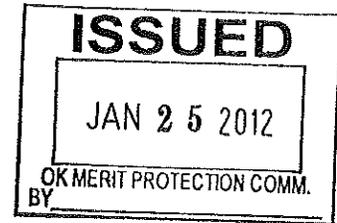


**BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION  
STATE OF OKLAHOMA**

**GLEN D. WILLIAMS,** )  
Appellant, )  
 )  
v. )  
 )  
**OKLAHOMA DEPARTMENT** )  
**OF TRANSPORTATION,** )  
Appellee. )

Case No. MPC 11-113



**FINAL ORDER**

This matter comes on for hearing before the undersigned Administrative Law Judge at the offices of the Oklahoma Merit Protection Commission, Oklahoma City, Oklahoma. The Appellant, Glen D. Williams (hereinafter “Williams”) appears personally and through counsel, Daniel Gamino. The Appellee, Oklahoma Department of Transportation (hereinafter “ODOT”), appears by and through counsel, Tamar Scott and Table Representative, Kurt Harms. This matter came on for hearing on the 8<sup>th</sup> day of November and the 12<sup>th</sup> day of December, 2011. The record was held open in order to obtain an audio recording which was identified as an Exhibit and to allow the undersigned ample time to receive and review the evidence.<sup>1</sup>

Appellant Williams was a classified employee of ODOT, appealing an adverse disciplinary action of discharge. Whereupon the hearing began and the sworn testimony of witnesses was presented, along with exhibits. Regarding the exhibits, the Appellant and the Appellee submitted Joint Exhibits 1 through 17 which were admitted into the record. Appellee offered its Exhibits 1 through 3 which were admitted into the record over the objection of the Appellant. Appellant offered his Exhibit 1 without objection and it was admitted into the record. Accordingly, all Exhibits offered and admitted are made a part of the record herein.

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<sup>1</sup> See Order Extending the Record, January 5, 2012.

After careful consideration of the entire record, including all relevant evidence, testimony, and exhibits, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

### ISSUES

1. Was there just cause to impose discipline in this matter?
2. If so, was the discipline imposed just and appropriate under the circumstances?

### FINDINGS OF FACT

#### Background of Case

This matter arises following a previous appeal involving the same parties<sup>2</sup>. In that case, ODOT imposed a suspension without pay upon Williams and the discipline was served. Upon additional investigation, ODOT attempted to rescind or expunge the discipline and then proceeded to terminate Williams. Summary Judgment was granted in that case, finding that ODOT was without authority to rescind the first final disciplinary action, voiding the expungement, and reinstating the previous disciplinary action of March 3, 2010 of a suspension without pay for ten days. The Order, issued on October 18, 2010, specifically provided that there “is nothing in this Order which prevents DOT from disciplining the Appellant for the additional misconduct, including dishonesty, based solely upon new evidence not included in the previous Suspension without Pay.” Following that Order, ODOT proceeded to discipline Williams based on information that became known or was discovered after the Suspension without Pay. On November 17, 2010, Williams was terminated and this appeal was commenced.

Williams was a classified employee of ODOT, employed as a Transportation Specialist III. Williams was discharged from his position for “willful violation of the Oklahoma Personnel Act, the Ethics Commission Rules, and Merit Rules; Misconduct; Conduct Unbecoming A Public Employee, and Just Cause” as further detailed in the

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<sup>2</sup> See GLEN D. WILLIAMS v. OKLAHOMA DEPARTMENT OF TRANSPORTATION, Case No. MPC 10-293.

Specifics of Cause issued by ODOT (Joint Exhibit 9). The Specifics of Cause listed some of the same facts and evidence as the previous discipline, however included a number of facts and issues discovered after it was imposed.

ODOT asserted that Williams was a long-term, trusted employee. His supervisors believed his version of the facts and believed his misconduct was caught and remedied before it got worse. Williams was suspended without pay for the misconduct discovered at that time. At the insistence of the General Counsel, additional investigation was undertaken which uncovered additional wrongdoing which is the basis of this disciplinary action. Williams argued that the entire matter was covered in the first disciplinary action and there was nothing new here. As such, Williams claims he is being disciplined twice for the same offenses.

#### The Testimony

The parties offered the testimony of seven (7) witnesses. All witnesses were properly sworn and provided testimony under oath.

