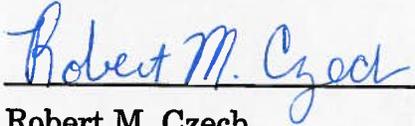


Re: Abdulhaq Al-Jurhanni

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

**DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
FEBRUARY 5 2015**



**Robert M. Czech
Chairperson
Civil Service Commission**

**Inquiries
and
Correspondence**

**Henry Maurer
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312**

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 05816-14

AGENCY DKT. NO. 2014-2110

**IN THE MATTER OF ABDULHAQ AL-JURHANNI,
DEPARTMENT OF CHILDREN AND FAMILIES—
MIDDLESEX COASTAL LOCAL OFFICE.**

Ray Montgomery, Staff Representative, for appellant Abdulhaq Al-Jurhanni pursuant to N.J.A.C. 1:1-5.4(a)(6) (AFSCME Council I)

Arupa Barua, Deputy Attorney General, for respondent Department of Children and Families—Middlesex Coastal Local Office (John J. Hoffman, Acting Attorney General of New Jersey, attorney)

Record Closed: October 22, 2014

Decided: January 8, 2015

BEFORE **KELLY J. KIRK, ALJ**:

STATEMENT OF THE CASE

Department of Children and Families—Middlesex Coastal Local Office terminated Assistant Family Service Worker 2 Abdulhaq Al-Jurhanni pursuant N.J.A.C. 4A:2-2.3(a), for incompetency, inefficiency or failure to perform duties, inability to perform duties, conduct unbecoming a public employee, misuse of public property, including motor vehicles, and other sufficient cause, for multiple suspensions of his driver's license,

failure to disclose the suspensions, and driving State vehicles and transporting families while his driver's license was suspended.

PROCEDURAL HISTORY

On or about June 7, 2013, Department of Children and Families—Middlesex Coastal Local Office served Abdulhaq Al-Jurhanni with a Preliminary Notice of Disciplinary Action (PNDA), suspending him without pay. (R-1.) A departmental hearing was held on December 16, 2013, and the charges of incompetency, inefficiency or failure to perform duties, inability to perform duties, conduct unbecoming a public employee, misuse of public property, including motor vehicles, and other sufficient cause were sustained. (R-2.) On or about January 24, 2014, Department of Children and Families—Middlesex Coastal Local Office served Abdulhaq Al-Jurhanni with a Final Notice of Disciplinary Action (FNDA), removing him effective June 7, 2013. (R-2.)

Al-Jurhanni appealed and the Civil Service Commission transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13 to the Office of Administrative Law (OAL), where it was filed on May 12, 2014, and assigned to the undersigned on August 12, 2014. The hearing was held on October 15, 2014, and the record remained open for two weeks for post-hearing submissions. The record closed on October 22, 2014.

EVIDENCE AND FINDINGS OF FACT

The Department of Children and Families (DCF) presented the testimony of Edna Rosa and Lori Sanders. Al-Jurhanni testified on his own behalf, and also presented the testimony of Michael Sladden.

Background

The following material facts are largely undisputed. Accordingly, I **FIND** them to be the **FACTS** of this case:

Abdulhaq Al-Jurhanni was employed by the DCF as a youth worker at the Ewing Residential Treatment Center in Trenton, New Jersey, from June 1, 2004, until it closed in 2011. Thereafter, from April 9, 2011, until his removal on June 7, 2013, he was employed as an Assistant Family Service Worker 2 (AFSW2) at the Middlesex Coastal Local Office in Perth Amboy, New Jersey.

Edna Rosa has been employed by the DCF Division of Child Protection and Permanency (formerly Division of Youth and Family Services) for forty years, and she has been the local office manager at the Perth Amboy office for approximately nine years. She is responsible for the overall function of the Perth Amboy office, which includes disciplinary actions.

