

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 3RD DAY OF MARCH, 2021

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. CSV 02833-19

AGENCY DKT. NO. 2019-1906

**IN THE MATTER OF STEPHEN MENTURE,
MONMOUTH COUNTY, DEPARTMENT OF
TRANSPORTATION.**

Stephen Menture, appellant, pro se

Steven W. Kleinman, Esq., Special County Counsel, for respondent Monmouth
County

Record Closed: September 30, 2020

Decided: February 2, 2021

BEFORE: **CARL V. BUCK III, ALJ:**

STATEMENT OF THE CASE

Appellant Stephen Menture (Menture) appeals his November 19, 2018 removal from his employment as a Motor Vehicle Operator of Elderly Handicapped Persons for the Department of Human Services, Division of Transportation, "Special Citizens Area Transportation (SCAT)" Driver with respondent Monmouth County, Department of Transportation (County or Monmouth). Appellant was charged with a violation¹ of a

¹ Technically this is a violation N.J.A.C. 4A:2-2.3(a)12 other sufficient cause—violation of a rule, regulation or policy. While this regulation was not specifically pled, the specifications and notice of the charges contained in the PNDA and FNDA were sufficient to provide appellant ample opportunity to defend against this action.

County requirement for his position for failing to maintain a valid commercial driver's license (CDL) as required for his title and job function as well as failing to ameliorate a safety issue on November 15, 2018. It is undisputed that appellant's driver's license was changed from a CDL to a basic driver's license on October 15, 2018.

For the reasons stated below, the motion for summary decision is **GRANTED** in favor of respondent on the charge of a violation of the County requirement that appellant maintain a CDL and for failing to maintain a valid commercial driver's license. Appellant is **REMOVED** from his position with Monmouth County effective November 19, 2018.

PROCEDURAL HISTORY

On or about November 27, 2018, appellant was served with a Preliminary Notice of Disciplinary Action (PNDA). On or about December 12, 2018, a departmental hearing was held and a Final Notice of Disciplinary Action was thereafter served upon appellant on January 4, 2019.

This matter was filed with the Office of Administrative Law on February 27, 2019, for determination as a contested case, pursuant to N.J.S.A. 40A:14-202d; N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A motion for summary decision was filed by respondent on December 26, 2019. After a number of in-person conferences, a schedule for submissions by the parties and oral argument on the motion were scheduled with oral argument scheduled and held on August 12, 2020. The parties were allowed time to provide additional submissions to the tribunal. The record closed on September 30, 2020.

On March 9, 2020, the Governor of the State of New Jersey issued Executive Order 103, declaring a public health emergency, due to the COVID-19 pandemic. The Governor's Executive Order 127 authorized the extension of time for the completion of administrative decisions, after the public health emergency. Subsequent Executive Orders have extended the public health emergency, which continues as of the date of this initial decision.

FACTUAL DISCUSSION AND FINDINGS

Respondent Monmouth County Presented the Following Facts²

1. Appellant was hired by respondent as a Motor Vehicle Operator of Elderly and Handicapped ("Operator") for respondent's Division of Transportation on September 19, 2016. See Certification of Kathleen Lodato ("Lodato Cert."), ¶8.
2. The Division of Transportation operates a program known as "Special Citizens Area Transportation," or "SCAT" for short, which provides transportation services for the elderly and the physically and mentally disabled. See Lodato Cert., ¶3.
3. According to the Civil Service job description, Operators may be required to possess a valid Commercial Driver's License ("CDL") and applicable endorsements for the class and type of vehicle being operated. See Lodato Cert., ¶10; Exhibit A.
4. All Operators are required to have a valid CDL to operate any of the vehicles used by SCAT to transport clients. See Lodato Cert., ¶11.
5. The County has promulgated a Vehicle Policy to establish written guidelines for the use of County-owned vehicles and equipment. See Lodato Cert., ¶12; Exhibit B.
6. The County Vehicle Policy makes clear that each driver of a County-owned vehicle must hold a valid, active appropriate driver's license, and if an employee operates a County-owned vehicle without that license, it is a

² Brief and exhibits were submitted by respondent on December 12, 2019. The statement of facts and exhibit references are those contained in respondent's brief.

violation of the policy and cause for discipline up to and including removal from employment. See Lodato Cert., ¶13; Exhibit B.