Alva Martin is the District 1 County Commissioner for Mayes County. He became acquainted with Williams as a result of a bridge project that Williams assisted with. Martin had two additional projects that needed to have all of the right of ways in place in order to qualify for stimulus money. He stated that Williams recommended that the County outsource those services to an individual named Tyler Williams (hereinafter "Tyler"). Williams assured him that they were not related or in any way connected. Martin states that Mayes County hired Tyler but he never met him. He said that Williams indicated that he could also help the County recover leftover funds from other projects but not to tell anyone. Williams invoiced Mayes County \$7000.00 for this service and Martin became concerned about the propriety of the invoice. He contacted ODOT and asked about the invoice. Williams called him back and told him to forget about the invoice. The entire situation made Martin very uncomfortable. Martin also identified a number of invoices he received for services allegedly performed by Tyler which indicated that they should be paid to a "Vickie Williams" (Joint Exhibit 14, pgs. 9-12). Martin stated that Williams had done a good job prior to these incidents, and identified a letter of acknowledgement that he had written (Joint Exhibit 17). Martin stated that he

observed Williams in Mayes County on several occasions and he was always driving an ODOT vehicle.

James Pruett is a local government division project manager. He testified that returning unused project funds to the local governments was a normal function of ODOT and is provided to them as a free service. He received the e-mail from Martin regarding the “finder’s fee” invoice from Williams and forwarded it on to his supervisor (Joint Exhibit 4, pg. 9-10).

Robert Blackwell is the Manager of Acquisitions at ODOT. He is tasked with acquiring right of way for state projects. Blackwell supervises Williams, who performs the same services for local governments. He indicated that Williams is there to assist the counties in the acquisitions, not to do it himself. He became aware of Williams invoice to Mayes County for the “finder’s fee” on the unused funds. Blackwell testified that charging the fee is not appropriate as this is part of Williams’ normal job duties. He stated that he met with Williams, Harms and others to discuss the invoice. He said that Williams was told to “come clean” and he admitted to sending the invoice. Williams was very remorseful, explained that he did not receive the fees and would cancel the invoice. Again, Williams was asked if there was anything else and he replied “no”. Another meeting was held to discuss additional accusations regarding Tyler Williams’ invoices. Williams denied having anything to do with those invoices. Williams told them that Vickie Williams was Tyler’s wife and he was just helping Tyler get started in the acquisition business. Blackwell testified that it is not improper or unusual to recommend outside sources to the counties to assist in the acquisitions. He testified that at the second meeting, Williams insisted that he had not received any money for these services and that it was all going to Tyler and Vickie. Blackwell stated that after the suspension, they had a third meeting where Williams finally admitted that Vickie was his wife. Blackwell admitted that, up to that point, Williams had been an excellent employee and received “exceeds standards” on his PMPs. He also testified that Williams initiated and greatly improved the local government packet of forms and guidance materials as a tool for them to use (Joint Exhibit 15). He said that several counties wrote letters of appreciation for Williams services (Joint Exhibits 16, 17). Blackwell had some confusion about the dates of the meetings with Williams, however he specifically recalled Williams stating that

Vickie Williams was Tyler's wife. When questioned if his wife was also named Vickie, Williams stated that it was just a coincidence. Blackwell stated that they all believed that Williams was being honest and truthful. Based upon the first two meetings, in an attempt to salvage a good employee, he and Harms made the decision to impose the suspension without pay. He stated that they met with Williams to advise him of this decision. At that time, Williams asked if this was the end of it and Harms replied "yes".

Sam Adkins is an ODOT Manager and acted as the Hearing Officer for Williams' pre-termination hearing. He testified that Williams appeared, after receiving notice of the charges, and was given an opportunity to present evidence. The hearing was conducted in compliance with ODOT policy (Joint Exhibit 11). Following the hearing, he issued his decision, finding that reasonable grounds existed to believe that the charges were true and that the proposed discipline was appropriate (Joint Exhibit 8).

