

Accordingly, after careful consideration of all evidence, testimony, and exhibits, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

On October 19, 2005, Stephen Brown, dispatcher for the Oklahoma Highway Patrol, received a telephone call from a person driving on the Muskogee Turnpike. The reporting party told Officer Brown that a green Chevrolet pickup truck with Texas license plates had been driving on the Muskogee Turnpike with its emergency lights and siren on. Officer Brown contacted two Oklahoma Highway Patrol Troopers, Trooper Kevin Cox and Trooper Keith Williams, who proceeded to the location on the Muskogee Turnpike, parked on the shoulder of the highway, and waited for the pickup truck to pass.

A few minutes after receiving the call, Trooper Cox and Trooper Williams saw a dark Ford pickup truck with Texas license plates drive by. Trooper Cox testified that as the pickup truck drove by the position where he was parked, the pickup truck activated law enforcement emergency lights. Both Troopers, in separate patrol cars, pulled out in pursuit of the pickup truck. Trooper Cox pulled out first, turning on his patrol lights, and pulled the vehicle over. Trooper Williams also turned on his patrol lights and pulled in front of the pickup truck. After the pickup truck was stopped, the driver, Appellant Michael Easley, got out of the truck.

Trooper Williams testified that he observed Trooper Cox turn on his emergency lights and also witnessed Appellant turn on his emergency lights.¹ When Trooper Williams talked to Appellant, Appellant admitted to both Trooper Williams and Trooper

¹Neither Trooper asserted that Appellant was operating an emergency siren or speeding as he drove past their position point on the turnpike prior to the stop.

Cox that he had been traveling to Muskogee, Oklahoma for a case and also to teach a class at a local college, Bacone College.

After the stop, the Troopers reported back to the dispatch office stating "This is an ABLE Agent using his lights to get people out of his way, late to teach a class."

The matter was later brought to Appellee's attention and Assistant Director H.T. Scott initiated an investigation of Appellant's actions of October 19, 2005. At the conclusion of that investigation in January 2006, Assistant Director Scott, in a memorandum to ABLE Commission Director Keith Burt, stated his belief that Appellant had violated several ABLE Commission policies and procedures and Oklahoma State statutes. Thereafter, a pre-termination hearing was held on March 3, 2006 and on April 25, 2006 Appellant was discharged.

According to Appellee's Notice of Final Action, Appellee discharged Appellant for improperly using his state owned vehicle emergency equipment in an unauthorized manner on October 19, 2005 by activating the emergency lights and siren for his personal and private use while traveling to a second job as an instructor at Bacone College in Muskogee, Oklahoma. The agency further found that Appellant's pike pass records supported that Appellant had improperly used the pike pass and his state owned vehicle for personal or private use to travel on the Muskogee Turnpike to Appellant's job at Bacone College on numerous days during the period of August 10, 2005 to November 15, 2005. Lastly, Appellant was discharged for receiving funds from Bacone College while on duty after the ABLE Commission found that he was working for the ABLE Commission on the same days (or some of the same hours) that he was teaching at the college.

At this hearing, Appellee presented its case which included numerous exhibits

and the testimony of nine witnesses: the last of which was Director Keith Burt. At the conclusion of Appellee's case, Appellant argued that Appellee had not presented sufficient evidence to prove its case and made a motion for a directed verdict. The undersigned took Appellant's argument and Appellee's response to that argument under advisement.²

At the beginning of the third day of hearing on November 16th, Appellant's motion for directed verdict was sustained. The undersigned held that Appellee had presented sufficient evidence to support only one of the six violations set forth in the Notice of Final Action and Appellee had not presented sufficient evidence to support the remaining five violations. The violation that Appellee had established was that Appellant had improperly used agency emergency equipment on October 19, 2006. The Appellee had not presented sufficient evidence to support the remaining five violations: improper use of a state issued Pike Pass, improper use of a state owned motor vehicle, receiving pay from an outside agency while on duty with the ABLE Commission, improper use of a state issued Pike Pass while off duty, and improper use of a state owned motor vehicle while off duty. The Appellant then presented his case recalling Director Burt and calling ABLE Commission Agent Roger Davis to address the sole, remaining issue of the October 19th, 2006 violation. Both Director Burt and Agent Davis testified that Agent Davis had been disciplined in the past for improper use of his emergency lights and that such discipline consisted of a thirty day revocation of light usage. Thereafter, the Appellant rested. Appellee offered no rebuttal witnesses.

