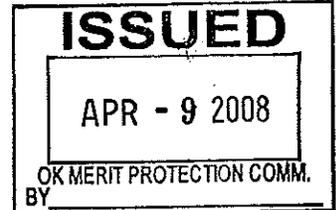


BEFORE THE MERIT PROTECTION COMMISSION  
STATE OF OKLAHOMA

MPC 08-036

*Danny L. Megee v. Oklahoma Department of Transportation*

FINAL ORDER



Hearing on this matter was held March 14, 2008, before the duly appointed, undersigned Administrative Law Judge at the offices of the Oklahoma Merit Protection Commission, Oklahoma City, Oklahoma. Present at this hearing was Appellant Danny Megee, who was represented by his attorney, Philip L. Watson. Present for the Department of Transportation (hereinafter "Appellee" or "ODOT") was Deputy General Counsel Tamar Scott. Also present for Appellee was Table Representative Bill Wilkinson.

Appellant was employed as a Transportation Equipment Operator with the Department of Transportation when he was arrested for driving while impaired on May 31, 2006. As a result of Appellant's arrest, Appellant's commercial drivers license was revoked on June 2, 2007. Appellant's position as an equipment operator required him to have and maintain a commercial drivers license. Because Appellee's policies provide that permanent employees who lose their license for a period of 90 days or more should be discharged for inability to perform the duties of the position, Appellant was discharged effective August 17, 2007. Appellant then filed this appeal before the Merit Protection Commission.

Whereupon this hearing began and the sworn testimony of witnesses for Appellee and Appellant was presented, along with exhibits, which were admitted and are incorporated herein and made a part hereof. In addition, joint stipulations were presented by the parties and those joint stipulations are also incorporated herein and made a part hereof.

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

The Appellant was hired by Appellee as a Transportation Equipment Operator ("TEO") on January 13, 2000 and was later promoted to a TEO level 2. Appellant was assigned to work in ODOT's field division 3 office in Pontotoc County in the traffic and sign erection division.

ODOT Policy Directive # B305-6 states in pertinent part that pursuant to Title 47 of Oklahoma Statutes, all ODOT employees classified as maintenance workers 1, 2 and seniors are required to possess a class A commercial drivers license. There is no dispute that Appellant did possess a commercial drivers license at the time of his promotion.

The Appellant was arrested for driving while impaired on May 31, 2006. Thereafter, until April 20, 2007, the Appellant was issued a temporary drivers license by the Department of Public Safety (hereinafter "DPS) on a month to month basis. This license was not a work permit but was a temporary license allowing full driving privileges. However that this temporary license was not a commercial drivers license.

Toward the end of April, 2007, Appellant had not received the following month's license and informed his supervisor, Bruce Jeffcoat, that he had not received his monthly temporary drivers license. At that time, Supervisor Jeffcoat instructed the Appellant to take leave since his temporary license issued by DPS had expired.

Thereafter, the DPS concluded the matter of Appellant's original charge of driving while impaired from May 2006 and on June 2, 2007 revoke Appellant's commercial driving license. That revocation was in place for 180 days.

On August 14, 2007, Appellee held a pre-disciplinary hearing regarding the revocation of Appellant's commercial drivers license. At that time, evidence was presented establishing Appellant's arrest for driving while impaired on May 31, 2006 and the revocation for 180 days of Appellant's commercial drivers license

beginning June 2, 2007. At the conclusion of the pre-termination hearing, good cause was found to discharge the Appellant effective August 17, 2007.

At this hearing, Supervisor Jeffcoat testified that he oversees 12 people on three crews including Appellant's crew. The Appellant worked on the guardrail crew which repaired guardrails and Appellant frequently operated a one ton truck, a post driver and a bucket truck.

Supervisor Jeffcoat testified that no discipline whatsoever was taken against Appellant while he was using the temporary drivers license issued by the DPS from May, 2006 until Appellant's license was revoked by the DPS in June 2007. In fact, there was some confusion as to when the Appellant's license was finally revoked and during that period of time the Appellant was allowed to continue to work based on the monthly issuance of a temporary drivers license by the DPS. However, even when Appellant was told that he could work throughout the month of July, 2007, a time period during which Appellee was unaware Appellant's license had been revoked, Appellant failed to return to work that month and in fact only worked one day.

In addition, in order to allow Appellant to continue to work, Supervisor Jeffcoat assigned a fourth person to the guardrail crew in order to compensate for the Appellant's inability to drive during that period of time. This put a burden on the other crews who were a man short and required the planning and coordinating of all 3 crews in order to work around the Appellant's inability to completely perform his job.

