

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
16 OSP 06508

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HAROLD HALL,	)	
Petitioner	)	
	)	
vs.	)	FINAL DECISION
	)	
NORTH CAROLINA DEPARTMENT OF	)	
TRANSPORTATION, DIVISION OF	)	
MOTOR VEHICLES	)	
Respondent	)	

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THIS MATTER came on for hearing before the Honorable John W. Smith, Temporary Administrative Law Judge, on September 6, 2016, in Wilmington, North Carolina. After considering the allegations in the Petition, the testimony of the witnesses, and the documentary evidence and exhibits admitted, the undersigned makes the following DECISION:

APPEARANCES

**For the Petitioner:**

Norwood P. Blanchard, III  
Crossley McIntosh Collier Hanley & Edes, PLLC  
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**For the Respondent:**

Ashleigh Parker Dunston  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
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ISSUE

Did Respondent dismiss Petitioner with just cause for unacceptable personal conduct, specifically: insubordination; the willful failure or refusal to follow an order from an authorized supervisor; conduct for which no reasonable person should expect to receive a prior warning; and conduct unbecoming a State employee that is detrimental to the State service?

## EXHIBITS

Petitioner's Exhibit Nos. 1, 2, 3, 4, and 5.

Respondent's Exhibit Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20.

## WITNESSES

For the Petitioner: Ms. Cynthia Corpening.

For the Respondent: Ms. Genia Newkirk, Ms. Shannon Williams, Mr. Alan Monteith, Mr. Terry Fuller, Mr. Daniel Ervin, and Petitioner.

**BASED UPON** careful consideration of the sworn testimony of witnesses presented at the hearing, documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW.

In making the FINDINGS OF FACT, the undersigned has weighed all the evidence, or the lack thereof, and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness; any interest, bias or prejudice the witness may have; the opportunity of the witness to see, hear, know and remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether such testimony is consistent with all other believable evidence in the case.

The undersigned has also reviewed the entire file, including but not limited to the proposals for final decision submitted by both the Petitioner and Respondent.

## FINDINGS OF FACT

1. The parties stipulated that they were properly before the undersigned, and that this Tribunal had jurisdiction of the parties and of the subject matter, specifically the allegations that Petitioner was discharged without just cause.
2. The parties stipulated that all parties had been correctly designated and that there was no question as to misjoinder or non-joinder of parties.
3. The parties stipulated to the following facts prior to the hearing:
  - a. Prior to his termination from the N.C. Division of Motor Vehicles, Petitioner, Harold Hall, was employed as a Driver License Examiner, located in Wilmington, NC,
  - b. On Tuesday February 23, 2016, a Pre-disciplinary conference was held. On Friday, February 26, 2016, Petitioner was dismissed for alleged unacceptable personal conduct; specifically: insubordination, willful failure or refusal to follow an order from an authorized supervisor; conduct for which no reasonable person should expect to receive prior warning; and conduct unbecoming a state employee that is detrimental to the State service.
  - c. On May 26, 2016, the Chief Deputy Secretary for the Department of Transportation

affirmed Petitioner's dismissal from the Division of Motor Vehicles for unacceptable personal conduct effective February 26, 2016.