Between December 12, 2009, and June 7, 2013, Al-Jurhanni's date of termination, his driver's license was suspended at least seven times. (R-6.) Al-Jurhanni's license has also been suspended subsequent to his termination. (A-5.) Specifically, during his employment with the DCF, his license was suspended and restored as follows: 1) suspended December 20, 2009, and restored March 12, 2010; 2) suspended June 13, 2010, and restored June 15, 2010; 3) suspended December 12, 2010, and restored January 6, 2011; 4) suspended July 12, 2011, and restored August 5, 2011; 5) suspended March 25, 2012, and restored April 16, 2012; 6) suspended June 29, 2012, and restored September 19, 2012; and 7) suspended March 17, 2013, and restored April 15, 2013. Thus, while employed as an AFSW2 at the Perth Amboy office, Al-Jurhanni's driver's license was suspended at least four times, and the State Cars Discharge Summary (Log) reflects that Al-Jurhanni drove State vehicles while his driver's license was suspended. The Log reflects the dates and times the vehicles were assigned/dispatched, the dates and times the vehicles were returned, to whom the vehicles were assigned/dispatched, the license plate numbers of the vehicles assigned/dispatched, and the locations the vehicles were driven. (R-7.)

Specifically, during the suspension from July 12, 2011, to August 5, 2011, Al-Jurhanni drove State vehicles as follows: Tuesday, July 19, 2011, to Thursday July 21, 2011; Thursday, July 21, 2011, to Thursday, July 21, 2011; Thursday, July 21, 2011, to Thursday, July 21, 2011; Monday, July 25, 2011, to Wednesday, July 27, 2011; and

Thursday, July 28, 2011, to Thursday, July 28, 2011. During the suspension from March 25, 2012, to April 16, 2012, he drove State vehicles as follows: Monday, March 26, 2012, to Monday, March 26, 2012; Tuesday, March 27, 2012, to Tuesday, March 27, 2012; Wednesday, April 11, 2012, to Friday, April 13, 2012; and Friday, April 13, 2012, to Friday, April 13, 2012. Finally, during the suspension from June 29, 2012, to September 19, 2012, he drove State vehicles as follows: Tuesday, July 10, 2012, to Tuesday, July 10, 2012; Thursday, July 12, 2012, to Thursday, July 12, 2012; Tuesday, July 17, 2012, to Tuesday, July 17, 2012; Wednesday, July 18, 2012, to Thursday, July 19, 2012; Friday, July 20, 2012, to Friday, July 20, 2012; Monday, July 23, 2012, to Monday, July 23, 2012; Tuesday, July 24, 2012, to Wednesday, July 25, 2012; Thursday, July 26, 2012, to Thursday, July 26, 2012; Friday, July 27, 2012, to Friday, July 27, 2012; Friday, July 27, 2012, to Friday, July 27, 2012; Thursday, August 2, 2012, to Friday, August 3, 2012; Tuesday, August 7, 2012, to Wednesday, August 8, 2012; Monday, August 13, 2012, to Wednesday, August 15, 2012; Tuesday, August 14, 2012, to Thursday, August 16, 2012; Monday, August 20, 2012, to Monday, August 20, 2012; Friday, August 24, 2012, to Monday, August 27, 2012; Tuesday, August 28, 2012; Tuesday, August 28, 2012, to Tuesday, August 28, 2012; Tuesday, August 28, 2012, to Wednesday, August 29, 2012; Wednesday, September 5, 2012, to Wednesday, September 5, 2012; Wednesday, September 5, 2012, to Friday, September 7, 2012; Monday, September 10, 2012, to Wednesday, September 12, 2012; Wednesday, September 12, 2012, to Friday, September 14, 2012; Friday, September 14, 2012, to Monday, September 17, 2012; and September 18, 2012 (to Monday, September 24, 2012).

Many of the dates specified included multiple trips and/or locations. Al-Jurhanni never notified Rosa of the foregoing suspensions, nor was Rosa notified of the foregoing suspensions by any other supervisor as would have been required had Al-Jurhanni notified any other supervisor.