7. The County Vehicle Policy further contains a "Driver's License Verification Policy" that explains that a CDL employee must possess and maintain a valid New Jersey CDL and meet and maintain the medical qualifications to drive CDL vehicles and equipment. See Lodato Cert., ¶14; Exhibit C.
8. The Driver's License Verification Policy further provides that employees who drive County vehicles or hold a CDL are required to report any license suspension or revocation within 24 hours of the suspension or revocation and before driving a County-owned vehicle. See Lodato Cert., ¶15; Exhibit C.
9. The Driver's License Verification Policy further provides that the obligation to report applies any time driving privileges are terminated, revoked, suspended or limited in any way by any court or administrative office of the State of New Jersey, or agency or any other state or jurisdiction. See Lodato Cert., ¶16; Exhibit C.
10. The Driver's License Verification Policy further provides that reports of revocations or suspensions must be submitted in writing using a "Notification of Suspension/Revocation Form," which is attached as an exhibit to the County Vehicle Policy. See Lodato Cert., ¶17; Exhibit C; Exhibit D.
11. On September 19, 2016, appellant acknowledged receipt of the County Vehicle Policy and executed a form confirming he understood it was his responsibility to read and follow the policy. See Lodato Cert., ¶18; Exhibit E.

12. Respondent also created an Employee Guide to Policies, Benefits and Services ("Employee Guide"), which in Policy 701 provides that disciplinary action, up to and including removal, may be taken for the violation of departmental or personnel policies; unsatisfactory performance or conduct; neglect of duty; violation of safety or health rules; conduct unbecoming of a public employee; and other sufficient causes. See Lodato Cert., ¶19; Exhibit F.
13. On September 16, 2016, appellant executed an acknowledgement form that he was familiar with and would comply with the policies contained in the Employee Guide. See Lodato Cert., ¶19; Exhibit G.
14. Appellant was also informed in writing that SCAT policy required appellant to keep his CDL and any certifications current and valid at all times, and that appellant remained responsible for directly addressing any license-related issues with the New Jersey Department of Motor Vehicles. See Lodato Cert., ¶21.
15. On September 20, 2016, appellant executed an acknowledgement form that he was aware of and would comply with SCAT policy regarding his CDL driver's license and related certifications. See Lodato Cert., ¶22; Exhibit H.
16. At a point in 2017 Lodato advised appellant his performance as a SCAT Operator had been unsatisfactory, and in lieu of receiving formal disciplinary action, he acknowledged and agreed to improve upon his performance issues, as reflected in a Memorandum of Understanding executed in early October 2017. See Lodato Cert., ¶23; Exhibit I.
17. Appellant also expressly acknowledged in this Memorandum of Understanding that he had an obligation to follow all SCAT policies and procedures and to operate his SCAT vehicle in a safe and professional manner at all times. See Lodato Cert., ¶24; Exhibit I.

18. On November 15, 2018, appellant's assignment was to pick up a SCAT client at the Veteran's Administration facility in Lyons, NJ and return her to her home in Monmouth County. See Lodato Cert., ¶25.
19. At approximately 2:06 p.m. on November 15, 2018, appellant was operating his assigned SCAT vehicle, V-70, in the vicinity of Lloyd Road and Church Street in Aberdeen with one passenger on board. See Lodato Cert., ¶26.
20. At that date, time and location, snow and ice were falling, and the weather forecast predicted the conditions would continue to deteriorate. See Lodato Cert., ¶27.