Events of February 5, 2016

4. In December 2009, Petitioner was hired by Respondent, Division of Motor Vehicles ("DMV"), as a Driver License Examiner.
5. At the time of his termination on February 26, 2016, Petitioner was directly supervised by Senior Examiner Genia Newkirk ("SE Newkirk") at the DMV License Office located at 1 Station Road in Wilmington, North Carolina. Petitioner's District Supervisor was Daniel Ervin ("DS Ervin") and his Regional Chief was Terry Fuller ("RC Fuller").
6. On January 29, 2016, in response to the Petitioner and several individuals closing down their work stations early and, therefore, being unable to assist with customers, SE Newkirk sent out an email directive to her staff with specific instructions not to bring end of the day receipts and not to close their workstation until she directed them to do so, (Resp. Ex. 2).
7. On Friday, February 5, 2016, the DMV Office at 1 Station Road in Wilmington, North Carolina was short-staffed and busy shortly before it was time to close at 5 pm. Because it was so busy, at some point after 4:00 pm, SE Examiner Newkirk decided to remove the "Q-Flow Device" from the counter. This device allows customers to independently retrieve a ticket and be serviced in the order received. Although the device was taken off of the counter, SE Newkirk still had the ability to issue Q-Flow tickets to customers, at her discretion. She also was able to speak to the customers individually and to schedule appointments, if necessary.
8. The Q-Flow device generates a list (queue) of waiting customers that can be seen by each of the examiners in the office on their respective computer workstations. The examiners ordinarily use this computerized list to determine how many customers are waiting in queue to be served. However, the supervisor (in this case, SE Newkirk) can take some customers out of the computerized queue. This is frequently done if a customer needs to step out of the office to retrieve some additional documentation, or needs to leave for some other reason. Because the queue list on the computer is not always accurate, examiners are instructed to look at the waiting area to see if any customers are waiting, even if the computerized list does not show any waiting customers.
9. At approximately 4:50 pm, all four (4) employees in the office, including Petitioner, were servicing customers.
10. Surveillance video showed that at approximately 4:51 pm, after Petitioner's customer left, he did not check the Q-Flow screen to see if there were any customers waiting to be serviced. Instead, without notification from SE Newkirk, Petitioner began to count his money and print his end-of-day reports and receipts. (Resp. Ex. 4).
11. During this period of time, an African American male customer with a reflective safety vest was waiting to be seen. This customer had been in and out of the office since approximately 4:15 pm and was issued Q-Flow Ticket #D554 at 4:52 pm. He was not serviced by Petitioner. (Resp. Ex. 4, 5). Petitioner's contention that he "believed" the waiting customer was being served by his supervisor Newkirk is unsupported by other believable evidence. Newkirk was servicing another customer at her desk.
12. At approximately 4:57 pm, Petitioner put on his coat and hat and approached SE Newkirk

- with his money and receipts. SE Newkirk told Petitioner that she "did not ask for his money and there was still [a customer] in the Q." (Resp. Ex. 3, 4).
13. Petitioner returned to his desk with his money and receipts and did not service the available customer who had been waiting with a Q-Flow Ticket. Instead, Petitioner waited at his desk until approximately 4:59:30 pm, laid his money on the scanner between his desk and Examiner Alan Monteith's desk, and walked out of the DMV Office without permission or clearance from SE Newkirk. (Resp. Ex. 4).
  14. Petitioner's contention that his action of leaving his money on the scanner was justified by custom and that Monteith was an appropriate "other person" he could entrust his money to on this occasion is not reasonable or credible, and Petitioner knew his actions were not authorized and were in direct defiance of policies issued by his supervisor. Furthermore, there was never any specific articulated agreement between Petitioner and Monteith that Monteith would become responsible for the funds that Petitioner was leaving in plain view and unsecured. Abandoning the money and leaving without further conversation with his supervisor after stating "I don't know what to do with my money" was without any lawful or reasonable justification.
  15. After Petitioner left, SE Newkirk in an attempt to find out where Petitioner went, chased behind him, but could not find him. SE Newkirk was then left to service the customer in the reflective vest. (Resp. Ex. 4).
  16. At approximately 5:18 pm, Examiner Monteith attempted to bring his and Petitioner's receipts and monies to SE Newkirk. SE Newkirk told Examiner Monteith to return Petitioner's money to where he found it. Examiner Monteith placed Petitioner's paperwork and money back on the scanner and subsequently left. (Resp. Ex. 7).
  17. Petitioner's contention that Newkirk, his supervisor, violated policies by not securing Petitioner's money for him after he left it on the scanner does not excuse or justify or mitigate Petitioner's wrongful conduct.
  18. When Examiner Monteith returned to work on Monday morning, February 8, 2016, he observed the money still on the scanner and he took a picture of the same with his cell phone. (Resp. Ex. 8). Petitioner did not provide the money to SE Newkirk, on February 8, 2016, until after she requested it from him.
  19. SE Newkirk contacted her supervisor, DS Ervin, to inform him of the incident regarding Petitioner and was directed by RC Fuller to obtain statements.
  20. Petitioner provided multiple verbal and written statements to DS Ervin and RC Fuller, ultimately admitting that he did violate SE Newkirk's email directive and that he left his money before exiting the building. (Resp. Ex. 17, 18, and 19).
  21. The Driver License Examiner's Manual states in section 1.4: Duties of a Driver License Examiner that, "The daily duties of a Driver License Examiner are to: ...Collect required fees and account accurately and promptly to the Division for all collections. Examiners are responsible for all funds they receive until those funds are turned over to the Senior Examiner or other person for deposit. Failure to account accurately and promptly may result in immediate dismissal." (Resp. Ex. 11).
  22. The Driver License Examiner's Manual states in section 17.6 that, "Employees are responsible for their daily fund collections and must keep the drawer locked while not at their workstation. Monies must be secured at all times." (Resp. Ex. 11).
  23. The Driver License Examiner's Manual states in section 17.8 that, "The Examiners will be responsible for closing out their work and turning in their report and monies to the Senior or

