

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Santo Bocchinfuso,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 623 C.D. 2014
	:	
State Civil Service Commission	:	Submitted: December 5, 2014
(Department of Transportation),	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER¹**

FILED: April 28, 2015

Santo Bocchinfuso petitions for review of the March 18, 2014 Order of the State Civil Service Commission (Commission), which sustained the decision of the Pennsylvania Department of Transportation (Department) to remove Bocchinfuso from his employment due to the one-year suspension of Bocchinfuso’s Class C driver’s license as a result of his conviction for driving under the influence of alcohol (DUI). On appeal, Bocchinfuso argues that the Commission erred by: (1) concluding that the Department had met its burden of proving that it had just cause to remove him from his employment; and (2) determining that the Department’s

¹ This matter was reassigned to the authoring judge on January 23, 2015.

actions complied with the Governor’s Code of Conduct.² Discerning no error, we affirm.

The complicated factual background preceding Bocchinfuso’s removal from employment due to the one year suspension of his Class C driver’s license are set forth in greater detail in Department of Transportation v. State Civil Service Commission (Bocchinfuso), 84 A.3d 779 (Pa. Cmwlth. 2014) (Bocchinfuso I). We, therefore, summarize only those events relevant to our disposition in this matter.

Bocchinfuso worked for the Department for 20 years, serving the last five as a Senior Civil Engineer Supervisor, Transportation. (Adjudication, Findings of Fact (FOF) ¶ 3.) On July 1, 2012, Bocchinfuso was arrested for DUI and spent that night in prison. (FOF ¶ 4); Bocchinfuso I, 84 A.3d at 781. Bocchinfuso contacted his supervisor, Mary Ann Lang, and advised her that he was calling off work for July 2 and 3, 2012, but would return on July 5, 2012. Bocchinfuso I, 84 A.3d at 781. On July 3, 2012, Bocchinfuso was incarcerated in a New Jersey jail on charges unrelated to his DUI, where he remained until July 16, 2012. Id. at 781-82. Bocchinfuso missed multiple days of work and, following a pre-disciplinary conference (PDC) on July 18, 2012 and an investigation into his whereabouts between July 5 and July 16, 2012, the Department removed Bocchinfuso for being Absent Without Leave (AWOL) via letter dated August 30, 2012. (FOF ¶¶ 5-7);

² The Governor’s Code of Conduct was issued as Executive Order 1980-18 Amended on May 16, 1984 and addresses, *inter alia*, the “[p]rocedures to be followed by agencies under the Governor’s jurisdiction in regard to employees . . . who are formally charged with criminal conduct.” (Governor’s Code of Conduct, Part III, R.R. at 158a.)

Bocchinfuso I, 84 A.3d at 782-83. The August 30, 2012 removal was not based on Bocchinfuso's pending DUI charges.

Bocchinfuso appealed his removal to the Commission, which, on April 8, 2013, sustained Bocchinfuso's appeal and reversed the Department's decision. (FOF ¶¶ 6-7); Bocchinfuso I, 84 A.3d at 782-83.³ The Commission directed the Department to expunge the August 30, 2012 removal letter and a July 19, 2012 letter suspending Bocchinfuso pending the investigation into his being AWOL from Bocchinfuso's record. (FOF ¶ 7.) The Commission also directed the Department to replace the July 19, 2012 suspension letter with "a letter advising [Bocchinfuso] that he is suspended without pay pending investigation, effective July 2, 2012, solely pursuant to the requirements of the Governor's Code of Conduct, pending final resolution of the [DUI] criminal charges brought against him following his arrest on July 1, 2012." (FOF ¶ 7 (emphasis in original).)

In accordance with the Commission's April 8, 2013 directive, one of the Department's labor relations analysts, Anthony Reda, investigated the DUI criminal charges resulting from Bocchinfuso's July 1, 2012 arrest. (FOF ¶ 8.) Reda's investigation revealed that the felony charges against Bocchinfuso "had been reduced to misdemeanors or were not being prosecuted." (FOF ¶ 8.) However, Reda also discovered in that investigation that Bocchinfuso had pleaded guilty to DUI, and that the Department's Bureau of Driver Licensing (Bureau) had suspended Bocchinfuso's Class C driver's license for one year, effective December 3, 2012. (FOF ¶¶ 8-9.)

