

NO. 140C00103 1B

Dept II

REC

Dept. No

2015 JUL 21 PM 1:57

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF TEXAS

STATE OF NEVADA IN AND BY

THE COUNTY OF CARSON

Electronically Filed
Jul 22 2015 03:10 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

Cara O'Keefe

Petitioner-Employee,

VS.

State of Nevada, ex. rel., it's Department)

of Motor Vehicles

Respondent, Employer

NOTICE OF APPEAL

Notice is hereby given that the petitioner, Cara O'Keefe, hereby appeals to the Supreme Court of Nevada (from the final judgment) (from the Order Granting Petition for Judicial Review and Setting Aside Hearing Officer's Decision) entered in this action on the 21st, day of July, 2015.

Dated this 21st, day of July, 2015

Care O'Keefe

Cara O'Keefe

1775 Myles Way

Carson City, Nevada 89701

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed appeal statement upon all parties to the appeal as follows:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served by mail):

Dominika J. Batten
Deputy Attorney General
Personnel Division
5420 Kietzke Lane, Suite 202
Reno, NV 89511

DATED this _____ day of July, 2015.


Signature of Appellant

CARA L. O'HEERE
Print Name of Appellant

1775 Myles Way
Address

Carson City NV 89701
City/State/Zip

775 297-2906
Telephone

REC'D & FILED

2015 JUL 21 PM 2:45

SUSAN MERRIWETHER
CLERK

BY *Muggins*
DEPT.

In The First Judicial District Court of the State of Nevada
In and for Carson City

STATE OF NEVADA, ex rel. its
DEPARTMENT OF MOTOR VEHICLES,

Petitioner(s),

vs.

CARA O'KEEFE, an individual; and STATE
OF NEVADA, ex rel. ITS DEPARTMENT
OF ADMINISTRATION, DIVISION OF
HUMAN RESOURCE MANAGEMENT; and
JILL GREINER, Hearing Officer,
Respondent(s).

Case No.: 14 OC 00103 1B

Dept. No.: II

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:
- CARA O'KEEFE
2. Identify the judge issuing the decision, judgment, or order appealed from:
- HONORABLE JAMES E. WILSON, JR.
3. Identify each appellant and the name and address of counsel for each appellant:
- CARA O'KEEFE IN PROPER PERSON
1775 MYLES WAY
CARSON CITY, NV 89701
4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):
- STATE OF NEVADA, DEPT. OF MOTOR VEHICLES
ADAM PAUL LAXALT, ATTORNEY GENERAL

5420 KIETZKE LANE, SUITE 202
RENO, NV 89511

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

- NOT APPLICABLE

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

- APPELLANT WAS REPRESENTED BY JEFFREY S. BLANCK IN THE DISTRICT COURT

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

- APPELLANT IN PROPER PERSON ON APPEAL

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

- APPELLANT GRANTED LEAVE TO PROCEED IN FORMA PAUPERIS ON JULY 21, 2015

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):

- PETITION FOR JUDICIAL REVIEW FILED MAY 21, 2014

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

- ORDER GRANTING PETITION FOR JUDICIAL REVIEW AND SETTING ASIDE HEARING OFFICER'S DECISION FILED JUN. 15, 2015

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

1 - NOT APPLICABLE

2 12. Indicate whether this appeal involves child custody or visitation:

3 - NOT APPLICABLE

4 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

5 - NOT APPLICABLE.

6 Dated this 21st day of July, 2015.

7
8 SUSAN MERRIWETHER, Carson City Clerk
9 885 E. Musser St., #3031
10 Carson City, NV 89701

11 By  Deputy

Judge: WILSON JR, JAMES E

Case No. 14 OC 00103 1B
Ticket No.
CTN:

STATE OF NEVADA et al

-vs-

By:

DEPARTMENT OF
ADMINISTRATION

DRSPND

By:

Dob:
Lic:
OKEEFE, CARASex:
Sid:
DRSPND

By:

Dob:
Lic:
STATE OF NEVADASex:
Sid:
DRSPND

By:

Dob:
Lic:Sex:
Sid:Plate#:
Make:
Year:
Type:
Venue:
Location:
Accident:DEPARTMENT OF MOTOR
VEHICLES
STATE OF NEVADAPLNTPET
PLNTPETBond:
Type:Set:
Posted:

Charges:

Ct.

