

CSC

B-82



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Craig Williams

Reconsideration

CSC Docket No. 2014-1048

ISSUED: **MAR 08 2015** (EG)

Craig Williams, represented by Kathleen Fantacone Mazzouccolo, Staff Attorney, AFSCME, New Jersey Council 52, petitions the Civil Service Commission (Commission) for reconsideration of the attached final administrative decision, rendered on September 4, 2013, in which the Commission upheld the petitioner's removal.

By way of background, the petitioner appealed his removal on charges of inability to perform job duties due to the lack of a valid driver's license. An initial decision was rendered by the Administrative Law Judge (ALJ) on July 29, 2013 upholding the removal. At the hearing, the petitioner had sought to introduce the testimony of several witnesses who had lost their licenses due to a driving while intoxicated (DWI) conviction or had committed other serious drug or alcohol-related offenses but did not lose their licenses, and were not terminated. The appointing authority, the Township of Sparta, filed a Motion to Suppress this proposed testimony which was granted via a written decision and Order from the ALJ dated October 1, 2012 (attached). The ALJ determined that the discipline of other employees is only relevant where there is a claim of discrimination. In this regard, the ALJ indicated that the petitioner made no such claim at the departmental hearing or in his arguments to permit such testimony. The ALJ explained that in order to succeed with a discrimination claim, the petitioner must show that he is a member of a protected class and that other non-minority employees involved in acts of comparable seriousness and having comparable disciplinary records were not removed. Further, the ALJ indicated that the testimony of similarly situated employees and their punishment were irrelevant to her determination of the

penalty the petitioner could receive because appeals of major discipline were *de novo* reviews.

In the initial decision, the ALJ also denied the petitioner's attempt to introduce documents from doctors indicating that he had an alcohol problem which contained hearsay opinions without the experts testifying. The ALJ asserted that even with the administrative court's rules of evidence, the Residuum Rule, an expert's opinion cannot be offered as substantive evidence without the expert being present for cross-examination. There was no residuum of competent evidence presented at the hearing to support the inclusion of such documents as the petitioner himself did not testify that he was an alcoholic. In addition, the ALJ found that the petitioner had not requested a reasonable accommodation under the Americans with Disabilities Act (ADA). Without the petitioner requesting a reasonable accommodation there was no obligation for the appointing authority to provide such an accommodation. The ALJ also indicated that the petitioner provided no evidence that he was depressed and was unable to testify that he suffered from alcoholism. Further, the ALJ determined that the petitioner was no longer qualified for his position as a truck driver, when as a result of his DWI conviction he lost his driver's license and his commercial driver's license (CDL). Moreover, the ALJ found that the petitioner presented no evidence that the appointing authority retaliated against him by terminating him. In this regard, while the petitioner argued that he supported a female employee in her sexual harassment claim in 2007, the ALJ found no clear connection between the sexual harassment matter and his termination five years later. Moreover, the ALJ found that the mere fact that the petitioner served as a shop steward did not create a basis for retaliation. The ALJ indicated that the petitioner's service as a shop steward was not very acrimonious. Furthermore, the ALJ found that the petitioner had full knowledge that a CDL was required by the appointing authority to work in the Truck Driver title. The ALJ asserted that clear evidence was shown that the petitioner's job required having a driver's license and a CDL depending on the random assignment or need to drive certain trucks. The petitioner acknowledged that without his driver's license he was unable to fulfill the job requirements for truck driver. Therefore, the ALJ found that the appointing authority sustained its burden of proof in proving that having a CDL and a personal driver's license was required for the title of Truck Driver and that the petitioner's failure to possess either made him unqualified for the position. With regard to the penalty, the ALJ concluded that since the petitioner could no longer perform the essential duties of his position, termination was proper rather than progressive discipline. Upon a *de novo* review of the matter, the Commission upheld the petitioner's removal in its September 3, 2013 final decision.