While the Appellee stated numerous reasons for discharge of Appellant in its

²Appellee later argued that Appellants directed verdict should not have been granted because Appellant committed error in his request for the directed verdict. The undersigned found that any error by Appellant in making the motion was not fatal error.

April 25, 2006 Notice of Final Action, the evidence and testimony offered by Appellee at this hearing did not establish that five of the six violations took place. The ruling by the undersigned on Appellant's Directed Verdict at the hearing on November 16, 2006 addressed the five unsubstantiated violations. Accordingly, no discussion of those five alleged violations is required in this Final Order. However, in order to address some of the arguments in Appellee's closing statement, listed below are some examples of the evidence and testimony which supported the motion for directed verdict. According to the testimony of ABLE Commission Director Keith Burt:

- At the pre-termination hearing, he was not completely satisfied that the Appellant had used his lights to get people off the road on October 19th, 2006 but did agree some form of discipline was appropriate.
- Even though there were six reasons listed in the Notice of Final Action, there were only two reasons he terminated the Appellant - regardless of what the Notice said. Those reasons were 1) Appellant went to Bacone College to teach and, 2) Appellant was reimbursed for the mileage from Bacone College in the amount of \$800.00.³
- He did not believe that Appellant tried to fool anyone and did not think Appellant committed any type of fraud.
- It does not appear that the investigators in this matter did their job.
- The investigation conducted by the ABLE Commission was not complete.
- He wished the agency had been more thorough in its investigation.
- Regarding the investigative materials, only the data from Tuesdays and Wednesdays was used which did not give the complete picture.

³It is undisputed that the Appellant returned the \$800.00 to Bacone College in April, 2006.

- He was surprised to find out that no one had interviewed the Sheriff in Muskogee County or the students at Bacone College.
- Appellant does a lot of business on his cell phone, but the Appellee did not request nor did they see, Appellant's cell phone records. Appellant would call Director Burt three to five times a week from his cellular telephone, often in the evenings.
- He believed that Appellant was setting up the SST Program on Tuesdays and Wednesdays and that someone from ABLE should have asked about the work that Appellant was doing on that project⁴.
- No one at the ABLE Commission interviewed the numerous agents under Appellant's supervision.
- It is proper for ABLE agents to work while on leave and agents can use a state owned vehicle while working. In addition, many agents work in the evening.
- Appellant is the most productive agent in the field in spite of the fact that he does not oversee the Tulsa or Oklahoma City areas.
- It is possible to go to Bacone College and also work for ABLE while in Muskogee, Oklahoma.
- Appellant paid back the \$800.00 to Bacone College the day he was made aware of the problem in accepting that \$800.00.
- He could not identify one single pike pass violation.
- Although every turnpike entry was alleged to be a violation, there was no evidence to support that allegation.

In addition, the evidence established:

⁴SST Program, Static Saturation Targeting Program, is a program that the Appellant helped develop and was working on during the period of July through September 2005.