Offense Dt:
Arrest Dt:
Comments:

Cvr:

Ct.

Offense Dt:
Arrest Dt:
Comments:

Cvr:

Ct.

Offense Dt:
Arrest Dt:
Comments:

Cvr:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
1	07/21/15	CASE APPEAL STATEMENT	1BJHIGGINS	0.00	0.00
2	07/21/15	CIVIL PROPER PERSON APPEAL STATEMENT	1BCCOOPER	0.00	0.00
3	07/21/15	NOTICE OF APPEAL FILED	1BCCOOPER	24.00	0.00
4	07/21/15	AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS & ORDER	1BCCOOPER	0.00	0.00
5	07/16/15	SUBSTITUTION OF COUNSEL	1BVANESSA	0.00	0.00
6	06/24/15	NOTICE OF ENTRY OF ORDER	1BCCOOPER	0.00	0.00
7	06/16/15	SUMMARY JUDGMENT	1BCCOOPER	0.00	0.00
8	06/15/15	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
9	06/15/15	ORDER GRANTING PETITION FOR JUDICIAL REVIEW AND SETTING ASIDE HEARING OFFICERS DECISION	1BCCOOPER	0.00	0.00
10	06/12/15	HEARING HELD: The following event: PETITION HEARING scheduled for 06/12/2015 at 11:00 am has been resulted as follows: Result: HEARING HELD Judge: WILSON JR, JAMES E Location: DEPT II	1BJHIGGINS	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
11	06/09/15	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJULIEH	0.00	0.00
12	06/09/15	ORDER FOR ORAL ARGUMENT	1BJULIEH	0.00	0.00
13	04/30/15	REQUEST FOR SUBMISSION	1BVANESSA	0.00	0.00
14	01/13/15	REPLY MEMORANDUM	1BCCOOPER	0.00	0.00
15	01/12/15	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BVANESSA	0.00	0.00
16	01/09/15	STIPULATION AND ORDER EXTENDING TIME FOR FILING PETITIONER'S REPLY MEMORANDUM	1BVANESSA	0.00	0.00
17	12/09/14	DEFENDANT'S/RESPONDENT'S INITIAL APPEARANCE AFFIRMATION PURSUANT TO NRS 239.030	1BJHIGGINS	0.00	0.00
18	12/09/14	RESPONDENT CARA O'KEEFE'S OPPOSITION TO PETITIONERS PETITION FOR JUDICIAL REVIEW	1BCCOOPER	0.00	0.00
19	11/07/14	NOTICE OF ENTRY OF ORDER	1BCCOOPER	0.00	0.00
20	11/07/14	NOTICE OF ENTRY OF ORDER	1BCCOOPER	0.00	0.00
21	10/10/14	OPENING BRIEF	1BCCOOPER	0.00	0.00
22	10/02/14	THIRD STIPULATION AND ORDER EXTENDING TIME FOR FILING PETITIONER'S OPENING BRIEF	1BJHIGGINS	0.00	0.00
23	09/30/14	NOTICE OF ENTRY OF ORDER	1BCCOOPER	0.00	0.00
24	09/25/14	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
