

FILED

IN THE COURT OF APPEALS OF THE STATE OF NEVADA DEC 18 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

CARA O'KEEFE, an Individual,)
)
 Appellant,)
 vs.)
)
 STATE OF NEVADA, *ex rel.*, its)
 DEPARTMENT OF MOTOR)
 VEHICLES,)
)
 Respondent.)
 _____)

Court of Appeals Case No. 68460
District Court Case No. 14 OC 00103 1 B

RESPONDENT'S APPENDIX
VOLUME I

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MEMORANDUM

from
Bruce H. Breslow
Director
Phone: (776) 884-4888
Fax: (776) 884-4892
Breslow@dmv.nv.gov

Date: April 28, 2011
To: All DMV Employees
Subject: Department Records

It has come to my attention that Department records have been accessed for non-business or personal reasons. I want to remind each of you that querying DMV records for a purpose other than DMV business is strictly forbidden. In addition, you may not process transactions on your own records or records of family, friends or acquaintances.

Prohibition and Penalty G (1) states, "The use, or manipulation of, production data or information outside the scope of one's job responsibilities, or for non-business or personal reasons, is strictly prohibited and may be subject to prosecution under NRS 208.481." The first offense can result in termination.

In addition, the Department Computer Usage Policy states, "The information contained in DMV System records is for use only for Departmental business and is proprietary information. Information from the DMV System should not be used for any purpose other than for completing authorized transactions for customers. All information in the DMV System is confidential, covered by the privacy act, and cannot be distributed to non-authorized persons."

The public entrusts this Department to ensure their personal information, whether its information on their drivers licenses, vehicle registration or title, is maintained in a secure environment and used only for official purposes. I expect each employee in this Department to honor and respect that trust.

The Department has tools in place to monitor all computer application activity to include identifying all transactions completed by each individual. We will continue to audit transaction activity. Appropriate disciplinary action will be taken if violations of policy occur as they concern DMV records.

We are the keepers of personal and confidential information of most Nevada residents. Our priority is to ensure the protection and security of this information with which we have been entrusted.

Bruce H. Breslow
Print Employee Name

253690
Employee ID #

5/3/11
Date

Bruce H. Breslow
Employee Signature

Karen Stoll
Print Supervisor Name

Karen Stoll
Supervisor Signature

5-3-11
Date

Original-DMV HR File

Exhibit F

4-28-2011

RA 0001

**NOTICE OF EMPLOYEE RIGHTS
DURING AN INTERNAL INVESTIGATION**

TO: Cara O'Keefe
FROM: Karen Stoll, Supervisor
DATE: September 16, 2013

(THIS NOTICE IS REQUIRED BY NRS 284.387)

This is to advise you that you are the subject of an internal administrative investigation relevant to the following allegation(s):

Violation of Department of Motor Vehicles Computer Usage policy:

Information Abuse

As found in NRS 242.105, NRS 281 section 1, and NAC 284.650:

Information contained in DMV system records is for use only for Departmental business and is proprietary information. Information from the DMV System should not be used for any purpose other than for completing authorized transactions for customers.

1. The use, or manipulation of, production data or information outside the scope of one's job responsibilities, or for non-business or personal reasons, is strictly prohibited and may be subject to prosecution under NRS 205.481.

This Notice is not intended to imply that disciplinary action will be taken in relation to these allegations; however, the result of the investigation may lead to disciplinary action.

You are scheduled for questioning regarding this/these allegation(s) at 9:00 a.m. on September 18, 2013 located at 555 Wright Way, Carson City NV 89711: (Human Resources office on the first floor). Pursuant to section 2 of NRS 284.387:

- You have the right to have an attorney or other representative present when you are questioned regarding this/these allegation(s), and
- You have up to two (2) business days to obtain an attorney or other representation, if you so choose.

I waive my right to have a representative present.

I wish to have a representative present.

X Cara O'Keefe
Cara O'Keefe

9/16/13
Date

As you are aware, investigations are confidential. In order to protect your confidentiality, the rights of other employees and clients and the integrity of the investigation, you are requested not to communicate any information regarding this/these allegations(s) with other employees or persons who may have information pertinent to the investigation.