21. Appellant contacted Mary Joe Wilfong at SCAT dispatch to advise that he could not see the road, claiming his windshield wipers were not effectively clearing the windshield. See Lodato Cert., ¶28; Exhibit J.
22. Appellant then pulled off the road. See Lodato Cert., ¶29; Exhibit J.
23. Ms. Wilfong then inquired whether appellant had hit the wipers against the windshield so as to remove any ice that might have accumulated, and he responded that there was no ice on the wipers. See Lodato Cert., ¶30; Exhibit J.
24. A service truck was dispatched to appellant's location and due to the poor weather conditions was unable to arrive until approximately 90 minutes later, at around 3:35 p.m. See Lodato Cert., ¶31; Exhibit K.
25. The technician determined that there was snow accumulation on the windshield wiper cowl that appellant failed to clear, resulting in the visibility problem reported by appellant. This was documented in a report by the technician indicating that the visibility problems were caused by snow

accumulation on the wiper cowl, as well as a photograph taken by the mechanic reflecting that accumulation. See Lodato Cert., ¶32; Exhibit K; Exhibit L.

26. The technician further advised that all appellant needed to do to resolve the problem was to clear the vents at the bottom of the wipers, so that the snow did not pull back up onto the window. See Lodato Cert., ¶33; Exhibit J; Exhibit K; Exhibit L.
27. According to the mandatory pre- and post-trip reports for the previous two months prepared by Operators operating SCAT vehicle V-70, there was no record of any maintenance or technical issues with the windshield wipers. See Lodato Cert., ¶34; Exhibit K.
28. At no time did appellant ever get out of the vehicle to check the windshield wipers for snow build-up or any other condition that he could have resolved himself. Appellant, when interviewed regarding the incident, re-confirmed he remained on the bus the entire time. See Lodato Cert., ¶35; Exhibit M.
29. During the approximately 90 minutes while appellant was waiting for the service vehicle, the weather conditions continued to worsen as predicted. See Lodato Cert., ¶36.
30. As a result, appellant unnecessarily delayed the return of the client to her home until 4:26 p.m., and did not return to the Union Beach SCAT yard until 5:40 p.m., nearly two hours late. See Lodato Cert., ¶37; Exhibit K.
31. In the considered judgment of SCAT management, appellant's actions in unnecessarily delaying the completion of his route placed himself, the SCAT vehicle and the client at substantial additional risk. See Lodato Cert., ¶38.

32. On November 19, 2019, SCAT management conducted a State of New Jersey, Motor Vehicle Services Driver History Abstract check to review appellant's driving record. See Lodato Cert., ¶39.
33. Appellant was aware that SCAT had the ability to check the status of his driver's license on a random basis or at any time when a situation arose where it might be necessary, and executed a written acknowledgement of same on January 25, 2017. See Lodato Cert., ¶40; Exhibit N.
34. This Driver History Abstract revealed that appellant's New Jersey Commercial Driver's License was suspended and his driving privileges were downgraded to a basic driver's license on October 15, 2018. See Lodato Cert., ¶41; Exhibit O.
35. At no time before SCAT management reviewed appellant's Driver History Abstract did appellant notify the County that he no longer had a valid CDL as of October 15, 2018. See Lodato Cert., ¶42.
36. SCAT records reflect that appellant was on duty and transporting clients in a SCAT vehicle on October 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, and 31, and November 1, 2, 14, and 15, a total of seventeen (17) times, all while he did not have a valid CDL. See Lodato Cert., ¶43, Exhibit P.
37. Based upon its belief that appellant had created an extraordinarily serious risk to the County by driving a SCAT vehicle without a valid CDL, and the potential for astronomical liability had he injured someone in an accident, SCAT management suspended him from employment effective November 19, 2018. See Lodato Cert., ¶44, Exhibit Q.
38. On November 27, 2018, the County issued appellant a Preliminary Notice of Disciplinary Action (DPF-31A) ("PNDA") charging him with violating numerous provisions of the New Jersey Administrative Code, including

N.J.A.C. 4A:2-2.3(a)(6), "conduct unbecoming a public employee;" (a)(7), "neglect of duty;" (a)(8), "misuse of public property, including motor vehicles; and (a)(12), "other sufficient cause." Appellant was also charged with violating numerous County policies, procedures, rules and regulations, including County Policy 701, "Employee Conduct and Work Rules" and the County Vehicle Policy, in addition to applicable state and federal regulations. See Lodato Cert., ¶45, Exhibit R.

