveled was shown to be deficient in some respects, those deficiencies did not mitigate the strength and credibility of his testimony. Specifically, Mitchell testified that there was a guardrail where the map showed there was no railing. The details of the road were not as important as the description of Schonzeit's driving, which I find to be credible.

Churchill's testimony, while also credible, was not as persuasive as the DVD itself that showed Schonzeit driving through a red light. Interestingly, this was the same conduct that Mitchell testified to and complained about to the County. Although Churchill testified that Schonzeit unlawfully used a wireless communication device (mobile cell phone) while operating said Department motor vehicle in violation of the motor vehicle laws of this state and Department policy, I did not see that clearly on the DVD. I also disagree with and do not want to encourage Churchill's action of getting someone to call Schonzeit's cell phone to see if he will talk on it while driving. Schonzeit mostly drove too slowly while being observed by Churchill on the roadway. However, at least once, Churchill observed him operating the assigned Department vehicle in excess of posted speed limits in violation of the motor vehicle laws of this state and Department policy. While Schonzeit's speed was not something that I could gauge from the DVD, Churchill's present-sense impression going by his own speed traveling behind Schonzeit was that Schonzeit was going 60 mph in a 45 mph zone. I find that testimony to be credible. Present-sense impressions are not hearsay pursuant to N.J.R.E. 803(c)(1). In addition, the DVD showed that Schonzeit made numerous lane changes where he failed to signal or signaled at the last minute that he was going to do so while operating his assigned motor vehicle. The DVD also showed that he operated his assigned motor vehicle in an erratic fashion, as set forth in the specifications of the FNDA.

The testimony of Mitchell and Churchill, combined with the DVD, show that between August 15, 2012, and September 13, 2012, Schonzeit operated an assigned Department motor vehicle improperly, inappropriately, without caution and in a fashion that posed a danger to the safety of others and himself. The Department had cause for concern with two reports of driving through red lights. Driving is a critical requirement for the position of environmental health specialist. Schonzeit's driving in such a way as to

cause a member of the public to become alarmed, follow him and report him to the County demonstrated incompetency, inefficiency or failure to perform his duty to drive carefully as required. With this evidence, the Department has proven by a preponderance of the credible evidence that Schonzeit violated N.J.A.C. 4A:2-2.3(a)(1), incompetency, inefficiency, or failure to perform duties.

“Conduct unbecoming a public employee” is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances “be such as to offend publicly accepted standards of decency.” Although the test is more objective than just offending the standards of decency of one person, in this case, Donald Mitchell, the Department met the standard objectively by the DVD showing Schonzeit’s driving the Department vehicle through a red light, along with the testimony of Mitchell that Schonzeit did the same thing when he drove behind him. When coupled with Schonzeit’s erratic driving—driving left and right and changing lanes without signaling on August 30, 2012, and September 13, 2012, the Department proved by a preponderance of the credible evidence that Schonzeit engaged in conduct unbecoming a public employee. I therefore **CONCLUDE** that Schonzeit violated N.J.A.C. 4A:2-2.3(a)(6).

“Misuse of public property” does not need further definition other than using the vehicle in a way other than it was intended to be used. As examples, the Department cited the instances on the Churchill DVD of Schonzeit driving through a red light, changing lanes without signaling, and driving over the center median on a two-lane road. In addition, the Department cites Mitchell’s description of the erratic way that Schonzeit drove. The Department cannot rely on accidents that took place in 2006 and 2009 on which it previously could have brought charges; however, it has presented enough credible evidence in the record in the present case to prove that Schonzeit misused the vehicle that he was assigned. I therefore **CONCLUDE** that Schonzeit violated N.J.A.C. 4A:2-2.3(a)(8).

If Schonzeit had lost his license as a result of poor driving, then N.J.A.C. 4A:2-2.3(a)(3), inability to perform duties, would apply because he would be unable to perform the duty of driving, which is required for his job. Schonzeit is still able to drive; he just does it very poorly. Stated differently, he is able to perform the duty of driving; he just does not do it well. The issue in such a case where the allegation is that an employee is unable to perform his duties is whether or not the employee has the physical capacity or ability to continue to perform the duties of the position; it relates to the physical ability of the employee to actually perform the job. City of Newark v. Bellezza, 159 N.J. Super. 123, 128 (App. Div. 1978). As such, the charge is not disciplinary in nature. I **CONCLUDE** that the charge of N.J.A.C. 4A:2-2.3(a)(3) does not apply to the facts of the present case.