Al-Jurhanni's five-year Driver History Abstract (Abstract), dated September 26, 2014, (Abstract) reflects violations as follows: failure to wear seat belt (05/03/10), unlicensed driver (08/05/11 and 08/22/12), speeding 80 in 65-mph zone (08/05/11), improper right and left turns (08/19/12), and using hand-held cell while driving

(09/21/12). (R-6.) Additionally, the Abstract reflects nonpayment of insurance surcharge (12/20/09, 06/30/10, 12/12/10, 03/25/12, 07/15/12, 03/17/13 and 08/11/13), Parking Offenses Adjudication Act (07/12/11 and 05/22/13), Point System Advisory Notice Driver Improvement Program (09/21/11 and 12/12/12), involved in accident—police report (04/21/12 and 12/04/12), failure to appear (04/30/12, 06/04/12, 06/29/12 and 08/03/12), operate during suspension period (12/12/12 and 04/19/13), "uninsured motor—insur cancel—reg" (08/14/13, 09/13/13 and 09/17/14); and "uninsured motor—insur cancel—licen" (09/13/13 and 10/13/13).

On April 21, 2013, the Motor Vehicle Commission issued to Al-Jurhanni an Order of Suspension, reflecting that his driving privilege was suspended as of April 19, 2013, for 180 days because he operated a motor vehicle during a period of driving privilege suspension. (A-1.) On May 9, 2013, the Motor Vehicle Commission issued to Al-Jurhanni an Advisory Notice, acknowledging receipt of his request for a hearing. (A-2.) On May 22, 2103, the Motor Vehicle Commission issued to Al-Jurhanni an Order of Suspension, reflecting that it was reducing his suspension from 180 days to 35 days, changing his eligible restoration date from October 16, 2013, to May 24, 2013. (A-3.) His license was restored on May 31, 2013. (R-6.)

Al-Jurhanni's daily job duties were transporting children or their parents to psychological and medical appointments, transporting children to visit their parents in removal cases, transporting them either to the office or a specific location, supervising the visits, and documenting his activities.

Michael Sladden was employed by the State of New Jersey at the Ewing Residential Treatment Center from 1982 until it closed in 2011, and he retired from his employment with the State. Sladden was a youth worker supervisor from 1993 to 2011, and was Al-Jurhanni's supervisor on the midnight shift for three to four years.

Al-Jurhanni was disciplined in 2009 and 2010. In 2009, he was suspended for ten days for falsifying records—his timesheet. In 2010, he was suspended for ten days for insubordination.

Testimony

Edna Rosa

Edna Rosa testified that Al-Jurhanni was on workers' compensation from November 2012 until April 2013. On or about the date he was scheduled to return, he advised Rosa that his driver's license was suspended. The policy is that if an employee is out for three months or more, a driver abstract must be run to verify that the employee's driver's license is valid and fingerprints must be run for background purposes. As a result of an aide advising Al-Jurhanni of these requirements, Al-Jurhanni told Rosa that his license was suspended and that he did not have the money to restore his license. Rosa advised him to take care of the suspended license and sent him home. An accommodation was not possible because Al-Jurhanni's primary function was transporting children and families from their homes to the Perth Amboy office or other locations, and to appointments. There were no alternate duties for him to perform.

Rosa notified employee relations of the situation and then waited for employee relations to advise what course of action was to be taken. In the meantime, Al-Jurhanni requested a meeting because he wanted to know why he could not return to work. Rosa met with him and told him that he could not return to work without a valid driver's license when the bulk of his job is transporting clients—children and parents—and she could not accommodate him. A valid driver's license was a condition of his employment. She estimated that 90 percent of Al-Jurhanni's duties were to transport children and parents, and 10 percent of his duties were in the office, documenting what he did during the day, after transporting and observing and supervising visits.

Rosa sought Al-Jurhanni's removal because she became aware of his driving record after contacting employee relations. DCF removes children from parents, in some instances because of parents placing children at risk of harm, and in her opinion Al-Jurhanni was placing families at risk of harm by driving on a suspended license and the DCF cannot afford to have a parent or child harmed while being transported. Rosa stressed the importance of having a valid driver's license because the DCF is charged

with the care and safety of the children referred to the DCF, and Al-Jurhanni spent a lot of time driving children and families to appointments and visiting at homes.

Al-Jurhanni's driver's license was suspended when the PNDA was issued, and when the departmental hearing was held. Rosa reviewed the Abstract and noted that as of September 17, 2014, his driver's license was again scheduled to be suspended.