In the instant matter, the petitioner argues that the ALJ erred in depriving him the opportunity to subpoena other employees who had committed similar

infractions but had not been terminated. He argues that such evidence was critical to his argument that he should have received a major discipline short of termination. He argues that the ALJ's determination that the discipline of other employees is only relevant where there is a claim of discrimination based on a protected class was an error. The petitioner contends that the proper standard is based on the unequal treatment of one employee as against another employee who had committed the same infraction. Additionally, the appellant claims that he should have been permitted to introduce documents under the Residuum Rule, that he had received from his medical providers that claim he suffered from an alcohol problem and could have been reasonably accommodated. Absent the medical documentation, the petitioner testified that after his accident, he had been treated for depression and sought counseling and acknowledged that he had an alcohol problem and was being treated for it. Further, the petitioner reiterates his claim that he was terminated in retaliation for supporting another employee's harassment claim and because of his duties as a shop steward.

In reply, the appointing authority, represented by Thomas N. Ryan, Esq., argues that the petitioner does not meet the standard for reconsideration as he is just relying on information available, presented, and considered by the ALJ and the Commission. It contends that the ALJ properly suppressed the testimony of other township employees as the proposed testimony was irrelevant as to whether the petitioner was able to perform his job duties as a Truck Driver while his CDL was suspended. Further, it claims that the ALJ properly excluded the hearsay medical opinions as to his alleged alcoholism. In this regard, the appointing authority asserts that while hearsay may be admitted under the relaxed evidence rules in an administrative hearing, there was a substantial danger of undue prejudice or confusion if such records were permitted. Moreover, it would not have been able to cross-examine the experts on their opinions. Furthermore, it argues that the petitioner never requested a reasonable accommodation and it is not required to excuse disciplinary issues because of an after-the-fact request for an accommodation.

### CONCLUSION

*N.J.A.C.* 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

In the instant matter, the petitioner claims that the ALJ erred in depriving him the opportunity to subpoena other employees who had committed similar infractions but had not been terminated. He contends that such evidence was critical to his argument that he should have received a major discipline short of

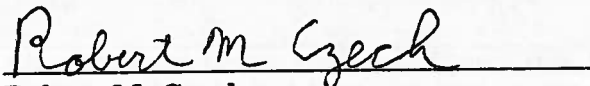
termination. The Commission does not agree. The Commission reviewed the ALJ's initial decision and after making an independent evaluation, accepted and adopted the ALJ's Findings of Fact, Conclusions, and the determination of the proper penalty. The Commission notes that it, independent of the appointing authority, determines the ultimate penalty in appeal matters and the fact that an appointing authority may have imposed a different penalty for a similar matter not presented to the Commission does not persuade it that the petitioner's action was not worthy of removal. In fact, the record is clear that the petitioner could not perform the essential duties of a Truck Driver since he did not possess a CDL. Further, with regard to the medical documentation, the ALJ concluded, and the Commission agrees, that even under the Residuum Rule, an expert's opinion cannot be offered as substantive evidence without the expert being present for cross-examination. There was no residuum of competent evidence presented at the hearing to support the inclusion of such documents. Moreover, the petitioner has not presented any evidence that he requested a reasonable accommodation under the ADA. Without such a request, there was no obligation for the appointing authority to provide such an accommodation. Finally, the Commission is not persuaded by the petitioner's claim that his termination was in retaliation for his prior testimony at a harassment hearing and due to his prior service as a union shop steward. As the ALJ indicated, there is no clear nexus between the harassment matter and his termination five years later. Moreover, the mere fact that the petitioner served as a shop steward did not create a basis for retaliation. In this regard, the ALJ noted that the petitioner's service as a shop steward was apparently not very acrimonious. Accordingly, under the circumstances presented, the Commission finds no grounds on which to grant reconsideration of its prior decision.

#### ORDER

Therefore, it is ordered that the petitioner's request be denied.

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  
THE 4TH DAY OF MARCH, 2015



Robert M. Czech

Chairperson

Civil Service Commission

**Inquiries  
and  
Correspondence**

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

**Attachment**

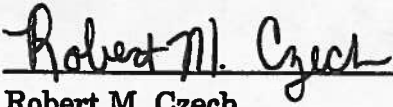
**c: Kathleen Fantacone Mazzouccolo, Esq.  
Craig Williams  
Thomas N. Ryan, Esq.  
William E. Close  
Joseph Gambino**



Re: Craig D. Williams

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  
SEPTEMBER 4, 2013



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

attachment



**State of New Jersey**  
**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. CSV 06178-12

AGENCY DKT. NO. 2012-3093

**IN THE MATTER OF CRAIG D. WILLIAMS,  
TOWNSHIP OF SPARTA, DEPARTMENT  
OF PUBLIC WORKS.**

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**Kathleen Mazzouccolo, Esq., for appellant Craig D. Williams (Staff Attorney,  
AFSCME Council 52)**