³ This Court affirmed the Commission's order in Bocchinfuso I.

In a letter dated May 23, 2013, the Department notified Bocchinfuso that a PDC was scheduled for May 29, 2013 to address the suspension of his driver's license. (FOF ¶ 9.) At the PDC, human resources officer Karen Brown notified Bocchinfuso, who at the time was still suspended pending the investigation into the July 1, 2012 criminal charges, that he was reinstated to his position effective the beginning of his shift on that day. (FOF ¶¶ 10-12.) During the PDC, Bocchinfuso "acknowledged that his driver's license was suspended for one year effective December 3, 2012." (FOF ¶ 13.) Brown then reviewed with Bocchinfuso a December 3, 2001 memorandum titled, "Employees' Loss or Restriction of Operating Privilege and/or Disqualification from Driving a Commercial Vehicle" (Loss of License Policy), which the Department had distributed to all of its employees. (FOF ¶¶ 13-14.) The Loss of License Policy provided Department employees whose positions required a driver's license the opportunity to resign in good standing if that driver's license was suspended for more than 180 days.⁴

⁴ The Loss of License Policy states in relevant part:

The following guidelines apply when the license of an employee whose position requires a valid driver's license is suspended These guidelines apply whether or not the suspension . . . [was the result] of a work[-]related incident. . . .

1. For the **first** period of suspension . . . of 180 calendar days or more, the employee shall be provided an opportunity to resign in good standing, prior to the beginning of such loss of driving privilege.

. . . .

Generally no action will be required for the loss or restriction of a driver's license by an employee whose position does not require a license for the performance of [his or her] duties. However, if travel is part of the employee's duties, he or she will be expected to continue to perform those duties, including travel, without accommodation by or expense to the Department. If the employee is unable to do so, the foregoing guidelines will apply.

(Loss of License Policy at 3-4, R.R. at 184a-85a (emphasis in original).)

(FOF ¶ 14.) Because the suspension of Bocchinfuso’s driver’s license exceeded 180 days, Brown offered Bocchinfuso the opportunity to resign in good standing in accordance with the Loss of License Policy, which he refused. (FOF ¶ 15.) Instead, Bocchinfuso presented to the PDC panel a completed petition for an occupational limited license (OLL).⁵ (FOF ¶ 16.) Bocchinfuso informed the PDC panel that he was eligible for an OLL,⁶ had completed the petition, but needed his supervisor’s signature before submitting it to the Bureau. (FOF ¶ 16.) Brown verbally informed Bocchinfuso that he was suspended from his position pending the Department’s investigation into the loss of his driver’s license. (FOF ¶ 17.) The Department confirmed Bocchinfuso’s suspension pending investigation as of 11:20 a.m. on May 29, 2013 via letter dated that day. (FOF ¶ 17.)

The investigation included a review of Bocchinfuso’s position description, which sets forth his job duties as including “represent[ing the Department] by attending field conferences and hearings on all applications, complaints and investigations filed with the [Public Utility Commission].” (FOF ¶ 18 (internal quotation marks omitted).) The “Requirements Profile” for Bocchinfuso’s position indicates “that a Class C driver’s license may be necessary to perform the functions of the position[,]” and that an “Essential Function[.]” of the position is the “ability to travel to remote locations.” (FOF ¶ 18 (internal quotation marks omitted).)

⁵ Section 102 of the Vehicle Code defines an OLL as “[a] license, issued under this title to a driver whose operating privileges have been suspended, to permit the operation of a motor vehicle under certain conditions, when necessary for the driver’s occupation, work, trade or study.” 75 Pa. C.S. § 102.

⁶ Under Section 1553(d.1) of the Vehicle Code, a person who has been convicted of DUI is eligible for an OLL if he or she: (1) has no prior offense; and (2) has already served 60 days of his or her license suspension. 75 Pa. C.S. § 1553(d.1).