Lead Examiner at the end of the workday...The monies will be secured in the safe at night." (Resp. Ex. 11).

24. The email directive sent by SE Newkirk to the Examiners requesting them to not bring her any end-of-day reports and monies and not to close down the workstation until notified to do was a reasonable order and was willfully violated by Petitioner. This act constituted insubordination. Also, when SE Newkirk directed Petitioner that there was still a customer in the Q, whom Petitioner failed to service and left the building instead, this act constituted insubordination.
25. Petitioner also willfully violated the Driver License Examiner Manual by not properly turning in his money to SE Newkirk and leaving it unsecured, on top of his scanner, over the weekend. According to the Driver License Examiner Manual, this may result in immediate dismissal,
26. At the time of this conduct, Petitioner had an active written warning issued on October 29, 2014 for unacceptable personal conduct, specifically: insubordination; conduct unbecoming a State employee detrimental to State service; and conduct for which no reasonable person should expect to receive prior warning. (Resp. Ex. 14).

#### Historical Incidents with Petitioner

27. Petitioner's employment with Respondent had been somewhat strained from the outset. Specifically, his "Performance Appraisal Completion of Basic Driver License Examiner Training" stated that "Examiner Hall would debate with the instructors...demonstrated unprofessional skills by the way that he spoke to a training officer in front of the public and will need assistance when he returns to his duty station," Petitioner's performance level at the end of Basic School was an "Improvement Needed" rating. (Resp. Ex. 12).
28. Thereafter, Petitioner received four (4) "Supervisor's Complaints" throughout the course of his employment with Respondent. (Resp. Ex. 13).
29. The first "Supervisor's Complaint," dated June 14, 2010, was for insubordination when Petitioner was told five (5) times by his supervisor to not park in a certain area and continued to do so. (Resp. Ex. 13).
30. The second "Supervisor's Complaint," dated September 7, 2011, was for unprofessional behavior when Petitioner was argumentative and ill-mannered with the training officer during a required training class. (Resp. Ex. 13). Respondent's explanation that he was attempting to be humorous due to a confusing situation is not a satisfactory explanation for conduct that appeared inappropriate to the reporting training officer.
31. The third "Supervisor's Complaint," dated April 3, 2013, was also for unprofessional behavior when Petitioner acted in an unprofessional, confrontational, and unsafe manner, in front of customers. Specifically, Petitioner entered into a confrontation with a fellow examiner and exited his vehicle with a customer left unattended behind the wheel. (Resp. Ex. 13). The Petitioner's explanation that the other person with whom he had the confrontation was also at fault does not excuse the Petitioner's inappropriate conduct.
32. The fourth "Supervisor's Complaint," dated June 12, 2014 was for unprofessional customer service when a customer complained about Petitioner's rudeness. Specifically, that Petitioner failed to properly call the ticket of a customer with an appointment. When the Senior Examiner directed the customer to be serviced at Petitioner's desk, Petitioner yelled to another examiner that "they were getting special treatment." Petitioner then ignored the