**Thomas Ryan, Esq., for respondent Township of Sparta (Laddey, Clark & Ryan,  
attorney)**

Record Closed: June 13, 2013

Decided: July 29, 2013

**BEFORE MICHAEL ANTONIEWICZ, ALJ:**

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

On April 10, 2012, the Township of Sparta (Township) issued a Final Notice of Disciplinary Action (FNDA) wherein the charges of inability to perform job duties due to a lack of a valid driver's license under N.J.A.C. 4A:2-2.3(a)(3) were sustained against appellant Craig Williams. (R-2.) The removal was effective February 13, 2012. For the reasons discussed, the determination of the Township of Sparta is **AFFIRMED**.



Appellant requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) where, on May 9, 2012, it was filed as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and 14F-1 to -13. The hearing proceeded on February 28, 2013, and the record closed after both parties submitted post-hearing submissions; June 4, 2013, for the appellant and June 13, 2013, for the respondent. A letter was received from Daniel Colfax, Esq., who represented Williams in his DWI municipal case but is not an attorney of record in this case—the letter was not considered in this decision.

In addition, there was an earlier decision in response to Motion by the attorney representing respondent seeking to suppress the testimony of witnesses Schlomm, Clark, Neals, Johnson, Steele, and Kimble, which was granted on October 1, 2012, for the reasons set forth in that decision.

#### **STATEMENT OF FACTS**

The material facts are mostly undisputed. Based upon the evidence presented at the hearing and the opportunity to observe the witnesses and assess their credibility, I **FIND** the following pertinent facts:

Appellant was hired as a Truck Driver by the Township of Sparta in 2000. He previously held the title of Code Enforcement Officer and Housing Inspector. Appellant possessed a driver's license and a commercial driver's license (CDL) when he was hired.

On December 1, 2011, appellant was involved in a motor vehicle accident. (R-4). He was charged with driving a motor vehicle while under the influence of alcohol, failure to maintain lane, reckless driving, and failure to obey a traffic signal. On January 27, 2012, Williams pled guilty to a DWI offense and all other charges were dismissed. As a result of this plea, the appellant's personal driver's license was suspended for seven months, his CDL was suspended for one year, and he was required to use an ignition-interlock device on any vehicle he drives. On January 27, 2012, Williams

advised the Township Manager that he lost his personal driver's license for seven months as a result of his DWI conviction. Appellant's New Jersey driver's license was reinstated on August 23, 2012, and his CDL was also restored prior to February 28, 2012. Appellant was served with a Preliminary Notice of Disciplinary Action on February 13, 2012, and was thus suspended without pay. (R-1.) A departmental hearing took place on March 26, 2012, and the appellant was served with a Final Notice of Disciplinary Action on April 10, 2012, terminating his employment with Sparta.

Appellant's duties as a Truck Driver, as set forth by the State of New Jersey Job Descriptions (R-3), included as examples of work: driving a truck with a single axle to pick up, haul, and deliver non-hazardous materials; receiving written and/or oral assignments and driving trucks of varied types including trucks used for road maintenance and construction work and road oiling, snow plowing, and ice control work; assisting with the repair and installation of snowplows and spreaders; picking up loads truck and delivering non-hazardous materials of varied types; performing minor repairs and adjustments on trucks; supplying trucks with gas, oil, and water; keeping garage clean and in order; and keeping records of trips. Somewhere between 50% and 75% of the tasks do not involve driving a truck.

The job specifications only provide a general synopsis of the type of work required. Municipal governments may have additional tasks required for the title. The requirements of the job (R-3) states that one (1) year of experience in driving a truck with a single axle and license: appointees must possess a driver's license valid in New Jersey. Appointees may also be required to possess a valid commercial driver's license (CDL) and applicable endorsement for the class and type of vehicle being operated.