William "Skip" Nicholson is the ODOT General Counsel's Investigator. He stated that the Deputy Director came to him and asked him to look into Williams conduct and to review the actions taken so far. He stated that he was specifically asked to investigate whether there were in fact two Vickie Williams and if there was any evidence that Williams had received any money from the counties. Nicholson identified the transcript of one taped interview with Williams (Joint Exhibit 12). The tape recording had malfunctioned during a previous interview. Nicholson testified that he specifically recalled Williams saying that the Vickie listed on the invoice was Tyler's wife during the first interview. He said that Williams listed his own P.O. Box on the invoices and collected money for Tyler when he was out of town, but he forwarded all of the money to Tyler. Williams initially agreed to provide copies of his bank statements, but later refused to do so. Nicholson stated that Williams never admitted that there was only one Vickie. Cancelled checks from various counties were examined and all were made payable to Vickie Williams and deposited into Williams' bank account. Nicholson said he discovered that a number of the invoices listed Williams' P.O. Box in Moore as well as Williams' cell phone number. One invoice listed Williams' home address. Nicholson stated that Williams' was evasive and continued to deny sending business to Tyler or helping him (Joint Exhibit 12, pg. 4). Nicholson testified that he was finally able to interview Tyler Williams on September 24, 2010 and had the taped interview transcribed

(Joint Exhibit 13). Tyler stated that Williams was his mentor in getting right of way acquisition work with the counties. Tyler stated that he was not married and had no wife named Vickie. Tyler also told him that he gave 40-50% of the money earned on these projects to Williams and stated that he never received any of the money from the checks made payable to Vickie. Tyler also denied ever doing any work for Mayes County. At the end of his investigation, Nicholson issued a 5 page written report, with 45 pages of exhibits. He filed a supplemental report after his interview with Tyler. He testified that all of the invoices attached as exhibits were found on Williams' ODOT computer.

Kurt Harms is the Chief of the Right of Way Division. He said that this entire matter started with the inquiry about the "finder's fee" invoice to Mayes County. He said that he prepared the Specifics of Cause for this action, as well as for the previous suspension without pay action. He said that he thought that Williams' behavior crossed the line, but recommended the suspension without pay, relying on Williams' statements and honesty. He said that initially, he was embarrassed by Williams' actions but still believed him. He said that Williams always insisted that Tyler did the work and that Williams never received any money. Harms testified that the first discipline of suspension without pay was based upon the attempt to charge the finder's fees and using his ODOT computer to generate the invoices for Tyler. He said that Williams' was so adamant that he was only "mentoring" a buddy and that he didn't receive anything from it. Harms wholeheartedly believed him. Harms stated that he is not a professional investigator and initially had no proof that Williams received any money so they agreed to impose the suspension without pay. He said that Williams stated numerous times that Vickie was Tyler's wife. Over time, after the suspension, Williams' story changed and he acknowledged that he acted as a "pass-through" to receive the checks for Tyler when he was traveling. This admission occurred only after he was confronted with the invoices with his PO Box, home address and cell phone listed on them. Harms stated that this action and the decision to terminate Williams' employment was a result of Williams charging and receiving money for his services, on state time, in a state vehicle and for being dishonest about his involvement. Harms stated that although some of the same projects were listed in both Specifics of Cause, there were more incidents and allegations of misconduct. He stated that there were major discrepancies and conflicts regarding

Williams' time keeping, work performed and the locations of his work as set out in the Specifics of Cause. Harms testified that all of the Invoices in Joint Exhibit 14 were found on Williams' ODOT computer. He stated that the Specifics of Cause were not verbatim accounts of everything that was said and that his testimony is accurate to supplement the written account. Harms specifically recalled that Williams was told to "come clean" prior to the first disciplinary action. Although Harms used terms and phrases not contained in the written account, the essence of the allegations did not change. Harms admitted that he used less formal words in his testimony but they were interchangeable with the account set out in the written documents and all meant the same thing. Harms admitted that it was the receipt of money that elevated this situation and he thought that discharge was appropriate because Williams violated the trust of both the Department and the public. He said that perhaps he initially acted too quickly in imposing the suspension but he thought it was for everyone's good to put it behind them, get beyond the incident and get back to work. However, he stated, the lies and the additionally discovered evidence elevated the situation.

Glen Williams testified in his own behalf. Williams denied lying or being dishonest to anyone at ODOT. He said there was no attempt to cover up his actions or to protect himself. Williams stated that he knew Tyler from football and discussed with him the need for individuals to do this type of acquisition work. He agreed to mentor Tyler and show him the ropes. Williams absolutely denied any and all wrong-doing in this matter. He said he always went over and above to help ODOT and the local governments. He admitted that he recommended Tyler to several counties but that was not improper. Williams said that Tyler did all of his own work and that he never helped him. He did admit to notarizing and filing one deed for Tyler, but that he was at the courthouse anyway on other business (Joint Exhibit 6, pgs. 9-11). Williams also said that he only prepared one "sample" invoice for Tyler to show him how to do it. Williams said that his wife, Vickie, sometimes did work for Tyler, but that he did not ever receive any money from that work. He denied receiving any money. Williams denied ever telling anyone that Vickie was Tyler's wife and never thought his wife was an issue in the discipline. He discussed his successes at ODOT. Williams stated that any help he provided to or for Tyler was simply a part of his job in assisting local governments.