25	09/25/14	STIPULATION AND ORDER EXTENDING TIME FOR FILING PETITIONERS OPENING BRIEF	1BCCOOPER	0.00	0.00
26	09/08/14	NOTICE OF ENTRY OF ORDER	1BCCOOPER	0.00	0.00
27	09/03/14	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJHIGGINS	0.00	0.00
28	09/03/14	STIPULATION AND ORDER EXTENDING TIME FOR FILING PETITIONER'S OPENING BRIEF	1BJHIGGINS	0.00	0.00
29	08/27/14	NOTICE OF ENTRY OF ORDER	1BJHIGGINS	0.00	0.00
30	08/21/14	ORDER	1BJHIGGINS	0.00	0.00
31	08/18/14	NOTICE OF ENTRY OF ORDER	1BCCOOPER	0.00	0.00
32	08/14/14	REQUEST FOR SUBMISSION	1BCCOOPER	0.00	0.00
33	08/14/14	SUBSTITUTION OF ATTORNEY	1BCCOOPER	0.00	0.00
34	08/11/14	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
35	08/11/14	ORDER	1BCCOOPER	0.00	0.00
36	07/29/14	REQUEST FOR SUBMISSION	1BCCOOPER	0.00	0.00
37	07/23/14	OPPOSITION TO MOTION TO DISMISS	1BVANESSA	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
38	07/23/14	OPPOSITION TO MOTION TO DISMISS	1BVANESSA	0.00	0.00
39	07/16/14	AFFIRMATION PURSUANT TO NRS 239.030	1BJHIGGINS	0.00	0.00
40	07/16/14	CERTIFICATION	1BVANESSA	0.00	0.00
41	07/16/14	NOTICE TO THE PARTIES RECORD ON APPEAL	1BVANESSA	0.00	0.00
42	07/16/14	RECORD ON APPEAL (VOLUME 2 OF 2)	1BVANESSA	0.00	0.00
43	07/16/14	RECORD ON APPEAL (VOLUME 1 OF 2)	1BVANESSA	0.00	0.00
44	07/11/14	MOTION TO DISMISS WITH PREJUDICE	1BCGRIBBLE	0.00	0.00
45	06/09/14	REPLY IN SUPPORT OF MOTION FOR STAY	1BJHIGGINS	0.00	0.00
46	06/09/14	ORDER DENYING MOTION FOR ORDER SHORTENING TIME	1BJHIGGINS	0.00	0.00
47	06/03/14	NOTICE OF INTENT TO PARTICPATE	1BCCOOPER	0.00	0.00
48	05/30/14	REQUEST FOR SUBMISSION	1BVANESSA	0.00	0.00
49	05/29/14	RESPONDENT CARA O'KEEFE'S OPPOSITION TO PETITIONER'S MOTION FOR ORDER SHORTENING TIME	1BCGRIBBLE	0.00	0.00
50	05/29/14	RESPONDENT CARA O'KEEFE'S OPPOSITION TO PETITIONER'S MOTION FOR STAY PENDING JUDICIAL REVIEW	1BCGRIBBLE	0.00	0.00
51	05/21/14	MOTION FOR ORDER SHORTENING TIME	1BCCOOPER	0.00	0.00
52	05/21/14	MOTION FOR STAY PENDING JUDICIAL REVIEW	1BCCOOPER	0.00	0.00
53	05/21/14	PETITION FOR JUDICIAL REVIEW	1BCCOOPER	265.00	0.00
Total:				289.00	0.00
Totals By: COST				289.00	0.00
INFORMATION				0.00	0.00
*** End of Report ***					