In this instance, Township Manager David Troast (Troast) and Director of the Department of Public Works Jim Zepp (Zepp) described, in great detail, the requirements of appellant's duties. Appellant was required to complete road repair and snow plow with the driving of a truck as part of those duties as set forth herein above. This requires appellant to drive any of an assorted number of trucks. Other tasks include assisting with the repair and installation of snowplows and spreaders; picking

up, loading trucks and delivering non-hazardous materials of varied types; performing minor repairs and adjustments on trucks; supplying trucks with gas, oil, and water and keeping garage clean and in order, and keeping records of trips; checking, cleaning, greasing and performing the required adjustments to trucks and other auxiliary equipment; collecting, loading and unloading, with and without assistance, various types of equipment, furniture, laundry, food products, coal, ashes, garbage, or trash and delivering same by truck to specified destinations; operating snow-removal equipment to keep roads clear; maintaining records of receipts, deliveries, fuel consumption and mileage traveled; driving truck equipped with dump body to transport and dump loose materials such as sand, gravel, and bituminous paving material, by pulling levers and turning crank to tilt body and dump contents; may inspect truck prior to operating for proper amounts of fuel, oil, water and to see that tires are inflated and that lights and brakes work properly; making minor emergency repairs to trucks such as changing tires or installing light bulbs, fuses, and tire chains; when not engaged in driving a truck or other equipment, may perform other work such as road and landscape construction, building maintenance and repair work, grounds keeping, laboring or other unskilled work; and will be required to learn to utilize various types of electronic and/or manual recording and information systems used by the agency, office, or related units.

The Township of Sparta is a rather large rural municipality of 39 square miles with over 100 miles of road. Because Sparta is located in higher elevations, the winter weather conditions can be quite severe, including large amounts of snow and ice accumulations. The driving of snow plow vehicles and treating ice on the roads is a large portion of the duties of the truck drivers in the DPW.

Both Troast and Zepp believed that it is essential for Truck Drivers to have a driver's license and a CDL because driving is a core part of their jobs. They rejected the suggestion that appellant could perform his duties without a CDL or a personal driver's license (even if it was done by the appellant for a two-week period after losing his license). Not being able to drive would undermine the efficiency of a Truck Driver and would unfairly transfer a bulk of the work to those employees with a CDL and personal driver's license.

All witnesses for Sparta confirmed that the title of a Truck Driver has always been performed by a licensed driver and it was required that the truck drivers have a CDL. At no time has Sparta permitted the position to be filled by someone without a driver's license.

Appellant lost his personal license for seven months and his CDL for one year. He will be required to use an ignition-interlock device until August 2013. He was removed from his position as a Truck Driver effective February 13, 2012, about two weeks after Williams notified Sparta of his loss of licenses. Appellant argues that he could have performed his tasks without a driver's license. Appellant contends that he could have had other employees drive and he could have been a passenger during the seven/twelve-month period that his license/CDL was suspended.

Williams stated that he was ready, willing, and able to perform all the essential tasks of the job; however, a bulk of his tasks—especially during the winter—includes the driving of a truck (at least 25% of the time and as much as 50% of the time). It was described as "all hands on deck" when there was a major snow event in Sparta. This means that the Township must have at its availability all drivers in order to clear the many roads in the municipality. Zepp testified that during these major storms, the Township must resort to hiring part-time outside drivers because they have more trucks than drivers and drivers are needed.

## **LEGAL ANALYSIS**

### **Motion to Suppress**

Appellant presents, once again, an argument that Sparta's Motion to Suppress the proposed testimony of several Sparta employees who would testify that they had lost their driving licenses due to a conviction of DWI and were not terminated or had committed other serious drug or alcohol-related offenses that did not result in the loss of their driver's licenses, should have been denied.

This Motion was previously presented, argued, and correctly decided by the Court. Any attempt to have this Court reconsider the decision on a previous motion must follow the rules regarding a Motion for Reconsideration. The appellant does not do so here. See R. 4:49-2; see also Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996).

In a Motion for Reconsideration, the party making such a motion must include "a statement of the matters or controlling decisions which the counsel believes the court overlooked or as to which it has erred." R. 4:49-2; Cummings, supra, 295 N.J. Super. at 384. No such statement or form has been presented by the appellant. Accordingly, the appellant's attempt to have this issue addressed again has been presented improperly.

As previously stated in the Order entered by this Court, to establish a valid claim of discriminatory or disparate treatment, appellant must show that he is a "member of a protected group and that other non-minority employees involved in acts of comparable seriousness and having comparable prior disciplinary records were nevertheless retained." Johnson v. E. Jersey State Prison, 92 N.J.A.R.2d (CSV) 800.