New Jersey civil service law protects classified employees from arbitrary dismissal and other onerous sanctions. Prosecutor's Detectives and Investigators Ass'n v. Hudson Cnty. Bd. of Freeholders, 130 N.J. Super. 30, 41 (App. Div. 1974); Scancarella v. Dep't of Civil Serv., 24 N.J. Super. 65, 70 (App. Div. 1952). Schonzeit has shown that other employees of the Department have had complaints registered against them and had accidents, but such conduct with Department vehicles did not result in disciplinary action. While I agree that the Department needs to clarify the conduct with Department vehicles that will result in disciplinary action, I do not conclude that its actions in the present case were arbitrary. Schonzeit also had two accidents that did not result in disciplinary action against him.

PENALTY

A civil service employee who commits a wrongful act related to his or her duties or who gives other just cause may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). Depending upon the incident complained of and/or the employee's past record, major discipline may include removal. West New York v. Bock, 38 N.J. 500, 522-24 (1962). Once a determination is made that an employee has violated a statute, rule, regulation, etc., concerning his/her employment, the concept of progressive discipline must be considered. Bock, supra, 38 N.J. 500. While the Bock case did not specifically use the phrase "progressive discipline," its facts

strongly suggest that a record of progressive discipline should precede the ultimate penalty, which is removal. The concept of progressive discipline involves consideration of the number of prior disciplinary infractions, the nature of those infractions and the imposition of progressively increasing penalties.

In the present case, Schonzeit has received two major disciplinary actions of fifteen-day suspensions for misuse of public property. N.J.A.C. 4A:2-2.3(a)(8). Thus, this is his third disciplinary infraction for misuse of public property. In light of the nature of these charges, the Department had no reason to impose yet another major suspension before termination. This is especially so since the nature of the charges indicates that Schonzeit is a danger to himself and others while driving a Department vehicle. I **CONCLUDE** that the penalty of removal was appropriate just based on the misuse-of-public-property charge, but especially when coupled with the additional infractions that the Department proved, albeit based on the same conduct.

ORDER

I **ORDER** the appellant's appeal from the Final Notice of Disciplinary Action **DISMISSED WITH PREJUDICE**, and I **ORDER** that Schonzeit be **REMOVED** from his position as environmental health specialist.

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.

Nov. 12, 2014
DATE


LISA JAMES-BEAVERS, ALJ

Date Received at Agency:

11/12/14

Date Mailed to Parties:

11/12/14

mph

APPENDIX

WITNESSES

For Appellant:

Victoria Rae Miragliotta
Michael Schonzeit

For Respondent:

Donald Mitchell
James Churchill
Matthew Csik
Claudia Lewandowski

EXHIBITS

For Appellant:

- P-1 Expired Private Detective License of J. Maralla, hired by Ocean County Health Department
- P-2 Csik Report to Miragliotta re: Flat Tire, dated October 18, 2011
- P-3 October 17, 2011, Flat Tire Accident Report Recommending Termination
- P-4 Csik Revised Report to Miragliotta re: Flat Tire, dated October 19, 2011
- P-5 Revised Inventory Control Clerk Report to Miragliotta re: Flat Tire Incident: "only slightly damaged"
- P-6 October 17, 2011, Schonzeit Emergency EKG Medical Records
- P-7 Preliminary Notice of Disciplinary Action for Flat Tire Incident, "extensive damage" (Miragliotta)
- P-8 Pictures of pool car rim after (but not before) October 17, 2011, incident
- P-9 2010 and 2011 memos re: Close Observation of Schonzeit
- P-10 Settlement Agreement re: Flat Tire Incident
- P-11 Nearon Accident Report and related documents, December 4, 2006
- P-12 Nearon Accident Report and related documents, April 27, 2007