39. On December 12, 2018 a departmental hearing was held, after which the charges against appellant were upheld, and he was removed from employment, effective and retroactive to the date of his immediate suspension, via a Final Notice of Disciplinary Action (DPF-31B) ("FNDA") dated January 4, 2019. See Lodato Cert., ¶46, Exhibit S.

40. Prior to his removal, appellant was given the opportunity to demonstrate to the County that New Jersey Motor Vehicle Services had taken some action in error or that appellant was otherwise not responsible for what happened with the downgrade to his CDL. See Lodato Cert., ¶47.

Appellant Menture's position

Appellant was not represented by Counsel. As such the tribunal attempted to provide appellant with every opportunity to provide an accurate and complete submission of his position. Appellant first, and continually, expressed concern that respondent was not providing accurate discovery at appellant's request. He provided 19 Exhibits to bolster his position the first of which was a "preliminary statement" which detailed his efforts and performance. He states that because his driving privileges were only "downgraded" from a CDL to a basic driver's license, rather than were suspended altogether, he believes he "did not put Monmouth County at risk." He states he had no notice from the DMV therefore could not provide notice to respondent. Appellant then submits several exhibits and comments on a number of the documents as follows:

Exhibit A: January 4, 2019 Final Notice of Disciplinary Action (County's Exhibit S).

Appellant makes three comments to this exhibit, which the County already supplied to the Court as part of its own submission. First, he renews his discovery complaints which had been addressed by the tribunal. Second, he denies causing a safety issue with respect to his deficient performance during the November 15, 2018 snowstorm, claiming it is "not true" but fails to counter the documentary evidence presented by the County. He then reiterates that his driver's license was merely downgraded, and claims without any factual support that he did not receive the necessary paperwork to resolve the problem, arguments that were already addressed and disposed of by the County in its previous submission.

Exhibit B: "Timeline of Events." This exhibit consists of a 2018 calendar and a handwritten "timeline" purporting to show the dates of events pertinent to this proceeding.

Exhibit C: Appellant's Interview Statement (County's Exhibit M). Appellant resubmits his investigatory interview that took place following the November 15, 2018 snowstorm incident, while suggesting that others should have been "investigated."

Exhibit D: Northjersey.com Web Article. A news story from the Bergen Record's website describes the snowstorm that affected New Jersey on November 15, 2018.

Exhibit E: Work Order Detail (County's Exhibit L). This is a service document reflecting the service that was provided to appellant's SCAT vehicle on November 15, 2018.

Exhibit F: Appellant's Driver's Abstract (County's Exhibit O) and associated documents. Appellant resubmits his New Jersey Motor Vehicle Commission Driver's Abstract that was obtained by the County on November 19, 2018. The Abstract reflects that appellant did not have a valid CDL at that time. He then attempted to distinguish between a downgraded and suspended CDL stating that a downgraded license "mean [sic] that Motor Vehicle did not get the proper paperwork or document for Medical Certificate.

Exhibit G: November 14, 2018 e-mail from Kevin Tauro to Steven Menture (and others) and additional records. This exhibit purports to be an e-mail from the President of CWA Local 1075, which is the collective negotiations representative for certain SCAT employees, to appellant, as well as various union officials. It appears to be in response to an earlier e-mail from appellant about the possibility of replacing a shop steward at the CWA 1075 SCAT unit. This e-mail is not copied to anyone at the County, and appellant offers no evidence that before this e-mail was disclosed as part of these proceedings, that anyone at the County was even aware of it. Similarly, there is no evidence in the record suggesting that anyone in the County would care in the least about a purely internal union matter such as who CWA 1075 designated as the shop steward for its SCAT unit. This entire exhibit is therefore irrelevant and should be entirely disregarded. Certainly, it does not demonstrate there is a dispute of material fact. Also included in Exhibit G is an unrelated document that appears to be a computer printout relating to appellant's driving record. There is no explanation as to the relevance of this record, which is dated November 20, 2018, or the circumstances under which it was prepared, and it is thus inadmissible as lacking foundation.