Lori Sanders

Lori Sanders is employed by the DCF in the Division of Child Protection and Permanency Central Office. She has been employed by the DCF for ten years. For the past year her title has been special projects manager. As special projects manager she educates and informs local office managers and area directors on current policy and practice; she oversees several State-wide initiatives that look at practice and services; and she serves as a policy witness for the Central Office. She was previously employed as the office manager in the Newark Local Office for nine years. In her capacity as a local office manager, one of her responsibilities was to make sure staff practices were in accordance with policies and procedures.

Sanders testified extensively as to two DCF policies and a State Circular, regarding driver's licenses and State vehicles, to wit: DCF Department Policy 006-2007, effective July 15, 2007, revised July 29, 2009, entitled "Driver's License Monitoring" (R-8); State of New Jersey Department of the Treasury Circular No. 12-11-ADM, effective April 20, 2012, superseding 10-05ADM, 88-30-GSA, 88-02-GSA and 89-01-GSA, the subject of which is "State Vehicular Assignment and Use Policy" (R-9); and DCF Policy Manual, Volume III, Chapter E, Subchapter 1, Issuance 01-2014, effective July 8, 2014, superseding 006-2007; 023-2008; 024-2008; 001-2010; 002-2010 and 022-2008, regarding "Use of State Vehicles." Sanders testified that she is familiar with the foregoing policies, and that the policies are available on the DCF intranet. She did not know if Al-Jurhanni had been provided with copies of the policies. However, she testified that no employee who transitioned to AFSW2 would have been allowed to begin the job until orientation and there would have been policy distributed relative to driver's licenses, because that is a major specification for that job title. She did not

know if Al-Jurhanni attended orientation, and she did not know what orientation encompassed.

Sanders testified about the duties and responsibilities of a youth worker and AFSW2. Sanders also testified as to her understanding of Al-Jurhanni's job as youth worker and as an AFSW2, but she had no firsthand knowledge relative to Al-Jurhanni's employment.

Michael Sladden

Michael Sladden testified that, as a youth worker, Al-Jurhanni was required to have a valid driver's license. Al-Jurhanni advised Sladden once that his license was suspended. As required, Sladden notified his immediate supervisor. An accommodation was made for Al-Jurhanni in that, if transportation was needed, another staff member would do it. The need for transportation was very rare during the midnight shift, which was a factor in allowing an accommodation, and the suspension was not for a long period. The children were asleep when the midnight shift arrived, and the last thing the youth workers did before the midnight shift was wake the children for school. During the night, Al-Jurhanni mainly monitored and checked rooms.

Sladden testified that Al-Jurhanni was a good employee, satisfactory or above, although another supervisor was responsible for Al-Jurhanni's performance assessments. With respect to disciplinary history, Sladden was aware of one incident involving a verbal altercation. Sladden testified that Al-Jurhanni had gotten in Sladden's face and was very loud. A disciplinary action resulted, but the two resolved their differences and Sladden still felt that Al-Jurhanni was a good employee, and that it was an isolated incident.

Abdulhaq Al-Jurhanni

Abdulhaq Al-Jurhanni testified that during his employment at the Ewing Residential Treatment Center, he monitored children on and off the grounds. He worked all the shifts. He started on the evening shift, then shortly thereafter he worked

the morning shift, and his final post was the midnight shift. Al-Jurhanni was aware of a few suspensions of his driver's license during his employment at the Ewing Residential Treatment Center. He testified that he reported the suspensions to his immediate supervisor at the time, and that his supervisors had accommodated him. However, he testified that he was not allowed to drive his vehicle onto the facility grounds, and that while employed at the Ewing Residential Treatment Center he never drove a vehicle without a valid driver's license.

During his employment at the Perth Amboy office, he was on an approved leave of absence from November 29, 2012, until April 26, 2013. He testified that upon his return on April 26, 2014, he gave his driver's license to the aide and he was approved to drive. He further testified that he was not aware that his license was suspended, and he transported a child that day. Al-Jurhanni was again out of work from April 26, 2013, until May 3, 2013, because he was admitted to the hospital because of an erratic heartbeat. He returned to work on May 10, 2013.