- P-13 Nearon Accident Report and related documents, March 8, 2010
- P-14 Nearon Accident Report and related documents, November 7, 2008
- P-15 Nearon Accident Report and related documents, April 8, 2009
- P-16 Deter-Gillich Accident Report and related documents, October 31, 2008
- P-17 Deter-Gillich Accident Report and related documents, July 15, 2009, at 11:50 a.m.
- P-18 Deter-Gillich Accident Report and related documents, July 15, 2009, at 5:10 p.m.
- P-19 For identification only
- P-20 Deter-Gillich Accident Report and related documents, August 25, 2011
- P-21 July 23, 2009, memo to Deter-Gillich re: Two Accidents in a Single Day, no discipline
- P-22 Deter-Gillich Accident Report and related documents, December 12, 2012
- P-23 Deter-Gillich GPS Records, February 25, 2013
- P-24 Deter-Gillich GPS Records, March 28, 2013
- P-25 Deter-Gillich GPS Reports, April 19, 2013
- P-26 GPS Report from OCDH employee driving vehicle #98 on the morning of August 15, 2012
- P-27 January 25, 2005, Vehicle Accident Report (D. Dodd), vehicle totaled, no discipline
- P-28 November 7, 2011, verbal warning (non-discipline) issued to Ivana Zabek
- P-29 Verbal warnings (non-discipline) issued to employees known to consistently drive at excessive speeds
- P-30 November 27, 2007, Vehicle Accident Report (J. Bygott), over \$26,000 of damage, no discipline
- P-31 July 18, 2007, Vehicle Accident Report (J. Protonentis & A. Banagona), at least one car totaled, no discipline
- P-32 Evidence that members of the public have twice registered complaints about OCDH employee M. Mariano's unsafe driving, February 14, 2013, written warning
- P-33 OCDH employee observed using cell phone and reading book while driving, May 21, 2001, no discipline
- P-34 June 18, 2010, letter from Schonzeit to Miragliotta re: Discrimination

- P-35 For identification only
- P-36 February 29, 2012, memo to Griffin re: Inappropriate Use of Vehicle
- P-37 For identification only
- P-38 For identification only
- P-39 April 14, 2011, Accident Report (lost consciousness), Preliminary Notice of Disciplinary Action and Final Notice of Disciplinary Action
- P-40 October 17, 2011, Inventory Control Clerk Report re: October 17, 2011, Flat Tire Incident
- P-41 Schonzeit Performance Evaluation dated September 23, 2009, received on March 19, 2010
- P-42 Schonzeit Performance Evaluation dated October 27, 2007, received on March 25, 2010
- P-43 October 17, 2011, Preliminary Notice of Disciplinary Action (flat tire)
- P-44 October 17, 2011, Final Notice of Disciplinary Action (flat tire)
- P-45 Pictures, Google maps
- P-46 Retirement record of Gerald Nearon

For Respondent:

- R-1 Google map of Parkway Exit 80 and vicinity
- R-1a Google map of Parkway Exit 80
- R-2 DVD of August 30, 2012, surveillance
- R-3 DVD of September 30, 2012, surveillance
- R-4 Vehicle #98 GPS data information for August 15, 2012
- R-5 Vehicle #98 GPS data information for August 30, 2012
- R-6 Vehicle #98 GPS data information for September 13, 2012
- R-7 Ocean County Health Department Vehicle Use Policy
- R-8 Respondent's Records regarding resolution of disciplinary charges issued to petitioner on October 18, 2011
- R-9 Respondent's records regarding resolution of disciplinary charges issued to petitioner on April 14, 2011
- R-10 Respondent's records regarding petitioner's October 2, 2009, accident with respondent's Vehicle #41

- R-11 Respondent's records regarding petitioner's October 19, 2006, accident with respondent's Vehicle #68
- R-12a Three-page letter from Schonzeit to Miragliotta with notes
- R-12b Memorandum from Schonzeit to Miragliotta dated June 20, 2010
- R-12c One-page memo re: Meeting request, June 2010 Schonzeit Evaluation
- R-13 Disciplinary Action Notice, Ryan Griffin, dated March 16, 2012
- R-14 Ocean County Board of Health Anti-Discrimination Policy
- R-15 Introduction to Employee Handbook, Ocean County Board of Health
- R-18 OCHD Employee Profile, Michael Schonzeit
- R-19 Memorandum from Schonzeit to Protonentis dated September 6, 2011
- R-20 Memorandum of Agreement re: Religious Accommodation dated February 16, 2006
- R-21 Wireless phone agreement dated September 28, 2006
- R-22 Wireless phone agreement dated July 2, 2008
- R-23 Training courses attended by Schonzeit between 2008 and 2012
- R-24 Certificate of training in Underground Storage Tanks dated May 1, 2012
- R-25 Inspections of Schonzeit returned from the State
- R-31a Photograph of the vehicle Schonzeit drove
- R-31b Photograph of the vehicle Schonzeit drove
- R-32 Memorandum from Lewandowski to Miragliotta dated October 17, 2011