Bocchinfuso certified on August 10, 2011 that, to the best of his knowledge, the statements contained in his position description were correct. (FOF ¶ 18.) Furthermore, the class specifications for the position of Senior Civil Engineer Supervisor state, under the heading “Conditions of Employment,” that “certain positions will require possession of a valid driver’s license.” (FOF ¶ 19 (internal quotation marks omitted).)

Following the PDC and investigation, Brown submitted a written recommendation that Bocchinfuso be removed from employment because Bocchinfuso’s position requires a Class C driver’s license and his Class C driver’s license had been suspended for one year. (FOF ¶ 24.) Reda agreed with Brown’s recommendation, and human resources analyst Dale Wetzel accepted the recommendation of Brown and Reda. (FOF ¶¶ 24-26.) By letter dated May 31, 2013, the Department notified Bocchinfuso that he was removed from his position as Senior Civil Engineer Supervisor, Transportation, effective that day. (FOF ¶ 1.) Bocchinfuso appealed his removal to the Commission. (FOF ¶ 2.)

The Commission held a hearing on August 7, 2013, at which the Department presented the testimony of, *inter alia*, Lang and Reda, as well as documentary evidence, and Bocchinfuso testified on his own behalf. In addition to the above referenced facts, this testimony and documentary evidence revealed, in pertinent part, that, as part of his job duties, Bocchinfuso was responsible for coordinating any Department projects involving railroads and required him to travel to meetings with railroad officials. (FOF ¶ 20.) Sometimes Bocchinfuso traveled to the meetings with co-workers. (FOF ¶ 21.) Although the need for travel has reduced somewhat due to cameras that allow Department employees to view Pennsylvania

roads via internet resources such as Google Earth, Bocchinfuso's travel expense forms show that, between January 2012 and May 2012, he traveled for work an average of seven times per month. (FOF ¶¶ 21-22.) Lang, who had previously held a position similar to that of Bocchinfuso,⁷ indicated that Bocchinfuso's position required a Class C driver's license. (FOF ¶ 23.) Reda also testified that Bocchinfuso's position required a Class C driver's license. (Hr'g Tr. at 150-51, R.R. at 46a.)

The Commission credited the testimony of Lang and Reda, and concluded that the Department satisfied its burden of establishing just cause for Bocchinfuso's removal because: (1) a Class C driver's license was a requirement of Bocchinfuso's position; and (2) Bocchinfuso's license had been suspended for one year. (Adjudication at 13, 15.) The Commission also held that the Department's removal of Bocchinfuso from his position based on the one-year suspension of his Class C license was not untimely and did not otherwise violate the Governor's Code of Conduct. (Adjudication at 17-18.) Therefore, the Commission dismissed Bocchinfuso's appeal and sustained the Department's decision. (Order.) Bocchinfuso now petitions this Court for review.⁸

⁷ Lang previously held the position of District Utility Administrator. The only difference between Lang's former position and Bocchinfuso's position was that Lang was not required to have an engineering degree. (FOF ¶ 23; Hr'g Tr. at 18-19, R.R. at 13a.)

⁸ "Our review of the Commission's decision is limited to determining whether the factual findings are supported by substantial evidence, whether an error of law was committed, or whether constitutional rights were violated." Bocchinfuso I, 84 A.3d at 783 n.2. "Whether a civil service employee's actions constitute just cause for removal is a question of law reviewable by this court." Id.

Bocchinfuso offers a variety of reasons for why the Commission erred in holding that the Department established that it had just cause for removing him from his position under Section 807 of the Civil Service Act⁹ (Act). Bocchinfuso’s first argument is that there is insufficient evidence in the record to support the Commission’s finding that the Senior Civil Engineer Supervisor, Transportation, position requires a Class C driver’s license and, therefore, the temporary, one-year suspension of Bocchinfuso’s license did not provide the Department with just cause for removing him from his position.

In reviewing civil service appeals, we are mindful that the “credibility of the witnesses, the resolution of conflicts in the testimony, and the drawing of inferences, are for the Commission.” Benjamin v. State Civil Service Commission, 332 A.2d 585, 588 (Pa. Cmwlth. 1975). This Court “may not weigh the evidence or substitute our judgment for that of the Commission when . . . its essential findings are . . . supported by substantial evidence.” Id. “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion” Quinn v. Pennsylvania State Civil Service Commission, 703 A.2d 565, 571 (Pa. Cmwlth. 1997). “When reviewing a Commission decision, we view the evidence, and all reasonable inferences arising from the evidence, in a light most favorable to the prevailing party.” Perry v. State Civil Service Commission (Department of Labor and Industry), 38 A.3d 942, 948 (Pa. Cmwlth. 2011).