When he returned to work, he was aware that his driver's license was suspended. Al-Jurhanni contacted Rosa and his manager. He spoke to Rosa about Motor Vehicle trying to suspend his license. Rosa asked him if he could get it taken care of, and he told her "yes" and that his lawyer was on top of it, mainly because it claimed he did not appear for his appeal and that was why he was suspended. Al-Jurhanni testified that during the meeting with Rosa and his manager, he was told to take all time he had on books to try to get it resolved. He appealed to the Motor Vehicle Commission and his request for a hearing was denied, but the suspension was reduced. He gave the letter to the aide, who allowed him to return to work, but not to drive. When Rosa returned from vacation, he, Rosa, his manager, and the aide had a meeting and he realized he was being disciplined because of his Abstract.

Al-Jurhanni also testified that after the Ewing Residential Treatment Center closed, he did not receive orientation training for his new job as AFSW2. He later testified that he did receive training, but could not recall what the training was about. He denied being familiar with the policies testified to by Sanders. He denied ever accessing them on the intranet or being instructed to review the policies. However, he

admitted that he was required to have a valid driver's license as a youth worker and as an AFSW2.

He testified that there were times his license was suspended. When he received a letter stating his license was suspended for surcharges, he paid the fees, restored his license and returned to work. He did not notify his supervisor during the other periods of suspension because he did not know his license was suspended. If he had known his license was suspended he would have reported it to his supervisor because that is what he has always done if his license was suspended. He admitted that during the departmental hearing his driver's license was suspended.

Factual Discussion

It appeared from the testimony that Sanders had no first-hand knowledge of Al-Jurhanni's job duties at the Ewing Residential Treatment Center or at the Perth Amboy office, though she had been a local office manager in another office during the course of her employment. Further, there was no evidence that Al-Jurhanni had been provided with or reviewed any of the policies identified by Sanders, and one of the policies (Use of State Vehicles) was issued on January 1, 2014, after Al-Jurhanni's termination. Sanders had no knowledge of the contents of the prior policy that was superseded, and it therefore was not established what policy was in effect during Al-Jurhanni's employment with respect to State vehicles. Additionally, Sanders repeatedly testified that all employees of the State of New Jersey must maintain a valid New Jersey driver's license as a condition of employment, which was not accurate. In view of the foregoing, I ascribe little weight to Sander's testimony.

Job Specification 66002 for Youth Worker and Job Specification 54249 for AFSW2 both state: "License: Appointees will be required to possess a driver's license valid in NJ only if the operation of a vehicle, rather than employee mobility, is necessary to perform essential duties of the position." Although Al-Jurhanni testified that he was not familiar with the policies on driver's licenses and use of State vehicles, and that he had never accessed them on the intranet, he nevertheless admitted that he was aware that a valid driver's license was a requirement of both jobs. Further, even absent such

admission, a valid driver's license is required to operate a motor vehicle. Therefore, any suggestion that Al-Jurhanni did not know that he was required to maintain a valid driver's license is rejected because he routinely operated a vehicle at work.

While Al-Jurhanni may have notified his supervisors of one or more suspensions while employed at the Ewing Residential Treatment Center, the evidence showed that a suspension of his driver's license while he was employed as a youth worker would not have had any significant impact upon his job duties, as transportation was not a primary, or even common, function of that job. However, unlike his job as a youth worker, transportation was the primary function of his job as an AFSW2. Al-Jurhanni testified that he did not know his license was suspended three times from 2011 to 2012, so he did not notify his supervisor, but that he did know his license was suspended in 2013, so he did notify his supervisor. He also testified that he did not know his license was suspended on April 19, 2013 when he initially returned to work after being on leave. However, it is not plausible that Al-Jurhanni was completely unaware of the prior suspensions or that upon receipt of suspension notices he always restored his license the same day. Rather, it seems more likely that Al-Jurhanni knew that he would be unable to work with a suspended license, so he never reported the suspensions. Moreover, it seems more likely that the only reason he reported the suspension in 2013 was that he had been advised that an abstract was going to be run after his return from an extended leave and he was unable to pay the fine to get his license restored. Thus, his employer would discover the suspension.