- The two investigators of this matter found that Appellant's time sheets for those days he taught at Bacone College showed the time worked by Appellant was ten to twelve hours a day, but only eight hours of work were billed to Appellee. Both investigators discussed the extra, non-billed hours on Appellant's time sheets on teaching days, however, this information was not presented at the pre-termination hearing.
- Appellant's weekly reports also showed time worked up to twelve hours, but only eight hours of work time was billed to Appellee.
- Assistant Director Scott approved the Appellant's request to teach at Bacone College which he was allowed to do on his time off. Also, that time off could be included in the time sheets submitted to the agency.
- The investigators did not ask for cell phone records of the Appellant or check Appellant's ticket activity log, case reports, or annual leave usage - all of which could have validated Appellant's position.
- ABLE Agent Rocky Wuddell was allowed to use a state owned vehicle to attend college in Bethany, Oklahoma to take night courses after work. Mr. Wuddell lived in Enid, Oklahoma at the time.
- Assistant Director Scott was aware that ABLE employee Luke Simms, while working a part time job for the City of Warr Acres, was allowed to use his state owned vehicle to travel to Warr Acres even though Mr. Simms lived in Edmond, Oklahoma.
- Assistant Director Scott identified ABLE policy and procedure, operations memorandum, state statute, and Oklahoma Administrative Code but his testimony was insufficient to explain how those policies, procedures and statutes applied to this fact situation.

- Sergeant Shannon Clark, Tulsa County Sheriff's Office, had been a guest speaker at the class which Appellant taught at Bacone College. Sergeant Clark traveled to and from class with the Appellant on two occasions and was present during numerous ABLE Commission business stops that the Appellant made before and after the class at local police departments, bars, and restaurants.
- Both investigators agreed it was acceptable to fill up a state owned vehicle with gasoline on a day off or on a holiday.
- Officer Brown did not get the name or the telephone number of the complaining witness on October 19th, 2006 and could not remember the gender of the citizen making the complaint. As a result, the complaining witness, whose complaint included allegations that Appellant was speeding and using his emergency siren, was never produced as a witness at the pre-termination hearing or at this hearing.
- Although there was an audio tape of the October 19th, 2006 complaining call, that tape was not produced by Appellee at this hearing.

The Appellee has stated in its closing argument that to allow the Appellant to return to work as an agent for the ABLE Commission "would be a slap in the face to the citizens of Oklahoma." It must be remembered that between the allegations of guilt and the findings of guilt is the hearing on the actual facts: that time during which the Appellee must meet its burden of proof by presenting sufficient evidence to prove its case. The Appellee has failed, in part, to meet that burden at this hearing.

Lastly, Appellant has maintained since the pre-hearing that Appellee had political motives for firing Appellant. The Appellee at all times, including in closing argument, has denied such political motives. Fortunately, the undersigned was not privy to whether such political intrigue existed and has decided this case solely on the evidence presented at the hearing.

Accordingly, the undersigned finds that the evidence presented by the Appellee does support some form of discipline but does not support the termination of Appellant.

CONCLUSIONS OF LAW

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and subject matter in the above entitled cause.

2. Any finding of fact which is properly a conclusion of law is incorporated herein as a conclusion of law.

3. The burden of proof in this case was placed on the Appellee, as the Appointing Authority, pursuant to OAC 455:10-9-2 and Appellee has met its burden of proof in part.

4. ABLE Enforcement Operation Memorandum 025, utilization and maintenance of agency owned motor vehicles states in pertinent part that the use of agency owned motor vehicles shall be confined strictly to the conduct of business within the scope of employment. Further, policy prohibits the use of mounted flashing lights for anything other than defined situations.

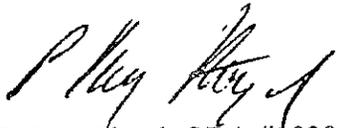
Appellee has shown by a preponderance of the evidence presented at this hearing that just cause exists for the discipline of Appellant for improper use of agency emergency equipment on October 19, 2005 and that such discipline is proper.

Appellee is therefore ordered to reinstate Appellant with full back pay and benefits. Appellant's emergency lights shall be removed from his state owned vehicle for a period not to exceed 30-days and Appellee is ordered to issue a letter of concern to the Appellant regarding the improper use of agency emergency equipment.

ORDER

It is therefore **ORDERED**, **ADJUDGED** and **DECREED** by the undersigned Administrative Law Judge that *MPC 06-166, Michael Easley v. Alcoholic Beverage Law Enforcement Commission* be **SUSTAINED** in part and **DENIED** in part.

Dated this 13th day of December, 2006.



P. Kay Floyd, OBA #10300
Administrative Law Judge
Oklahoma Merit Protection Commission
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