REC'D. & FILED

2015 JUN 15 PM 3:34

SUSAN MERRIWETHER
CLERK

BY  DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

-o0o-

STATE OF NEVADA, ex rel. its
DEPARTMENT OF MOTOR VEHICLES,

CASE NO. 14 OC 00103 1B

DEPT. 2

Petitioners,

vs.

CARA O'KEEFE, an individual; and
STATE OF NEVADA, ex rel. ITS
DEPARTMENT OF ADMINISTRATION,
DIVISION OF HUMAN RESOURCE
MANAGEMENT; and JILL GREINER,
Hearing Officer.

Respondents,

**ORDER GRANTING PETITION FOR JUDICIAL REVIEW AND SETTING
ASIDE HEARING OFFICER'S DECISION**

Petitioner, STATE OF NEVADA, ex rel., its DEPARTMENT OF MOTOR VEHICLES
(DMV), filed a petition for judicial review under NRS 284.390(8). The Court has
reviewed and considered the parties' briefs.

ISSUE AND CONCLUSION

Did the hearing officer's reversal of DMV's termination of Employee prejudice
substantial rights of DMV because the decision was affected by error of law, clearly

1 erroneous in view of the reliable, probative and substantial evidence on the whole
2 record; or arbitrary and capricious or characterized by an abuse of discretion?

3 Because substantial rights of DMV were prejudiced by the hearing officer
4 exceeding her authority, by error of law, and the hearing officer's decision was arbitrary
5 and capricious, DMV's Petition for Judicial Review is granted.

6 **FACTS**

7 Cara O'Keefe ("Employee") worked as a revenue specialist for Petitioner, DMV, in
8 DMV's Motor Carrier division. Employee promoted into a State of Nevada, Division of
9 Insurance position and left DMV on December 5, 2012. The Division of Insurance
10 rejected Employee from probation, reverting Employee back to DMV on September 16,
11 2013, under NAC 284.462.

12 During December 2012, shortly after Employee left DMV to work for the Division
13 of Insurance, two DMV employees reported to their supervisor that while Employee was
14 employed by DMV they heard Employee discussing another person's driver's license on
15 the telephone with the Carson City Sheriff's Office. During the telephone calls with the
16 Sheriff's Office, Employee identified herself as a DMV employee and stated that "a
17 customer had returned." The coworkers questioned the transaction's legitimacy because
18 there was no customer at Employee's desk and because Employee did not handle
19 driver's license issues, as Employee represented to the Sheriff's Office.

20 DMV did not investigate the reports until after learning Employee would be
21 returning from the Division of Insurance to DMV's employ. The investigation revealed
22 misconduct by Employee. Specifically, the investigation revealed Employee had accessed
23 DMV's confidential database at least ten times to perform non-business transactions for
24 her friend, Daniel, without authorization. Such conduct is a terminable offense under
25 DMV policies and Nevada law. She used the information to conduct personal business
26 for her friend, Daniel, involving Daniel's DUI. Employee also called the Sheriff's Office
27 about Daniel's driver's license and DUI, twice, representing herself as a DMV employee
28

1 assisting a customer, when she was really calling for the personal and non-business
2 reason of assisting her friend, Daniel.

3 Based upon the information from the investigation, DMV issued a Specificity of
4 Charges (SOC) to Employee, recommending termination under NAC 284.646(2)(b),
5 which authorizes dismissal for unauthorized use of confidential information; and under
6 DMV Prohibitions and Penalties (G1), which makes the use of data or information
7 outside the scope of one's job responsibilities, or for non-business or personal reasons a
8 Class 5 offense. The minimum discipline for a Class 5 offense is termination. The SOC
9 alleged other violations.

10 DMV provided Employee a pre-disciplinary hearing and terminated her
11 employment. Employee appealed the termination. The hearing officer found that
12 "Employee accessed the DMV database to look up the driver's license records...", and
13 that Employee should be disciplined for misuse of information technology under DMV
14 Prohibitions and Penalties (G1). The hearing officer concluded that "Employee's conduct
15 was not a 'serious violation of law or regulation' to merit termination prior to imposition
16 of less severe disciplinary measures.

17 18 **STANDARD OF REVIEW**

19 The burden of proof is on the party attacking or resisting the challenged decision
20 to show the final decision is invalid.¹ The court's review is limited to the record.² The
21 court cannot substitute its judgment for that of an administrative agency as to the
22 weight of evidence on a question of fact.³ The court may set aside an administrative
23 agency's decision if substantial rights of the petitioner have been prejudiced because the
24

25 ¹NRS 233B.135(2).

26 ²NRS 233B.135(1)(b).

27 ³NRS 233B.135(3).