Exhibit I: County Driver License Verification Policy (County's Exhibit C) and additional records. This is an excerpt from the County's "Driver License Verification Policy" which states that "[d]riving a County vehicle without an active, valid, appropriate driver's license shall constitute a violation of this policy and will be cause for discipline up to and including termination."

Exhibit J: Memorandum of Understanding (County's Exhibit I) and additional undated memorandum. This is an undated memorandum signed by Ms. Lodato and CWA 1075 Union steward Michael O'Connor, reflecting a review of concerns with appellant's performance earlier in his career as a SCAT Operator.

Exhibit K: Hearing Officer's Report, January 2, 2019. This exhibit is the report generated by a County employee assigned to hear the charges against appellant at the

departmental level, as required by N.J.A.C. 4A:2-2.5. However, this tribunal is not bound by such as the tribunal conducts a “de novo” hearing.

Exhibit L: Citizen Complaint, August 24, 2018. This is a letter from the County’s Office of Professional Standards reflecting that the County had received a complaint about appellant’s performance from a SCAT client, the matter had been investigated, and the allegations were found to be unsubstantiated.

Exhibit M: “NJ Civil Settlements.” This exhibit deals with an unrelated legal matter.

Exhibit N: Certification of Kathleen Lodato (and additional material). Appellant re-submits Ms. Lodato’s Certification in support of the County’s Motion for Summary Decision, along with his Civil Service job description and a portion of the County’s Vehicle Policy.

Exhibit O: Various Unemployment Records. Appellant submits various records relating to his application to the New Jersey Department of Labor and Workforce Development (“DOL”) for unemployment benefits following his removal from County employment.

Exhibit P: I/M/O Keith Busby. Appellant submits an excerpt from a Civil Service decision cited by the County in its moving papers, and then briefly attempts to distinguish the factual circumstances between that matter, which also involved a County employee, and the matter before the Court now.

Exhibit R: “County Personnel File on Steve Menture.”

LEGAL ANALYSIS AND CONCLUSION

Summary Decision Standard

N.J.A.C. 1:1-15.5 provides that summary decision should be granted "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." This language is substantially similar to summary judgment under New Jersey Court Rule 4:46-2(c). Though not required to do so, the OAL uses the standards for summary judgment, as set forth by the New Jersey Supreme Court, as our standards for summary decision. "[S]ince there are pronounced similarities in the exercise of judicial and 'quasi-judicial' powers, . . . court fashioned doctrines for the handling of litigation do in fact have some genuine utility and relevance in administrative proceedings." City of Hackensack v. Winner, 82 N.J. 1, 29 (1980). It is recognized that the OAL performs many "quasi-judicial" or adjudicative functions and that, in doing so, "[j]udicial rules of procedure and practice are transferable to [the OAL] when these are conducive to ensuring fairness, independence, integrity, and efficiency in administrative adjudications." Matter of Tenure Hearing of Onorevole, 103 N.J. 548, 554-55 (1986).

Summary decision is granted if, after considering the evidence presented in the light most favorable to the non-moving party, there exists no genuine issue of material fact. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 523 (1995). The essential question is "whether the evidence presents a sufficient disagreement to require [a hearing] or whether it is so one sided that one party must prevail as a matter of law." Id. at 533. The Brill Court recognized that this necessarily involves the judge in the process of weighing the evidence presented. Id. When determining whether a genuine issue of material fact exists, "the court should be guided by the same evidentiary standard of proof . . . that would apply" at a hearing. Id. This weighing differs from the weighing the judge would perform after a hearing in that "on a motion for summary [decision] the court must grant all the favorable inferences to the non-movant." Id. at 536.

"When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." N.J.A.C. 1:1-12.5(b). "If an adverse party does not so respond, a summary decision, if appropriate, shall be entered." Id.

I **CONCLUDE** that, under the Brill standards, this matter is appropriate for summary disposition. The appellant has not raised "colorable inferences" of contested fact regarding his termination and the underlying facts supporting same. The allegations are supported by tangible, undisputed evidence and the facts presented by the appellant in his opposition papers do not raise disputed facts on the record. LoRusso v. State-Operated Sch. Dist. Of Jersey City, Essex County, 97 N.J.A.R. 2d (EDU) 505, 506 [citing Borough of Franklin Lakes v. Mutzberg, 226 N.J. Super. 46, 57 (App. Div. 1988)]. Accordingly, as there are no disputed material facts, the matter is ripe to be determined for summary decision.