⁹ Act of August 5, 1941, P.L. 752, as amended, 71 P.S. § 741.807.

Bocchinfuso contends that he is not required to have a valid Class C driver's license because the position description for a Senior Civil Engineer Supervisor indicates only that such license "*may* be necessary" to perform the duties of the position. (FOF ¶ 18; Bocchinfuso Position Description at 2, R.R. at 4a (emphasis added).) However, the position description also states that Bocchinfuso is required to attend, *inter alia*, field conferences and hearings, and must be able "to travel to remote locations." (FOF ¶ 18; Bocchinfuso's Position Description at 1, 3, R.R. at 3a, 5a.) Moreover, the class specifications for a Senior Civil Engineer Supervisor, which includes Bocchinfuso's position, state that "certain positions will require possession of a valid driver's license." (FOF ¶ 19.) Most importantly, Lang and Reda testified that Bocchinfuso's position required him to have a valid Class C driver's license. (FOF ¶ 23; Hr'g Tr. at 24-25, 30-31, 150-51, R.R. at 14a, 16a, 46a.) The Commission credited that testimony, (Adjudication at 13), and its determinations regarding credibility and evidentiary weight are solely within its province. Benjamin, 332 A.2d at 588. Reviewing this evidence and the reasonable inferences drawn therefrom in the light most favorable to the Department, we conclude that a "reasonable mind might accept [it] as adequate to support [the] conclusion" that Bocchinfuso's position required him to have a Class C driver's license. Quinn, 703 A.2d at 571.

Bocchinfuso asserts that Lang and Reda acknowledged that the position description did not indicate that a Class C driver's license was "required" and, therefore, their testimony does not support the Commission's finding. However, a close reading of that testimony reveals that, while Reda agreed that the position description did not say "required," he explained that the reference to having a Class C driver's license would not have been included had it not been required.

(Hr’g Tr. at 158-59, R.R. at 48a.) Moreover, although Lang agreed that the position description did not use the term “required,” she repeatedly explained that the position did require a valid Class C driver’s license. (Hr’g Tr. at 24-25, 30-31, 34-35, R.R. at 14a, 16a-17a.) In performing a substantial evidence analysis, “[i]t is irrelevant whether the record contains evidence to support findings other than those made by the fact finder; the critical inquiry is whether there is evidence to support the findings actually made.” Keslosky v. Old Forge Civil Service Commission, 73 A.3d 665, 671 (Pa. Cmwlth. 2013), petition for allowance of appeal denied, 89 A.3d 1286 (Pa. 2014). Because we conclude that there is substantial evidence to support the Commission’s finding, the testimony Bocchinfuso cites is not a basis to reverse the supported finding.

We now consider whether the one year suspension of Bocchinfuso’s driver license provided the Department with just cause to remove him from his civil service position. Section 807 of the Act states that “[n]o regular employe in the classified service shall be removed except for just cause.” 71 P.S. § 741.807. “The appointing authority bears the burden of proof to show a just cause for removal of an employee.” Long v. Pennsylvania Liquor Control Board, 535 A.2d 1233, 1235 (Pa. Cmwlth. 1988). The term “just cause” is not defined in the Act. However, we have held that just cause ““must be merit-related and the criteria must touch upon competency and ability in some rational and logical manner.”” Pennsylvania Game Commission v. State Civil Service Commission (Toth), 747 A.2d 887, 892 (Pa. 2000) (quoting Galant v. Department of Environmental Resources, 626 A.2d 496, 497 n.2 (Pa. 1993)). Our Supreme Court has explained that

“What constitutes ample just cause for removal must necessarily be largely a matter of discretion on the part of the head of the department. To be sufficient, however, the cause should be personal to the employ[ee] and such as to render him unfit for the position he occupies, thus making his dismissal justifiable and for the good of the service.”