Having had an opportunity to consider the evidence and to observe the witnesses and make credibility determinations based on the witnesses' testimony, I **FIND** the following additional **FACTS** in this case:

Al-Jurhanni's jobs as a youth worker and as an AFSW2 both required that he have a valid NJ driver's license. Al-Jurhanni was aware at all times that a valid driver's license was a requirement of both jobs. Al-Jurhanni was aware that he was required to notify his supervisor if his driver's license was suspended. Al-Jurhanni's primary job duty as an AFSW2 was transportation of children and families. Al-Jurhanni's license was suspended multiple times from 2011 to 2012. He was aware of the license

suspensions, but failed to report the suspensions to his supervisors. Al-Jurhanni operated State vehicles to transport children and families while his license was suspended at least twenty-nine days (days vehicles were logged out) and possibly as many as forty-nine days (vehicles were logged out for multiple days) that his license was suspended. Many of those days involved multiple trips.

LEGAL ANALYSIS AND CONCLUSIONS

N.J.S.A. 11A:1-1 through 12-6, the "Civil Service Act," established the Civil Service Commission in the Department of Labor and Workforce Development in the Executive Branch of the New Jersey State government. N.J.S.A. 11A:2-1. The Commission establishes the general causes that constitute grounds for disciplinary action, and the kinds of disciplinary action that may be taken by appointing authorities against permanent career service employees. N.J.S.A. 11A:2-20. N.J.S.A. 11A:2-6 vests the Commission with the power, after a hearing, to render the final administrative decision on appeals concerning removal, suspension or fine, disciplinary demotion, and termination at the end of the working test period, of permanent career service employees.

N.J.A.C. 4A:2-2.2(a) provides that major discipline includes removal, disciplinary demotion, and suspension or fine for more than five working days at any one time. An employee may be subject to discipline for reasons enumerated in N.J.A.C. 4A:2-2.3(a), including incompetency, inefficiency or failure to perform duties, inability to perform duties, conduct unbecoming a public employee, misuse of public property, including motor vehicles, and other sufficient cause. N.J.A.C. 4A:2-2.3(a)(1), (3), (6), (8), and (12). In appeals concerning such major disciplinary actions, the burden of proof is on the appointing authority to establish the truth of the charges by a preponderance of the believable evidence. N.J.A.C. 4A:2-1.4; N.J.S.A. 11A:2-21; Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

Al-Jurhanni is charged with incompetency, inefficiency or failure to perform duties, inability to perform duties, conduct unbecoming a public employee, misuse of public property, including motor vehicles, and other sufficient cause pursuant to

N.J.A.C. 4A:2-2.3(a). The burden of proof is on the DCF to prove the charges by a preponderance of the credible evidence. The PNDA and FNDA both allege that the incidents giving rise to the charges and the dates they occurred are as follows:

As an AFSW2, your primary responsibility is to transport children and families for DCF. In order to perform the essential functions of your job, you must possess a valid Driver's License. Your Driver's License has been suspended a number of times since 2008 but you failed to disclose these suspensions and you did not inform your manager of these suspensions. In fact, you drove State vehicles and transported DCF families at various times while your Driver's License was suspended. Your misconduct created a significant risk of harm to the children, families and workers who you transported. Moreover, you misused State vehicles by driving them with a suspended license. Recently when confronted by your Supervisor about the status of your Driver's License you admitted that it was suspended. Your misconduct cannot be tolerated.

N.J.A.C. 4A:2-2.3(a)(6) does not define conduct unbecoming. However, the Appellate Division has held that conduct unbecoming a public employee is "any conduct . . . which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services." In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). In Emmons, which involved a police officer charged with conduct unbecoming, the Appellate Division also held that conduct unbecoming is "any conduct which adversely affects the morale or efficiency of the bureau." Ibid. What constitutes conduct unbecoming a public employee is primarily a question of law. Karins v. Atl. City, 152 N.J. 532, 553 (1998).