The Appellant has argued that there have been other employees of the Department of Transportation whose licenses have been revoked but were allowed to keep their employment with ODOT. In fact, although there were employees who were rumored to have been allowed to continue to work, the preponderance of the evidence presented at this hearing did not indicate that was the case. Accordingly, Appellant's position that he has been treated differently than others in a same or similar situation is not supported by the facts in this case.

It is also important to note there is a reason why certain ODOT employees are required to have a commercial drivers license.

Norman Hill is General Counsel for Appellee. One of Mr. Hill's duties has part of ODOT's risk management team is overseeing that drivers license possessed by ODOT employees remain current and in good standing. Mr. Hill testified that as a Transportation Equipment Operator 2, the Appellant was required by ODOT policy to maintain a valid commercial drivers license. This is because a Transportation Equipment Operator 2 must "work at the full performance level in operating heavy equipment used in highway construction or repair and also perform a variety of routine highway maintenance duties" (see Appellee exhibit 18).

Mr. Hill further testified that for years ODOT would monitor its employees' drivers license status through a process involving numerous supervisors manually checking subordinate employees' drivers licenses. However, ODOT has recently set up a database which allows for more prompt and efficient monitoring of employee drivers license status.

As a part of this new system, the risk management oversight division for the state will now send a letter to any agency upon receipt of information that an agency's employee is without a proper drivers license. Using this process, the agency is made aware that the state insurance policy will not cover the employee under its insurance policy if the employee does not have a current drivers license. In the instance case, had Appellant been operating any machinery during the time he was without a commercial drivers license, the state insurance policy would not have covered Appellant or ODOT.

On June 27, 2007, this type of letter was sent from John Richard, Director of Central Services, to Appellee notifying Appellee that a review of the Appellant's driving record revealed negative information concerning his drivers license. The letter went on to say that Risk Management was suspending insurance coverage for the Appellant until his license was fully reinstated without restrictions in accordance with the Oklahoma Administrative Code.

ODOT was further put on notice by this letter that during the period of suspension of coverage, should the Appellant become involved in a loss while using a state vehicle, Risk Management would not pay for any damages that resulted and, per Oklahoma law, losses incurred under such conditions would be borne by ODOT.

The facts established at this hearing before the undersigned Administrative Law Judge are this: Appellant was arrested for driving while impaired on May 31, 2006. From May 31, 2006 until July, 2007, Appellant was issued a temporary drivers license by the DPS and was allowed to continue his employment with ODOT. In July, 2007, the Department of Transportation was informed that the Appellant's commercial drivers license had been revoked for 180 days. Department of Transportation policy states clearly that all ODOT employees classified as maintenance works 1, 2 and senior are required to possess a class A commercial drivers license. During the 180 days of the Appellant's revocation, the Appellant was terminated for failure to have a valid commercial drivers license. Prior to that time, the agency allowed the Appellant to continue to work in his position while simultaneously providing additional manpower in the Appellant's division to compensate for the Appellant's inability to completely do his job.

Accordingly, under the circumstances presented, the undersigned Administrative Law Judge finds that just cause existed for the discharge 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 so incorporated herein as a conclusion of law.

3. The burden of proof in this case was placed upon Appellee, as the appointing authority, pursuant to OAC 455:10-9-2 and Appellee has met its burden of proof.
4. Office of Personnel Management Job Family Descriptor, T25 Transportation Equipment Operator, the job description for the Appellant's position with Appellee states in pertinent part that this is a position where employees perform skilled work at the full performance level in operating heavy equipment used in highway construction or repair.
5. Oklahoma Department of Transportation Policy Directive B305-6 states in pertinent part that no person ... shall operate any motor vehicle upon a highway in this state unless such person has a valid Oklahoma license for the class of vehicle being operated under the provisions of this title. No person shall be permitted to possess more than one valid license at anytime."
6. Oklahoma Department of Transportation Policy Directive B305-6 further states in pertinent part that permanent employees presently in the maintenance worker 1, 2 or senior must possess the class A commercial drivers license and one endorsement. Permanent employees who lose their license/endorsement for a period of more than ninety (90) days should be discharged for an inability to perform the duties of the position.
7. Appellee, the Department of Transportation, has shown by a preponderance of the evidence that just cause existed for the discharge of the Appellant and that such discharge was proper. Furthermore, it is the conclusion of the undersigned that the discharge of the Appellant did not constitute an abuse of discretion by Appellee under the facts and circumstances of this case.

**ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** by the undersigned Administrative Law Judge that the appeal of Danny Megee v. Oklahoma Department of Transportation, MPC 08-036, be **DENIED**.



P. Kay Floyd OBA # 10300  
Administrative Law Judge  
Oklahoma Merit Protection Commission  
3545 NW 58<sup>th</sup> Street, Suite 360  
Oklahoma City, Oklahoma 73112  
405/525-9144