Woods v. State Civil Service Commission, 912 A.2d 803, 808 (Pa. 2006) (alteration in original) (quoting Petition of Bell, 152 A.2d 731, 743 (Pa. 1959)). In addition, the Loss of License Policy sets forth the employment consequences for an employee whose position requires a valid driver’s license when that employee’s driver’s license is “suspended, revoked, cancelled, restricted, [or] recalled.” (Loss of License Policy at 3, R.R. at 184a.) For an employee who has a first time suspension of less than 180 days, the Loss of License Policy indicates that the employee will “be demoted or transferred to a classification not requiring a driver’s license” for the duration of the suspension period. (Loss of License Policy at 3, R.R. at 184a.) Where an employee’s license is suspended for **more** than 180 days, even if it is for the first time, the employee will “be provided an opportunity to resign in good standing, prior to the beginning of such loss of driving privilege.”¹⁰ (Loss of License Policy at 3, R.R. at 184a.) Implicit in this statement is that the employee who does not voluntarily resign will be removed from that position involuntarily, i.e., discharged.

¹⁰ Bocchinfuso does not argue that the Department did not give him the opportunity to resign in good standing *prior* to losing his driving privilege in December 2012, and we find no flaw in the Department’s offer here because Bocchinfuso was suspended from his position when the license suspension began and, as a result of Reda’s 2013 investigation, the Department did not become aware of Bocchinfuso’s license suspension until after the suspension had commenced.

After reviewing Bocchinfuso's removal under these factors, we agree with the Commission that the Department met its burden of establishing just cause for the removal. The suspension of Bocchinfuso's Class C driver's license was personal to him and, because his position required him to have a Class C driver's license, the suspension of that license rationally and logically "touch[ed] upon [his] competency and ability" to perform the duties required for that position. Woods, 912 A.2d at 808 (citation omitted). Pursuant to the Loss of License Policy, Brown offered Bocchinfuso the opportunity to resign in good standing, but Bocchinfuso declined to do so. Thus, in accordance with the Loss of License Policy, the Department removed him from his position for which he was no longer qualified. Bocchinfuso's inability to satisfy the required qualifications of his position for a year, based on his own conduct, "render[ed] him unfit for the position he occupies" and "mak[es] his dismissal justifiable and for the good of the service." Id. (citation omitted). Accordingly, the Commission did not err or abuse its discretion in concluding that the Department had just cause to remove Bocchinfuso from his position.

Bocchinfuso next argues that the Department could not rely on the Loss of License Policy to provide just cause because that policy applies only to employees who are assigned to operate Department-owned vehicles or equipment. However, while the Loss of License Policy does refer to employees "who [are] required to operate a Department vehicle in the performance of their duties," it also indicates that "[n]o employee is to operate his or her *own vehicle while on duty* without a valid and appropriate driver's license" and "[e]mployees who operate Commonwealth or Department vehicles and/or equipment, *or who operate their own vehicle while on duty*, shall notify their supervisor immediately of any loss or

restriction of their operating privilege.” (Loss of License Policy at 1-2, R.R. at 182a-83a (emphasis added).) Accordingly, we disagree that the Loss of License Policy does not apply to Bocchinfuso.

Bocchinfuso also contends that the Department did not have just cause to remove him because it should have considered his offer to obtain an OLL or to have a family member drive him to his required meetings, thereby allowing him to travel without accommodation. It appears that Bocchinfuso attempts to rely on that part of the Loss of License Policy that applies to an “employee whose position does not require a license for the performance of their duties,” which indicates that no disciplinary action will occur so long as the employee is able to perform any travel that is a part of the employee’s duties without accommodation. (Loss of License Policy at 4, R.R. at 185a.) However, this does not apply to Bocchinfuso because his position does require him to have a valid Class C driver’s license.

Bocchinfuso next challenges the Commission’s determination that the Department’s investigation and disciplinary proceedings in this matter complied with the provisions of the Governor’s Code of Conduct regarding the timeliness of an agency’s investigation of criminal charges against an employee. According to Bocchinfuso, the Governor’s Code of Conduct required the Department to investigate his DUI criminal charges within twelve working days of being notified thereof. (Governor’s Code of Conduct, Part III, Section 4(b),¹¹ R.R. at 160a.)