The appellant, here, was not a member of a protected group and did not even make an argument to that effect. Accordingly, this Court's decision in response to the respondent's motion was correct and remains correct. Appellant was hired as a truck driver, where Sparta and Civil Service required him to have a driver's license and a valid CDL, both of which he lost upon his conviction for a DWI. As such, the appellant was no longer qualified for this position.

#### **Documents From Medical Providers Subject to Residuam Rule**

There was no evidence produced by the appellant that supported the appellant's claim that he was an alcoholic or that he has an "alcohol problem." The appellant attempted to introduce documents which contained hearsay opinions without the

"experts" testifying. Even with the administrative court's rules of evidence, an expert's opinion cannot be offered as substantive evidence without the expert present for cross-examination. The appellant was even unsure as to whether he was an alcoholic or not.

All findings of fact must be based on "sufficient, competent and credible evidence." N.J.S.A. 52:14A-10(c); see also Weston v. State, 60 N.J. 36, 52 (1972). The "Residuum Rule" requires that findings be supported by residuum of competent evidence. In re Cowan, 224 N.J. Super. 737 (App. Div. 1988). No evidence was presented by the appellant at trial which would support the residuum rule. The appellant himself did not, and was unable to, testify that he was an alcoholic.

### Reasonable Accommodation

Appellant further was unable to testify that he sought a reasonable accommodation under the Americans with Disabilities Act (A.D.A.). (See Tr. 79.) Appellant was not entitled to a reasonable accommodation for either depression (there was no evidence presented for the appellant's depression) or for being an alcoholic. Furthermore, the appellant himself was unable to testify that he suffered from alcoholism. Without the appellant requesting a reasonable accommodation, there is no obligation by the respondent to provide such an accommodation. Jones v. United Parcel Serv., 214 F.3d 402, 408 (3d Cir. 2000) (which found that without the employee making a request for accommodation, the employer was under no obligation to provide same).

In addition, in this case the appellant was no longer qualified for his position as a truck driver when, as a result of his driving-while-intoxicated conviction, he lost his driver's license and his CDL. Employers "should be able to take appropriate action on account of egregious or criminal conduct of an employee, regardless of whether the employee's disability contributed to the conduct." Barbera v. DiMartino, 305 N.J. Super. 617, 638-39 (App. Div. 1997); see also Hill v. Kansas City Area Transp. Auth., 181 F.3d 891, 894 (8th Cir. 1999); Siefken v. Village of Arlington Heights, 65 F.3d 664, 666 (7th Cir. 1995). The position for which the appellant was hired required a driver's license

and a CDL. Sparta would then have to create a "non-driving" position simply to accommodate the appellant and infringe on the other employees who had their license.

### **Appellant's Termination Was Not Due to Retaliation**

Appellant presented no evidence to the time of the hearing showing that Sparta retaliated against him by terminating him. Sparta had a proper and cogent reason for his termination, i.e., his loss of his driver's license and his CDL. Appellant blindly points to the fact that he supported a female co-worker in 2007 regarding her claim of sexual harassment and his serving as a shop steward for a period of four years. There is no clear connection between his support for his co-worker and his termination. There was no evidence that the Township was upset for his support of his co-worker and this event happened over five years prior to his termination due to his loss of license. His loss of his driver's license is a tangible and reasonable basis for his termination. There were positive events experienced by the appellant in the interim which erodes any casual connection with regard to retaliation.

In addition, appellant simply serving as a shop steward does not create a basis for retaliation. It appears that his service as a shop steward was not very acrimonious. The appellant's attempt to connect his shop steward position and his termination was speculative at best, without any connection to the evidence presented. Accordingly, I **FIND** that this claim, that his termination was due to his working as a shop steward, must be rejected.

### **Basis for Termination**

Employees of the State of New Jersey are governed by Title 11A of the New Jersey Statutes, known as the Civil Service Act. N.J.S.A. 11A:1-1 et seq.; N.J.A.C. 4A:8-1.1. The objectives of our civil service laws are articulated in N.J.S.A. 11A:1-2. They include rewarding employees for "meritorious performance and separating others whose conduct is less than adequate." City of Newark v. Gaines, 309 N.J. Super. 327, 332 (App. Div. 1998). Under N.J.A.C. 4A:2-2.3(a)(1), an employee may be subjected to

major discipline for "incompetency, inefficiency, or failure to perform duties." In general, incompetence, inefficiency or failure to perform duties exists where the employee's conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. Clark v. New Jersey Dep't of Agric., 1 N.J.A.R. 315 (1980).