Charges in the January 4, 2019 FNDA

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

The January 4, 2019, FNDA charges the appellant with:

1. Conduct unbecoming a public employee, in violation of N.J.A.C. 4A:2-2.3(a)(6);
2. Neglect of Duty, in violation of N.J.A.C. 4A:2-2.3(a)(7);

3. Misuse of public property, in violation of N.J.A.C. 4A:2-2.3(a)(8); and
4. Other sufficient cause, in violation of N.J.A.C. 4A:2-2.3(a)(12).

Conduct Unbecoming

"Conduct unbecoming a public employee" is an elastic phrase, which encompasses conduct that adversely affects the morale of efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic 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 conduct complained of and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 [quoting In re Zeber, 150 A.2d 821, 825 (1959)]. Such misconduct "need not be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Department of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) [quoting Asbury Park v. Dep't of Civil Service, 17 N.J. 419, 429 (1955)].

It is factually undisputed that the appellant was working as a SCAT driver during a period between October 15, 2018 and November 19, 2018. During this time, the appellant did not possess a CDL and was therefore illegally operating a State-owned vehicle. The fact being that this was a violation of his employment requirements and the argument being made that appellant was endangering lives and property as a result. As such, I **CONCLUDE** that the respondent has met its burden of proof on this charge against the appellant.

Neglect of Duty

The next charge detailed in the FNDA is a violation of N.J.A.C. 4A:2-2.3(a)(8) which states that an employee may be subject to discipline for "misuse of public property,

including motor vehicles.” The term “misuse of public property” does not need further definition other than utilizing the vehicle in a way other than it was intended to be used. Prior cases addressing this issue have found that unsafe operation of a public vehicle such as erratic driving, driving through a red light, and driving over the center median on a two-lane road are adequate to demonstrate misuse of a public vehicle which the employee had been assigned. See, e.g., In the Matter of Michael Schonzeit, Ocean County Health Department, CSV 0938-13, Initial Decision, (November 12, 2014) <<http://lawlibrary.rutgers.edu/oal/search.html>>. The undisputed conduct here, as outlined in the abstract, details that the appellant was operating a government owned vehicle without the required licensure. I therefore **CONCLUDE** that the respondent has met its burden of proof to demonstrate that the appellant violated N.J.A.C. 4A:2-2.3(a)(8) through his operation of a government owned motor vehicle during the period October 15, 2018 to November 19, 2018.

Other Sufficient Cause

The next charge against the appellant is other sufficient cause, in violation of N.J.A.C. 4A:2-2.3(a)(12). Other sufficient cause is generally defined in the charges against appellant as all other offenses caused and derived as a result of all other charges against appellant. There have been cases when the charge of other sufficient cause has been dismissed when “respondent has not given any substance to the allegation.” Simmons v. City of Newark, CSV 9122-99, Initial Decision (February 22, 2006), adopted, Comm’r (April 26, 2006), <<http://njlaw.rutgers.edu/collections/oal/final/csv9122-99.pdf>>.

Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. The appellant’s careless and possibly criminal operation of a County owned vehicle while not possessing the appropriate and required licensure clearly meets this standard. As such, I **CONCLUDE** that the respondent has met its burden of proof on this charge.

The next charge against the appellant is for "Violation of Monmouth County Policy 701 regarding Employee Conduct and Work Rules."

As such, I **CONCLUDE** that the respondent has met its burden of proof on this charge.

The final charge against the appellant is for "Violation of the County of Monmouth Vehicle Policy."

As such, I **CONCLUDE** that the respondent has met its burden of proof on this charge.