¹¹ This provision states, in relevant part, that:

4. Investigation. Any employee formally charged with criminal conduct . . . shall be subject to an immediate investigation conducted by the Agency Head or his or her designee.

(Continued...)

Bocchinfuso contends, therefore, that the last day the Department could have timely investigated his July 1, 2012 arrest and July 2, 2012 DUI charge was July 18, 2012, which was the day the Department first held a PDC on the DUI charges that led to his initial removal.¹² That removal ultimately was reversed by the Commission on April 8, 2013 and, pursuant to the Commission's decision, the Department was to investigate the criminal charges against Bocchinfuso within thirty days, a time period the Department's May 29, 2013 PDC exceeded in contravention of both the Commission's order and the Governor's Code of Conduct. Accordingly, Bocchinfuso asserts the Department violated his rights under the Governor's Code of Conduct and the Commission erred in holding otherwise.

Bocchinfuso's argument focuses on his DUI criminal charges; however, as the Commission observed in its decision, the Department did not remove Bocchinfuso from his position following the May 29, 2013 PDC because of those charges, but because his Class C driver's license was suspended for a period exceeding 180 days. (Adjudication at 17.) The letter notifying Bocchinfuso of the May 29, 2013 PDC referenced only a charge based on the suspension of his Class

....

b. Conduct of the Investigation. In the investigation, all the relevant facts shall be promptly gathered and considered. . . . The investigation shall be completed within twelve (12) working days from the date on which the Secretary of Administration is notified

(Governor's Code of Conduct, Part III, Section 4(b), R.R. at 160a.)

¹² Bocchinfuso was not removed due to the DUI charges, but because the Department concluded that he violated Pennsylvania's Absence Without Leave Policy. Bocchinfuso I, 84 A.3d at 782.

C driver's license. (Letter from the Department to Bocchinfuso (May 23, 2013), R.R. at 6a.) Notably, Bocchinfuso's driver's license was not suspended until December 3, 2012, and it was not until the Department's investigation in response to the Commission's April 8, 2013 decision that the Department became aware of that suspension. Because the May 29, 2013 PDC and Bocchinfuso's removal was not based on the DUI criminal charges, but on the suspension of his driver's license, we conclude that the Governor's Code of Conduct does not apply to these circumstances.

For these reasons, we affirm the Commission's Order.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Santo Bocchinfuso,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 623 C.D. 2014
	:	
State Civil Service Commission	:	
(Department of Transportation),	:	
	:	
Respondent	:	

ORDER

NOW, April 28, 2015, the Order of the State Civil Service Commission, entered in the above-captioned matter, is hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Santo Bocchinfuso, :
 : No. 623 C.D. 2014
 Petitioner : Submitted: December 5, 2014
 :
 v. :
 :
 State Civil Service Commission :
 (Department of Transportation), :
 :
 Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
 HONORABLE P. KEVIN BROBSON, Judge
 HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

DISSENTING OPINION
 BY SENIOR JUDGE FRIEDMAN

FILED: April 28, 2015

Because I believe that the Commission erred in sustaining the Department’s decision to remove Bocchinfuso from his employment, I respectfully dissent.

I disagree with the majority’s conclusion that a Class C driver’s license is a requirement of the position of Senior Civil Engineer Supervisor, Transportation. The position description does not state that a Class C driver’s license is required. Rather, the position description states that a Class C driver’s license “may be necessary” to perform the duties of the position. (Commission’s Findings of Fact, No. 18.) The Department argues that the word “may” in the

position description actually means that a driver's license is mandatory. However, this interpretation is unsupported by the plain language of the description.

A common-sense reading of the relevant language reveals that a driver's license "may be necessary" *if* the employee drives a vehicle for work-related travel. It does not mean that the employee *must* drive a vehicle for work-related travel. The record shows that Bocchinfuso frequently traveled with his supervisor to off-site meetings, and Bocchinfuso testified that he could obtain rides with family members if necessary to fulfill his job duties for the remainder of the suspension period. (N.T., 8/7/13, at 327.) Although Lang and Reda testified that they believed that Bocchinfuso's position required a driver's license, as the majority points out, they also admitted that the position description does not state that a driver's license is mandatory. (*Id.* at 35, 159.)