As an employee working for Sparta, Williams had full knowledge that a CDL and a personal driver's license was required by Sparta to work as a Truck Driver for the Township. The appellant's job description clearly shows that he was required to hold a valid New Jersey driver's license. Klusaritz v. Cape May County, 387 N.J. Super. 305 (App. Div. 2006). There was definitive evidence showing that the appellant's job required having a driver's license and a CDL depending on the random assignment (and need for) driving certain trucks. In fact, the appellant admitted that without his driver's license, he was unable to fulfill the job specifications of a truck driver for the Township. See In re Busby, CSV 08640-09, Initial Decision (April 1, 2010), <http://njlaw.rutgers.edu/collections/oal/>.

Based upon the preponderance of the credible evidence, I **CONCLUDE** that Sparta sustained its burden in proving that having a CDL and a personal driver's license is required in order to be a Truck Driver for the Township and that the appellant's failure to possess either made him unqualified for the position.

The interpretation of DOP job requirements is the pertinent principle at issue. Job specification 04222, Truck Driver, provides:

**Appointees must possess a driver's license valid in New Jersey. Appointees may also be required to possess a valid Commercial Driver's License . . . [which Sparta requires of every Truck Driver in its DPW].**

[Emphasis added.]

The above-mentioned provision is standard language in many DOP specifications. The Merit System Board has observed that:



The job specification at issue provides that appointees **"will be required to possess a driver's license valid in the State of New Jersey only if the operation of a motor vehicle, rather than employee mobility, is necessary to perform the essential duties of the position."** However, it is noted that the quoted language is a standard clause contained in the job specification for most titles. Thus, the clause is not specific to the job specification for the position at issue and no implication can be drawn therefrom. Specifically, the presence of this language in the job specification does not, in and of itself, conclusively establish that possession of a driver's license is necessary to perform the duties of the job. See In re Redmond, CSV 8879-01, Initial Decision (May 5, 2003), modified, Merit Sys. Bd. (June 11, 2003), <<http://njlaw.rutgers.edu/collections/oal/>>; Morales v. City of Trenton, 97 N.J.A.R.2d (CSV) 712, aff'd, Merit Sys. Bd. (June 24, 1997).

[Emphasis added.]

I am fully persuaded that a driver's license (and to a lesser degree, a CDL) is necessary to perform the essential duties of the position. In this instance, possessing a driver's license strikes at the core of the position of Truck Driver as driving of a vehicle (and generally a truck) is set forth throughout the job specification. The termination of an employee who operates heavy equipment is justified when the employee had his license suspended for two years due to a DWI. Busby, supra, CSV 08640-09.

The Township of Sparta has over 100 miles of roads and during any snow storm, but especially during a significant snow storm, there is a heavy strain placed on the employees of DPW when plowing the roads in their trucks in order to keep the roads safe and passable. It is nearly axiomatic that a driver's license is required of a Truck Driver.

Based upon the foregoing, I **CONCLUDE** that a driver's license (and a CDL) are necessary to perform the essential duties of a Truck Driver within the territory of the Township of Sparta and that terminating Williams after losing his CDL, personal driver's license, and being required to use an interlock device on any vehicle he drives after the period of license suspension is imposed. Since Williams could no longer perform the

essential duties of his position, termination was proper rather than progressive discipline. Klusaritz, supra, 387 N.J. Super. 305.

**ORDER**

I **ORDER** that the determination of the Township of Sparta terminating appellant for inability to perform his duties, a violation of N.J.A.C. 4A:2-2.3(a)(3), is **AFFIRMED**.

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, P.O. 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.