The Division of Child Protection and Permanency, within the DCF, is the State agency responsible for the care, custody, guardianship, maintenance, and protection of children. N.J.S.A. 30:4C-2(a). Certainly, an AFSW2 with a driver abstract reflecting a history of numerous violations and suspensions would tend to destroy the public's respect and confidence in the DCF's operations, and even more so an AFSW2 who repeatedly operated State vehicles and transported children and families during periods of suspension. Accordingly, I **CONCLUDE** that Al-Jurhanni engaged in conduct unbecoming a public employee.

Additionally, State policies regarding the use of State vehicles require that an employee whose job responsibilities require driving must possess a valid driver's license. Further, pursuant to N.J.S.A. 39:3-10, no person may drive a motor vehicle on a public highway in this state unless the person is under supervision while participating in a behind-the-wheel driving course or is in possession of a validated permit, or a probationary or basic driver's license. Accordingly, consistent with the law, if Al-Jurhanni's license was suspended, Al-Jurhanni could not perform his primary job duty of transporting children and families. At the time Al-Jurhanni was issued a PNDA, and at the time of the departmental hearing, his license was suspended, and he was therefore unable to drive. Accordingly, I **CONCLUDE** that Al-Jurhanni was unable to perform his duties.

With regard to the charges of incompetency, inefficiency or failure to perform duties, and misuse of public property, I **CONCLUDE** that the evidence falls short of establishing the truth of these charges.

Per the FNDA, Al-Jurhanni was removed from his employment effective June 7, 2013. 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 Commission 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. However, in an instance where an employee commits an act sufficiently egregious, removal may be appropriate notwithstanding the lack of a prior history of infractions. See, e.g., In re Hermann, 192 N.J. 19 (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 (1980); Bowden v. Bayside State Prison, 268 N.J. Super. 301, 306 (App. Div. 1993), certif. denied, 135 N.J. 469 (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). The Supreme Court has noted that "the question for the courts is 'whether such punishment is so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness.'" Ibid. (quoting In re Polk, 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. Carter, supra, 191 N.J. at 485.

As an AFSW2, Al-Jurhanni was employed by an agency responsible for the care, custody, guardianship, maintenance, and protection of children. His license was suspended at least seven times during his employ with the DCF, and at least three times during his employ as an AFSW2. There can be no dispute that his primary job function was transporting children and families, and there likewise can be no dispute that he drove children and families many, many times while his license was suspended. His Abstract reflects an alarming number of violations and suspensions, and in view of the totality of the facts and circumstances of this case, I **CONCLUDE** that Al-Jurhanni's conduct rendered him unsuitable for continuation in his position as an AFSW2 and was sufficiently egregious

to warrant removal notwithstanding that his prior disciplinary history consisted of two ten-day suspensions.

ORDER

I **ORDER** that the charges of inability to perform duties and conduct unbecoming a public employee are **SUSTAINED** and that respondent's removal of Al-Jurhanni from his employment as an AFSW2 is hereby **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, P.O. 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.

1/8/15
DATE

Kelly J. Kirk
KELLY J. KIRK, ALJ

Date Received at Agency:

January 8, 2015 (db)

Date Mailed to Parties:

January 8, 2015 (db)

db

APPENDIX

WITNESSES

For Appellant:

Abdulhaq Al-Jurhanni
Michael Sladden

For Respondent:

Edna Rosa
Lori Sanders

EXHIBITS IN EVIDENCE

For Appellant:

- A-1 Motor Vehicle Commission Order of Suspension, dated April 21, 2013
- A-2 Motor Vehicle Commission Advisory Notice, dated May 9, 2013
- A-3 Motor Vehicle Commission Order of Suspension, dated May 22, 2013
- A-4 Unemployment Appeal Letter
- A-5 Driver History Printout, dated September 18, 2014

For Respondent:

- R-1 Preliminary Notice of Disciplinary Action
- R-2 Final Notice of Disciplinary Action
- R-3 (Not in evidence)
- R-4 Job Specification – Youth Worker
- R-5 AFSW2
- R-6 Motor Vehicle Commission Codes and Driver Abstract
- R-7 State Vehicle Log
- R-8 DCF Driver's License Monitoring Policy 006-2007, revised July 29, 2009
- R-9 State Vehicular Assignment and Use Policy Circular
- R-10 NJ DCF Policy Manual – Use of State Vehicles