1 decision was affected by error of law, clearly erroneous in view of the reliable, probative
2 and substantial evidence on the whole record; or arbitrary and capricious or
3 characterized by an abuse of discretion.⁴ The central inquiry is whether substantial
4 evidence supports the agency's decision.⁵ Substantial evidence is that which a reasonable
5 mind might accept as adequate to support a conclusion.⁶ The court decides purely legal
6 issues de novo.⁷

8 DISCUSSION

9 The hearing officer found that DMV proved Employee violated terminable
10 offenses, including a Class 5 offense. The minimum discipline for a Class 5 offense is
11 termination. The hearing officer then concluded that the violations, including the Class 5
12 offense, were not serious violations.

13 An appointing authority may dismiss an employee for any reason set forth in NAC
14 284.650 if the agency "has adopted any rules or policies which authorize the dismissal of
15 an employee for such a cause."⁸ DMV has adopted policies which authorize the dismissal
16 of an employee for use of data or information outside the scope of one's job
17 responsibilities, or for nonbusiness or personal reasons. Specifically, DMV adopted its
18 Prohibitions and Penalties (G1) which prohibits such conduct, and establishes the
19 minimum penalty as termination.

20 A dismissed employee may appeal to the administrative hearing officer, who can
21

22
23 ⁴NRS 233B.135(3)(d), (e), and (f).

24 ⁵*United Exposition Serv. Co. v. State Indus. Ins. Sys.*, 109 Nev. 421, 851, P.2d 423
25 (1993).

26 ⁶*Id.*

27 ⁷*Garcia v. Scolari's Food & Drug*, 125 Nev. A.O. 6, 200 P.3d 514 (2009).

28 ⁸NAC 284.646(1)(a).

1 set aside the dismissal if he determines the dismissal was without just cause.⁹ A hearing
2 officer does not have authority to second-guess the DMV's Prohibitions and Penalties
3 offense classification. If DMV proves an offense for which the Prohibitions and Penalties
4 provide a minimum discipline of termination, a hearing officer has no discretion
5 regarding just cause or reasonableness of the termination to exercise. If DMV proves an
6 offense for which the Prohibitions and Penalties provide a minimum discipline of
7 termination, just cause for termination is established and the termination is reasonable
8 as a matter of law.

9 The hearing officer's finding that DMV proved the Prohibitions and Penalties
10 (G1) offense, followed by the conclusion that the offense was not a serious violation to
11 merit termination exceeded the hearing officer's authority under NRS 284.390(1) and
12 (6), was an error of law, and arbitrary and capricious.

13 The hearing officer attempted to support her decision by referring to the
14 following: 1) DMV's failure to immediately investigate the alleged violations; 2) DMV's
15 failure to provide specific evidence of five other employees terminated for similar
16 conduct; 3) inconsistency between the Prohibition and Penalty (G1) and the Bruce
17 Breslow memorandum as to whether termination is mandatory or discretionary; 4) the
18 nature of the offense; and 5) Employee's seven-year state service without discipline. The
19 hearing officer also referred to, but did not make conclusions of law regarding, due
20 process concerns. Whether these matters are true or not, none of them, individually or
21 collectively, create authority for the hearing officer to exercise discretion on DMV's
22 classification of the offense in its Prohibition and Penalty (G1).

23 24 **CONCLUSION**

25 Because substantial rights of DMV were prejudiced by the hearing officer
26 exceeding her authority, by error of law, and the hearing officer's decision was arbitrary


27
28 ⁹NRS 284.390(1) and (6).

1 and capricious, DMV's Petition for Judicial Review is granted.

2
3 **ORDER**

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that DMV's Petition
5 for Judicial Review of the Hearing Officer's Decision and Order is GRANTED. The
6 hearing officer's decision is set aside in whole.