7/29/13  
DATE

  
MICHAEL ANTONIEWICZ, ALJ

Date Received at Agency:

7/29/13

Date Mailed to Parties:

7/29/13

jb

**APPENDIX**

**WITNESSES**

**For Appellant:**

**Craig D. Williams**

**For Respondent:**

**David Troast, Township Manager**

**James Zepp, Director of Department of Public Works**

**EXHIBITS**

**For Appellant:**

**None**

**For Respondent:**

- R-1 Preliminary Notice of Disciplinary Action as to Craig Williams, specification with New Jersey Civil Service Commission Job Specification 04222 – Truck Driver, dated February 13, 2012**
- R-2 Final Notice of Disciplinary Action as to Craig Williams and specifications, dated April 10, 2012**
- R-3 New Jersey Civil Service Commission Job Specification 04222 – Truck Driver**
- R-4 Andover Township Police Adult Arrest Report, dated December 1, 2011; certified laboratory report toxicology analysis; incident summary; copy of summons no. 1902 at 035080; copy of summons no. 1902 at 035421, 034523; Sparta Medical Associates, P.A. letter dated February 20, 2012; February 22, 2012; Letter from Patricia R. Taranto, R.N., M.A., L.P.C.**
- R-5 Andover Township Municipal Court Documents: New Jersey Judiciary Records Request Form; NJ Automated Traffic System Court Disposition Display; December 13, 2011, letter from Daniel A. Colfax, Esq. to Andover Township Municipal Court advising of representation and requesting discovery; Notification**

- of Penalties for Subsequent DWI or Driving on the Revoked List Convictions, dated January 26, 2012; State of New Jersey Order and Certification (Intoxicated Driving and Related Offenses) dated January 26, 2012; Andover Township Municipal Court Request to Approve Plea Agreement, dated January 26, 2012
- R-6 N.J.S.A. 39:3-10.20, suspension or revocation of commercial driver's license; N.J.S.A. 39:4-50, driving while intoxicated
- R-7 N.J.S.A. 39:4-50.17, ignition interlock devise as an additional penalty; N.J.S.A. 39:4-50, driving while intoxicated
- R-8 Memorandum from Water Supervisor Michael Sportelli and Township Engineer Charles P. Ryan, P.E. to Craig Williams re: "Proper Use of Township Time"



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**ORDER**

OAL DKT. NO. CSV 06178-12

AGENCY DKT. NO. 2012-3093

**IN THE MATTER OF CRAIG D. WILLIAMS,  
TOWNSHIP OF SPARTA, DEPARTMENT  
OF PUBLIC WORKS.**

---

**Kathleen Mazzouccolo, Esq., for appellant Craig D. Williams**

**Thomas N. Ryan, Esq., for respondent, Township of Sparta, Department of Public  
Works (Laddey, Clark & Ryan, attorneys)**

**BEFORE MICHAEL ANTONIEWICZ, ALJ:**

**Summary**

Appellant, Craig Williams (Williams), was hired by respondent Township of Sparta (Township) in October 2003 working in the Township Water Department until a 2007 layoff in that department resulted in his appointment to a laborer position. Thereafter, Williams was assigned as a truck driver within the Township of Sparta Department of Public Works. A valid driver's license and a valid Commercial Driver's License (CDL) are required to perform the essential duties of this job. As a truck driver, the job description includes driving trucks of varying types; repairing, installing and operating snowplows and spreaders; loading trucks

repairing and maintaining trucks; and driving trucks equipped with dump body to transport and dump loose materials.

As a result of a guilty plea on January 26, 2012 to a Driving Under the Influence ("DUI") issued in the Township of Andover, New Jersey on December 1, 2011, Williams lost his New Jersey driver's license for seven months and his CDL for one (1) year. In addition, an interlock devise was required to be installed on his vehicle.

On January 27, 2012, Williams reported his license suspensions to the Township. On February 13, 2012, Williams was served with a Preliminary Notice of Disciplinary Action ("PNDA") charging him with misconduct pursuant to N.J.A.C. 4A:2-2.5(a)(3), Inability to Perform Duties. Williams was suspended without pay on February 13, 2012. Following a departmental hearing held on March 26, 2012, Williams was served with a Final Notice of Disciplinary Action ("FNDA") on April 10, 2012, removing him from Township employment. On April 16, 2012, Williams appealed that determination to the State of New Jersey Office of Administrative Law. The issue on appeal is whether the termination of Williams should be upheld.

During the departmental hearing, Williams brought to the attention of the hearing officer the names of other employees of the Township of Sparta, Department of Public Works who had lost their licenses for similar periods of time but were not terminated from the Township employment, as well as the names of several additional employees who had engaged in infractions involving drugs or alcohol and who had not lost their licenses, but who were given alternate assignments instead of being terminated. Prior to the hearing, respondent filed a motion to suppress testimony from Williams proposed witnesses. The Township seeks to suppress the testimony of appellant's witnesses based upon the fact that such testimony is irrelevant to the determination of appropriate discipline.