- customer when she tried to explain that they had an appointment and had done nothing wrong. (Resp. Ex. 13).
33. On October 29, 2014, Petitioner was issued a Written Warning for unacceptable personal conduct, specifically: insubordination; conduct unbecoming a State employee detrimental to State service; and conduct for which no reasonable person should expect to receive prior warning.
  34. This Written Warning involved a September 11, 2014 customer complaint where Petitioner shouted a customer's name four (4) times across the DMV office and indicated that the office was closing soon. Petitioner was also very curt with the customer. When asked by DS Ervin to provide a written statement regarding the customer's complaint, Petitioner told DS Ervin that, "I'm not going to write a statement because you're going to do what you want anyway..." and turned and left DS Ervin's office. DS Ervin and the customer then heard Petitioner speaking negatively about the customer while on the phone. DS Ervin directed Petitioner back into his office, where Petitioner became so loud and argumentative that he could be heard outside of the office and was finally directed to leave. Petitioner did not submit a written statement regarding the September 11, 2014 as of the date of the written warning. (Resp. Ex. 14). The Petitioner's conduct and comments reflect a clear and open defiant and insubordinate attitude towards his supervisor.
  35. In addition to the Written Warning being issued, Respondent also placed Petitioner on a "Corrective Action Plan" ("CAP") dated October 29, 2014. This CAP informed Petitioner that he was expected to "carry out all reasonable orders from your supervisor... [and] to conduct yourself in a professional manner and refrain from rude and disrespectful conduct toward customers, co-workers, and your supervisors," The CAP was to be reviewed on or after December 27, 2014. Petitioner did not comply with the CAP and was placed on a second one on March 5, 2015. The second CAP involved a February 18, 2015 incident where Petitioner was disrespectful to DS Ervin in front of other examiners. (Resp. Ex. 15).
  36. From the year 2011-2014, Petitioner received an Overall Performance Rating of "Meets Expectations" and "Exceeds Expectations" on his "Performance Dashboard & Appraisals;" however, Petitioner's July 13, 2015 Overall Performance Rating was "Does Not Meet Expectations" based on his active written warning and customer complaints. (Pet. Ex. 1 and Resp. Ex. 16).
  37. Petitioner has a history of engaging in acts that show his willful defiance of his supervisors' orders, his lack of customer service skills, and his inability to acknowledge or take responsibility for his unprofessional and unacceptable behavior, and a clear refusal to make reasonable efforts to remedy his inappropriate pattern of unprofessional conduct vis-à-vis his fellow employees and his supervisors.
  38. The undersigned has carefully considered the testimony of petitioner's previous direct supervisor, Cindi Corpening. She supervised him from 2011 until May of 2015. She gave petitioner favorable comments on each of his year-end performance appraisals (Pet. Ex. 4). While the witness attempts to be supportive of petitioner, she noted that some of his inappropriate conduct she tolerated because "that's just Harold being Harold" (in substance); but her overall testimony was consistent with other testimony that petitioner had a "rigid" or prickly personality and that he tended to view things in a "black and white" manner. While his favorable year-end appraisals, given by Corpening despite a history of multiple supervisor complaints, might serve to mitigate his conduct in a close case, this is

not such a case. Despite the efforts of Ms. Corpening and others to work with petitioner, petitioner's final incident reflects a consistent pattern of unacceptable behavior that the testimony of Ms. Corpening does not persuasively mitigate.