7 June 15, 2015.

8 
9 JAMES E. WILSON, JR.
DISTRICT JUDGE

10
11
12
13 **CERTIFICATE OF SERVICE**

14 Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial
15 District Court, and I certify that on this 15 day of June 2014 I deposited for mailing at
16 Carson City, Nevada, or caused to be delivered by messenger service, a true and correct
17 copy of the foregoing Order and addressed to the following:

18 Jeffrey S. Blanck, Esq.
19 485 West Fifth St.
20 Reno, NV 89503

Dominika J. Batten
Deputy Attorney General
5420 Kietzke Lane, #202
Reno, NV 89511

21 Jill Greiner, Hearing Officer
22 4790 Caughlin Pkwy., #120
Reno, NV 89519

23
24 
25 Susan Greenburg
26 Judicial Assistant

1 ADAM PAUL LAXALT
Attorney General
2 DOMINIKA J. BATTEN
Deputy Attorney General
3 Nevada Bar No. 12258
Personnel Division
4 5420 Kietzke Lane, Suite 202
Reno, Nevada 89511
5 Tel: 775-850-4117
Fax: 775-688-1822
6 dbatten@ag.nv.gov

7 *Attorneys for Petitioner*

8 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR CARSON CITY**

10 STATE OF NEVADA, *ex rel.*, its
11 DEPARTMENT OF MOTOR VEHICLES,

12 Petitioner-Employer,

13 vs.

14 CARA O'KEEFE, an individual; and STATE
15 OF NEVADA, *ex rel.*, ITS DEPARTMENT
OF ADMINISTRATION, DIVISION OF
16 HUMAN RESOURCE MANAGEMENT, and
JILL GREINER, Hearing Officer,

17 Respondents.

Case No. 14 OC 00103 1 B

Department No. II

18 **NOTICE OF ENTRY OF ORDER**

19 PLEASE TAKE NOTICE that on June 15, 2015, the Court entered an Order in this
20 matter Granting Petition for Judicial Review and Setting Aside Hearing Officer's Decision filed
21 by Petitioner State of Nevada, *ex rel.*, its Department of Motor Vehicles (DMV), by and
22 through its attorneys, ADAM PAUL LAXALT, Attorney General, and DOMINIKA J. BATTEN,
23 Deputy Attorney General, a true and correct copy of which is attached to this notice.

24 ///

25 ///

26 ///

27 ///

28 ///

REC'D & FILED

2015 JUN 24 AM 11:08

SUSAN MERRIWETHER

CLERK

BY

DEPUTY

AFFIRMATION PURSUANT TO NRS 239B.030

This document does not contain the social security number of any person.

RESPECTFULLY SUBMITTED this 13th day of June, 2015.

ADAM PAUL LAXALT
Attorney General

By:



DOMINIKA J. BATTEN
Deputy Attorney General
Bureau of Litigation
Personnel Division
Nevada Bar No. 12258
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511

Attorneys for Petitioner

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of the State of Nevada, Office of the Attorney
3 General, and that on the 23rd day of June, 2015, I deposited for mailing, a true and correct
4 copy of the foregoing Notice of Change of Counsel to:

5 Jeffrey S. Blanck, Esq.
6 485 W. Fifth St.
7 Reno, NV 89503
Attorney for Respondent

8 Jill Greiner, Esq.
9 4790 Caughlin Pkwy. #120
10 Reno, NV 89519
Hearing Officer

11 Department of Administration
12 Division of Human Resource Management
13 209 East Musser Street, Room 101
14 Carson City, Nevada 89701-4204

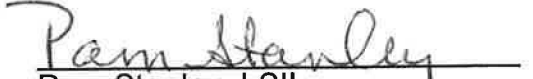
15 
16 Pam Stanley, LSI
17 An Employee of the State of Nevada
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EXHIBIT A

EXHIBIT A

REC'D & FILED

2015 JUN 15 PM 3:34

SUSAN MERRIWETHER
CLERK

BY [Signature] DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

-o0o-

STATE OF NEVADA, ex rel. its
DEPARTMENT OF MOTOR VEHICLES,

CASE NO. 14 OC 00103 1B

DEPT. 2

Petitioners,

vs.