PENALTY

The Civil Service Commission may increase or decrease the penalty imposed by the appointing authority, though removal cannot be substituted for a lesser penalty. N.J.S.A. 11A:2-19. When determining the appropriate penalty, the Board must utilize the evaluation process set forth in West New York v. Bock, 38 N.J. 500 (1962), and consider the employee's reasonably recent history of promotions, commendations and the like, as well as formally adjudicated disciplinary actions and instances of misconduct informally adjudicated. Since West New York v. Bock, the concept of progressive discipline has been utilized in two ways when determining the appropriate penalty for present misconduct: to support the imposition of a more severe penalty for a public employee who engages in habitual misconduct, and to mitigate the penalty for a current offense. In re Herrmann, 192 N.J. 19, 30-33 (2007).

According to the Supreme Court, progressive discipline is a worthy principle, but it is not subject to universal application when determining a disciplined employee's quantum of discipline. Id. at 36.

Although progressive discipline is a recognized and accepted principle that has currency in the [Civil Service Commission's]

sensitive task of meting out an appropriate penalty to classified employees in the public sector, that is not to say that incremental discipline is a principle that must be applied in every disciplinary setting. To the contrary, judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580, 410 A.2d 686 (1980); Bowden v. Bayside State Prison, 268 N.J. Super. 301, 306, 633 A.2d 577 (App. Div. 1993), certif. denied, 135 N.J. 469, 640 A.2d 850 (1994).

[Id. at 33–34.]

The theory of progressive discipline is not a fixed and immutable rule to be followed without question, as some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007). See also, In re Herrmann, 192 N.J. at 33 (finding, progressive discipline may be “bypassed when an employee engages in severe misconduct, especially when the employee’s position involves public safety and the misconduct causes risk of harm to persons or property”). The Supreme Court has noted that “the question for the courts is whether the punishment is so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one’s sense of fairness.” Id. [citing In re Polk License Revocation, 90 N.J. 550, 578 (1982)]. The Supreme Court also noted that the Appellate Division has likewise acknowledged and adhered to this principle where the acts charged, regardless of prior discipline, warranted the imposition of the sanction. In re Carter, 191 N.J. at 485.

The appellant seeks to reverse the penalty of removal imposed under the FNDA on January 4, 2019. In support of his position, the appellant argues that the respondent

has given accommodation to others in similar circumstances and he should be provided with the same accommodation. Further he states that he was unaware that his CDL had been downgraded by the DMV on October 15, 2019.

The crucial aggravating factor present in this case is the fact that the appellant's license downgrade left him without a valid commercial driver's license during a period of slightly more than one month while he continued to drive his SCAT vehicle. The appellant's job with the County required him to possess a valid New Jersey commercial driver's license—rendering him unable to comply with this requirement of his job during this period of license downgrade. The direct nexus between the appellant's misconduct, and the danger his misconduct created for himself and others during the performance of his public employment while utilizing a government owned vehicle is an egregious aggravating factor that was seemingly not recognized by appellant.

The appellant argues that he has since successfully regained his CDL and the downgrade to a basic license no longer exists. This mitigating factor against removal is uncontested on this record, however, it is unpersuasive in view of the totality of the circumstances. There is a record of a prior disciplinary history in the years appellant worked with SCAT and respondent brings concerns about the vehicle incident which occurred immediately prior to the CDL downgrade which led to appellant's termination. Respondent did not detail specific, categorical charges for the initial incident and the tribunal finds that appellant's conduct in operating a SCAT vehicle on some 17 occasions while his CDL did not exist is sufficiently egregious, directly related to the performance of his public employment, and presented such a clear and present danger to himself and others as to warrant removal even in the absence of prior major disciplinary history. I **CONCLUDE**, therefore, that sufficient cause was established by the respondent to warrant the appellant's removal from his position with the County.

ORDER

Based upon the foregoing, the respondent's motion for summary decision is hereby **GRANTED** and the appellant's appeal from the FDNA is **DISMISSED** and the penalty of removal **AFFIRMED**.

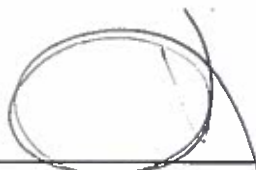
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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, 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.

February 2, 2021

DATE



CARL V. BUCK III, ALJ

Date Received at Agency:

February 4, 2021

Date Mailed to Parties:

February 4, 2021

CVB/cb