39. The undersigned has also considered petitioner's evidence of a written compliment from a citizen-customer and the efficiency with which he worked during some portions of his tenure; but finds that on balance they do not override the egregiousness of his conduct in February of 2016. The Respondent has carried its burden on the conduct justifying its actions and has carried its burden that its decision to discharge petitioner was an appropriate action considering all of the circumstances.

### CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings on a Petition pursuant to Chapter 126 of the General Statutes, and the Office of Administrative Hearings has jurisdiction over both the parties and the subject matter as such.
2. At the time of his discharge, Petitioner was a career State employee subject to the provisions of the State Personnel Act, N.C.G.S. § 126-1 *et seq.* Petitioner, therefore, could only "be warned, demoted, suspended or dismissed by" Respondent "for just cause." 25 NCAC 01J .0604(a).
3. One of the two bases for "just cause" is "unacceptable personal conduct," 25 NCAC 01J .0604(b), which includes, *inter alia*, "conduct for which no reasonable person should expect to receive prior warning," "conduct unbecoming a state employee that is detrimental to state service," and "insubordination." 25 NCAC 01J .0614(7), (8)(a), and (8)(e). "Insubordination," in turn, is defined as "willful failure or refusal to carry out a reasonable order from an authorized supervisor." 25 NCAC 01J .0614(7).
4. Respondent complied with the procedural requirements for dismissal for personal conduct pursuant to 25 NCAC 01J .0608 and .0613.
5. Senior Examiner Genia Newkirk was an authorized supervisor of Petitioner and her January 29, 2016 email constituted a reasonable order.
6. Petitioner's willful violation of Senior Examiner Newkirk's order to not bring the end of day reports until requested and to not close his workstation prior to notification from her constituted unacceptable personal conduct and just cause for dismissal pursuant to 25 NCAC 1J .0614.
7. Petitioner's willful violation of the Driver License Examiner Manual, specifically section 1.4, when he left his monies on top of the scanner and left the DMV office constituted unacceptable personal conduct and just cause for dismissal pursuant to 25 NCAC 1J .0614.
8. Petitioner's blatant refusals to carry out reasonable orders from duly authorized supervisors and management, historical failure to follow orders, prior active written warning for insubordination, and his "Does Not Meet Expectations" performance review were the justification for Respondent's termination of Petitioner.
9. Respondent dismissed Petitioner with just cause for unacceptable personal conduct, specifically: insubordination; the willful failure or refusal to follow an order from an authorized supervisor; conduct for which no reasonable person should expect to receive a prior warning; and conduct unbecoming a State employee that is detrimental to the State service; each of which constitutes sufficient justification based on these facts.

10. Therefore, Respondent has met its burden of proof and established by substantial evidence in the record that it had just cause to terminate its employment of Petitioner for unacceptable personal conduct.
11. On the basis of the above-noted Findings of Fact and Conclusions of Law, the undersigned makes the following:

#### FINAL DECISION

**NOW THEREFORE**, based upon the foregoing Findings of Fact and Conclusions of Law, the Respondent met its burden of proof showing that it had just cause to dismiss the Petitioner for Unacceptable Personal Conduct pursuant to 25 NCAC 01J .0614(7), (8)(a), (8)(e) and N.C. Gen. Stat. § 126-35. The Petition is therefore **DISMISSED** and the decision of the agency is **AFFIRMED**.

#### NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34. Under the provisions of North Carolina General Statute § 126-34.02, an aggrieved party in a contested case under this section shall be entitled to judicial review of a final decision by appeal to the North Carolina Court of Appeals as provided in North Carolina General Statute § 7A-29(a). The procedure for the appeal shall be as provided by the rules of appellate procedure. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.

IT IS SO ORDERED.

This the 7th day of October, 2016.

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John W Smith  
Administrative Law Judge