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28

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8 Class 5 offense. The minimum discipline for a Class 5 offense is termination. The SOC
9 alleged other violations.

10 DMV provided Employee a pre-disciplinary hearing and terminated her
11 employment. Employee appealed the termination. The hearing officer found that
12 "Employee accessed the DMV database to look up the driver's license records....," and
13 that Employee should be disciplined for misuse of information technology under DMV
14 Prohibitions and Penalties (G1). The hearing officer concluded that "Employee's conduct
15 was not a 'serious violation of law or regulation' to merit termination prior to imposition
16 of less severe disciplinary measures.

17 18 **STANDARD OF REVIEW**

19 The burden of proof is on the party attacking or resisting the challenged decision
20 to show the final decision is invalid.¹ The court's review is limited to the record.² The
21 court cannot substitute its judgment for that of an administrative agency as to the
22 weight of evidence on a question of fact.³ The court may set aside an administrative
23 agency's decision if substantial rights of the petitioner have been prejudiced because the
24

25 ¹NRS 233B.135(2).

26 ²NRS 233B.135(1)(b).

27 ³NRS 233B.135(3).

1 decision was affected by error of law, clearly erroneous in view of the reliable, probative
2 and substantial evidence on the whole record; or arbitrary and capricious or
3 characterized by an abuse of discretion.⁴ The central inquiry is whether substantial
4 evidence supports the agency's decision.⁵ Substantial evidence is that which a reasonable
5 mind might accept as adequate to support a conclusion.⁶ The court decides purely legal
6 issues de novo.⁷

8 DISCUSSION

9 The hearing officer found that DMV proved Employee violated terminable
10 offenses, including a Class 5 offense. The minimum discipline for a Class 5 offense is
11 termination. The hearing officer then concluded that the violations, including the Class 5
12 offense, were not serious violations.

13 An appointing authority may dismiss an employee for any reason set forth in NAC
14 284.650 if the agency "has adopted any rules or policies which authorize the dismissal of
15 an employee for such a cause."⁸ DMV has adopted policies which authorize the dismissal
16 of an employee for use of data or information outside the scope of one's job
17 responsibilities, or for nonbusiness or personal reasons. Specifically, DMV adopted its
18 Prohibitions and Penalties (G1) which prohibits such conduct, and establishes the
19 minimum penalty as termination.

20 A dismissed employee may appeal to the administrative hearing officer, who can
21

22
23 ⁴NRS 233B.135(3)(d), (e), and (f).

24 ⁵*United Exposition Serv. Co. v. State Indus. Ins. Sys.*, 109 Nev. 421, 851, P.2d 423
25 (1993).

26 ⁶*Id.*

27 ⁷*Garcia v. Scolari's Food & Drug*, 125 Nev. A.O. 6, 200 P.3d 514 (2009).

28 ⁸NAC 284.646(1)(a).

1 set aside the dismissal if he determines the dismissal was without just cause.⁹ A hearing
2 officer does not have authority to second-guess the DMV's Prohibitions and Penalties
3 offense classification. If DMV proves an offense for which the Prohibitions and Penalties
4 provide a minimum discipline of termination, a hearing officer has no discretion
5 regarding just cause or reasonableness of the termination to exercise. If DMV proves an
6 offense for which the Prohibitions and Penalties provide a minimum discipline of
7 termination, just cause for termination is established and the termination is reasonable
8 as a matter of law.

9 The hearing officer's finding that DMV proved the Prohibitions and Penalties
10 (G1) offense, followed by the conclusion that the offense was not a serious violation to
11 merit termination exceeded the hearing officer's authority under NRS 284.390(1) and
12 (6), was an error of law, and arbitrary and capricious.