Moreover, the class specifications for Senior Civil Engineer Supervisor state that "[c]ertain positions will require possession of a valid driver's license." (Commission's Findings of Fact, No. 19.) However, the class specifications apply to five categories of Senior Civil Engineer Supervisor: Transportation, Bridges, General, Hydraulic, and Structural. (*Id.*, No. 19 n.5.) During the five-year period that Bocchinfuso held the position of Senior Civil Engineer Supervisor, Transportation, the Department never asked him to provide a copy of his driver's license. (N.T., 8/7/13, at 327-28.) Nor did the Department produce any evidence that it possessed a copy of Bocchinfuso's driver's license.

Unlike the majority, I cannot conclude, based on the credible evidence, that a driver's license was a requirement of Bocchinfuso's position.¹

Because I would conclude that Bocchinfuso's position did not require a Class C driver's license, I would also conclude that the Department failed to establish just cause for Bocchinfuso's removal. The Department's Loss of License Policy states:

[N]o action will be required for the loss or restriction of a driver's license by an employee *whose position does not require a license* for the performance of [his or her] duties. However, *if travel is part of the employee's duties, he or she will be expected to continue to perform those duties, including travel, without accommodation by or expense to the Department.*

(Ex. AA2 at 4 (emphasis added).)²

At the PDC, Bocchinfuso presented a completed petition for an OLL, which, if granted, would have allowed him to obtain a driver's license for work-related travel while his license was suspended. Yet the Commission rejected this

¹ Notably, the class specifications also state that "[c]ertain positions will require a valid Professional Engineer license issued by the Pennsylvania State Registration Board for Professional Engineers, Land Surveyors and Geologists." (Ex. AA7 at 6.) Lang testified, however, that Bocchinfuso has an engineering degree but not a Professional Engineer license. (N.T., 8/7/13, at 36.)

² Due to its resolution of the first issue, the majority relies on a different provision of the Loss of License Policy applicable to employees whose positions require a valid driver's license. (Maj. Op. at 11-12.) Because I would conclude that Bocchinfuso's position did not require a driver's license, I would apply the above-quoted provision instead.

evidence, finding that Bocchinfuso's offer to obtain an OLL was speculative and uncertain. I do not believe that the record supports this finding.

Bocchinfuso was statutorily eligible for an OLL because he had no prior driving under the influence offense and had already served 60 days of his license suspension. *See* 75 Pa. C.S. §1553(d.1). Section 1553(b) of the Vehicle Code provides that the Department's Bureau of Driver Licensing (Bureau) "shall issue" an OLL to an eligible applicant within 20 days if he or she supplies the following information: (1) the specific vehicle the applicant seeks permission to operate; (2) an explanation of why the applicant needs to operate a vehicle for his job; (3) the name of the applicant's employer; and (4) proof of financial responsibility covering the vehicle. 75 Pa. C.S. §1553(b)(1) and (b)(3). Bocchinfuso's petition contained all of this information. (*See* Ex. AP5 at 1-2.)³ Bocchinfuso also brought the requisite application fee and proof of vehicle insurance to the PDC. (N.T., 8/7/13, at 263.) I can discern no reason why the Bureau would not have granted Bocchinfuso's petition under the circumstances, nor has the Department offered any reason. Thus, I believe that Bocchinfuso presented sufficient evidence to establish that he could satisfy the travel requirements of his position without accommodation by or expense to the Department pursuant to the Loss of License Policy.

³ At the time of the PDC, Bocchinfuso had not mailed his completed OLL petition to the Bureau because he mistakenly believed that he needed a supervisor's signature first. However, a supervisor's signature is not required at the time of application. *See generally* 75 Pa. C.S. §1553. The Department's regulation at 67 Pa. Code §86.101(b)(1) provides that the Department "may" require a written statement from a supervisor verifying the applicant's employment after receiving a completed OLL petition.

For these reasons, I would reverse the Commission's decision.

ROCHELLE S. FRIEDMAN, Senior Judge