### The Arguments

Appellant argues that the testimony is relevant in that it will demonstrate that he received disparate treatment. Appellant maintains that the other employees were in a

similar situation, but were not terminated by the Township. Respondent argues that the proposed testimony is irrelevant with reference to the determination of the appropriate discipline for Williams. The Township maintains that its discipline of other employees in the past with different factual circumstances is not relevant as to whether the termination of Williams was appropriate under these circumstances because he is no longer able to fulfill the job requirements of his position.

**Why the Appellant is not Entitled to Present  
the Testimony of the Employees**

Under N.J.A.C. 1:1-15.1(c), all relevant evidence is admissible. In addition, under N.J.R.E. 401, "relevant evidence" is "evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action."

In any matter, evidence must be relevant to be presented. State v. Darby, 174 N.J. 509, 519 (2002). Evidence is relevant if it has a tendency in reason to prove or disprove any fact of consequence to the determination of the action." "In determining whether evidence is relevant, the inquiry focuses upon 'the logical connection between the proffered evidence and a fact in issue.'" State v. Calleia, 414 N.J. Super. 125, 150 (App. Div. 2010). The factors that are relevant in determining the degree of discipline to be imposed include, consistent with the principle of progressive discipline, the employee's prior disciplinary record and the gravity of the misconduct in the instant case.

In addition, the principle that discipline of other employees is only relevant where there is a claim of discrimination. In the departmental hearing, appellant did not raise such a claim and, in fact, does not raise such a claim here. In order to succeed in such a discrimination claim, the party must show that he is a member of a protected group and that the other non-minority employees involved in acts of comparable seriousness and having comparable prior disciplinary records were nevertheless retained. In the Matter of Donald Michelson, City of Union, OAL DKT. CSV 05839-2007 WL 4732852 at 5 (N.J. Adm. Oct. 4, 1993).

Furthermore, the testimony of similarly situated employees and their punishment are irrelevant to my determination of the penalty the appellant may ultimately receive because appeals of major disciplinary actions are de novo reviews.

In Town of West New York v. Bock, 38 N.J. 500, 519 (1962), the New Jersey Supreme Court explained that appeals of major disciplinary actions are de novo reviews—even when the only issue may be the propriety of the penalty imposed below. Years later, in Henry v. Rahway State Prison, 81 N.J. 571 (1980), the Supreme Court restated this principle. In that case, the Court wrote, “Bock ruled that the Commission could conduct a de novo review of a disciplinary action taken by an appointing authority, make its own findings and substitute its judgment as to guilt or innocence or as to the penalty imposed for that of the appointing authority.” Henry, supra., 81 N.J. at 576.

In Bock, the New Jersey Supreme Court also emphasized that a party’s personnel record may be used to determine the appropriate penalty. It did not authorize the use of a non-party’s personnel record. See Bock, supra 38 N.J. at 523, where the Supreme Court wrote, “[T]he Commission hearing on appeal ‘shall be for the purpose of fairly determining whether the employee involved, by reason of his act as charged and his record of service, merits continuance therein or should be removed there from or otherwise disciplined for the good of the service.’”

Inherent in appellant’s request to present the testimony of other employees for the Township would be the necessary inquiry into the charges against the other employees and the personnel record of each employee. In this case, respondent must prove the charges sustained and then I must determine the appropriate penalties. To determine the appropriate penalties, I may use the personnel record of appellant, who is a party to this action. I do not need the personnel records of other employees who are not parties to this action. This action is de novo. I must make my own findings and recommend my own penalties. The penalties the other employees received are irrelevant to my determination.



**Disposition**

I **ORDER** that the motion to suppress testimony of proposed witnesses: Franz Schlomm, Dave Clark, Bob Neals, Thomas Johnson, Roger Steele and Gerald Kimble is **GRANTED**.

I further **ORDER** that a telephone conference will be held on Thursday, October 25, 2012 at 4:00 p.m.

This order may be reviewed by the **CIVIL SERVICE COMMISSION** either upon interlocutory review pursuant to N.J.A.C. 1:1-14.10 or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6.

10/1/12

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MICHAEL ANTONIEWICZ, ALJ