13 The hearing officer attempted to support her decision by referring to the
14 following: 1) DMV's failure to immediately investigate the alleged violations; 2) DMV's
15 failure to provide specific evidence of five other employees terminated for similar
16 conduct; 3) inconsistency between the Prohibition and Penalty (G1) and the Bruce
17 Breslow memorandum as to whether termination is mandatory or discretionary; 4) the
18 nature of the offense; and 5) Employee's seven-year state service without discipline. The
19 hearing officer also referred to, but did not make conclusions of law regarding, due
20 process concerns. Whether these matters are true or not, none of them, individually or
21 collectively, create authority for the hearing officer to exercise discretion on DMV's
22 classification of the offense in its Prohibition and Penalty (G1).

23 24 CONCLUSION

25 Because substantial rights of DMV were prejudiced by the hearing officer
26 exceeding her authority, by error of law, and the hearing officer's decision was arbitrary

27
28 ⁹NRS 284.390(1) and (6).

1 and capricious, DMV's Petition for Judicial Review is granted.

2
3 **ORDER**

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that DMV's Petition
5 for Judicial Review of the Hearing Officer's Decision and Order is GRANTED. The
6 hearing officer's decision is set aside in whole.

7 June 15, 2015.

8 
9 JAMES E. WILSON, JR.
10 DISTRICT JUDGE


11
12
13 **CERTIFICATE OF SERVICE**

14 Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial
15 District Court, and I certify that on this 15 day of June 2014 I deposited for mailing at
16 Carson City, Nevada, or caused to be delivered by messenger service, a true and correct
17 copy of the foregoing Order and addressed to the following:

18 Jeffrey S. Blanck, Esq.
19 485 West Fifth St.
20 Reno, NV 89503

Dominika J. Batten
Deputy Attorney General
5420 Kietzke Lane, #202
Reno, NV 89511

21 Jill Greiner, Hearing Officer
22 4790 Caughlin Pkwy., #120
23 Reno, NV 89519

24 
25 Susan Greenburg
26 Judicial Assistant

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 14 OC 00103 1B

TITLE: STATE OF NEVADA, EX REL.,
DEPARTMENT OF MOTOR VEHICLES
VS CARA OKEEFE, AN INDIVIDUAL
AND STATE OF NEVADA, EX REL., ITS
DEPARTMENT OF ADMINISTRATION,
DIVISION OF HUMAN RESOURCES
MANAGEMENT, AND JILL GREINER,
HEARING OFFICER

06/12/15 – DEPT. II – HONORABLE JAMES E. WILSON, JR.
S. Greenburg/C. Franz, Clerk – Not Reported

PETITION FOR JUDICIAL REVIEW

Present: Deputy Attorney General, Dominika Batten; Jeffrey Blanck, counsel for Defendant.

Statements were made by Court. Counsel argued the matter.

COURT ORDERED: If counsel wants to file a new proposed Order, it is due by Friday June 19, 2015.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

CIVIL COVER SHEET

Carson County, Nevada

Case No. 14080010313

(Assigned by Clerk's Office)

REC'D & FILED

2014 MAY 29 PM 1:51

I. Party Information

Plaintiff(s) (name/address/phone):
 State of Nevada ex re., its Department of
 Motor Vehicles

Attorney (name/address/phone):
 Catherine Cortez Masto, Attorney General,
 Cynthia R. Hoover & Dominika J. Morun, Deputy Attorneys General
 5240 Kietzki Lane, Suite 202, Reno, NV 89511

Defendant(s) (name/address/phone):
 Cara O'Keefe, an individual; and State of Nevada ex re., its
 Department of Administration, Division of Human Resource Management, and
 Jill Greiner, Hearing Officer

Attorney (name/address/phone):
 Jeffrey S. Blanck, Esq.
 485 W. Fifth St.
 Reno, NV 89503

ALAN GLOVER
 BY JEFFREY S. BLANCK CLERK
 DEPUTY

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)
☐ Arbitration Requested**Civil Cases Filing Types**

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
<input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate Estimated Estate Value: _____	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input checked="" type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

5-22-14

Date

Cynthia R. Hoover
 Signature of initiating party or representative

See other side for family-related case filings.