Williams stated that his wife has her own bank account and P.O. Box but could not recall the specific numbers or information. He said that the information listed on the invoice might be hers, but admitted that the cell phone number was his. He said it was simply a mistake, erroneously left from a “template” invoice. Williams acknowledges that the first Specifics of Cause stated that he told Harms that Vickie was Tyler’s wife. He said it was wrong but he never made any attempt to correct it. All in all, Williams’ answers were evasive and vague. He was not credible in his denials.

In rebuttal, Kurt Harms again offered testimony. He testified that in his meetings with Williams, he specifically said the Vickie listed on the invoice was a “different” Vickie, not his wife.

#### Discussion of Evidence

Although the same 14 projects were referenced in both Specifics of Cause, the allegations are clearly different. Although the actions in this second discipline stem from the same “series” of events, the allegations are additional and different from the initial allegations against Williams. ODOT’s evidence supports that new information and evidence came to light upon further investigation. This new information includes allegations that Williams lied to his supervisor and that he actually received inappropriate money. The first discipline of suspension without pay was not based upon Williams’ actual receipt of moneys or his dishonesty, both of which were the essential basis for the discharge. Williams claims that ODOT should have discovered all of this information prior to imposing any discipline. This argument is not persuasive. An agency shall not be penalized for trusting and believing its employees. It was Williams’ own lack of candor that contributed to this second action. Other than Williams’ denials, there is no evidence to refute the allegations of ODOT. The sheer number of invoices found on Williams’ ODOT computer contradicts Williams’ testimony. In addition, the invoices contained his wife’s name and his address and cell phone number. It was also critical that Tyler stated that Williams’ received at least 40-50% of the money from the county jobs.<sup>3</sup>

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<sup>3</sup> There was no allegation or evidence that the transcript of Tyler’s interview was incorrect or inaccurate.

The standard of proof in this matter is preponderance of the evidence, not beyond a reasonable doubt. ODOT has met its burden of proof regarding Williams' additional misconduct. Given the gravity of the misconduct and Williams' dishonesty, the discipline of discharge is appropriate.

### CONCLUSIONS OF LAW

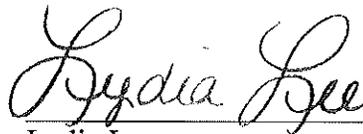
1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and the subject matter in this cause.
2. Any finding of fact which is properly a conclusion of law is so incorporated herein as a conclusion of law.
3. Title 74 O.S. §840-6.5 and OAC 455:10-9-2 states that the Appellee ODOT has the burden of proof in an adverse action and must prove by a preponderance of the evidence that just cause exists for the adverse action and that the discipline imposed is just.
4. 74 O.S. §840-6.5 and Merit Rule 455:10-11-14 states that a permanent classified employee may be discharged for the reasons of misconduct, insubordination, inefficiency, habitual drunkenness, inability to perform the duties of the position in which employed, willful violation of the Oklahoma Personnel Act or the Merit Rules, conduct unbecoming a public employee, conviction of a crime involving moral turpitude or any other just cause.
5. The allegations of misconduct in this second disciplinary action are distinct and additional from the first action, therefore neither claim nor issue preclusion is applicable. ODOT is not precluded from taking this additional disciplinary action as a result of evidence of additional employee violations or misconduct.
6. Appellee ODOT has met its burden to prove, by a preponderance of the evidence, that just cause exists to discipline Williams for his misconduct and his appeal on that ground is denied.
7. Appellee ODOT has met its burden to prove, by a preponderance of the evidence, that the discipline imposed was just, considering all of the circumstances.

8. The record herein supports the imposition of formal discipline of discharge as just and appropriate considering all of the facts and circumstances of this matter.

**ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant Glen Williams, MPC 11-113 be **DENIED** and the appeal is hereby dismissed.

This Order entered this 17th day of January, 2012.

  
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Lydia Lee  
Administrative Law Judge