Thank you for your assistance and cooperation with this investigation.

cc: Agency Personnel Liaison
NPD-32
2/26/04
NAWEDOCs\websites\Forms\NPD-32\NoticeofEmpRightsRev3-09.doc

Exhibit A

RA 0002

**STATE OF NEVADA
SPECIFICITY OF CHARGES**

Name: Cara O'Keefe Employee ID# 25693 Budget Account: 810/4717
 07.233 Revenue
 Current Class: Officer 2 Grade: 32 Step: 03 Supervisor: Karen Stoll
 Department: Motor Vehicles Division: Motor Carrier Date: 11/22/13 Time: 10:00 AM

This is to inform you that you are alleged to have violated section 284.650 of the Nevada Administrative Code, as follows:

| Date(s) | Violation(s) |
|---------|---------------------|
| | Please See Attached |

EMPLOYER EMPLOYEE

EXHIBIT P

INITIALS KS

DATE 11/22/13

A recommendation has been made by Karen Stoll Revenue Officer Al Martin
 Name Title

that it is in the best interest of the State of Nevada to take the following disciplinary action(s):

Termination

Proposed Effective Date, no earlier than December 18, 2013 ¹⁶
Karen Stoll
 Signature (Person recommending action)

- In accordance with NAC 284.656, a hearing has been scheduled on your behalf to determine whether such action is warranted. Following the hearing and prior to the proposed effective date, you will be given a copy of the finding(s) and recommendation(s), if any, resulting from the hearing and be informed in writing of the appointing authority's decision regarding the recommended action(s).
- In accordance with paragraph 2(b) of NAC 284.6563, the effective date of your discipline is immediate as noted above. A hearing in accordance with NAC 284.656 will follow as soon as practicable after the effective date of your discipline.

Note: If you wish to appeal your discipline, please be aware that pursuant to NRS 284.390, an appeal is deemed timely if it is postmarked within 10 working days after the proposed effective date of the disciplinary action.

The hearing will be conducted by:

Terr L Carter DMV, Division Administrator, Management Services at 9:00 a.m. on December 6, 2013
 Name Title Time Date

at: 555 Wright Way, Carson City NV 89711, Conference Room B on the second floor.
 Location (Include complete address)

Pursuant to NAC 284.656, the hearing process is an informal proceeding between you and the appointing authority or his or her designated representative. Witnesses are not permitted. Each party may be accompanied by a person of his or her choice. Please refer to NAC 284.656 or direct questions concerning this notice and hearing to the appointing authority, personnel officer, or other agency personnel familiar with the procedure. (For information regarding the hearing and your right to waive the hearing, you should refer to NAC 284.6561.)

Kayne Steidel
 Signature of Appointing Authority or Designated Representative

Signature of Employee: I understand that by acknowledging receipt of this Specificity of Charges, I am neither admitting guilt nor giving up any appeal rights I may have under NRS 284.390.

Cara O'Keefe Date 11/22/13 Time 10:05 A.M
 Employee's Signature

 Witness' Signature (Required if employee refuses to sign) Signature and Title: (Person serving this notice)

NPD-41 Attachment
Employee Name: Cara O'Keefe
Employee ID# 025693
Budget Account: 810/4717
Location: Carson City

I. SUMMARY OF FACTS:

On December 28, 2012 Department (DMV) employees were made aware that you were interested in applying for a recently vacated position with another Division in the DMV. As a result two employees came forth separately with information alleging they overheard you make calls to the Carson City Sheriff's office regarding an individual's driver's license and representing yourself to be an employee whose job it was at the DMV to assist individuals with driver's license issues. These calls were reportedly made on August 8, 2012 at approximately 12.53 p.m. and again on August 10, 2012 at 10:37 a.m.

Since you had transferred out of the Department, accepting a promotional opportunity on December 5, 2012, the administrator decided it was not necessary to investigate the allegations. On August 12, 2013 the agency was notified you were being restored to your previously held position with the DMV, Motor Carrier Division. In light of your return to the department and due to the seriousness of the allegations brought forth in December 2012, it became pertinent to investigate the alleged conduct.

On September 16, 2013, you were issued a Notice of Employee Rights During an Internal Investigation and placed on Administrative Leave with pay for the duration of the investigation and conclusion. On October 8, 2013, you received a 2nd Notice of Employee Rights During an Internal Investigation for additional questioning. The interviews were conducted with you on September 18, 2013 and October 10, 2013. (Exhibits A, B, and C)

The results of the investigation, validated by your own admission and the information obtained through the DMV CARRS (formerly known as DMV Application) access reports for your user ID, confirm you accessed the confidential DMV database information for reasons outside your scope of duty. A review of the CARRS report confirmed you accessed the confidential information of two persons, a male citizen and a female citizen. Pursuant to Section G of the Department's Prohibitions and Penalties, misuse of information technology is a terminable offense.

The CARRS report shows you accessed the records of a male citizen on 7 occasions. You identified your relationship with the male citizen as a family friend. You reported having helped the citizen with a DUI situation and reported the reason for accessing his records on two occasions was to obtain a date from the record and to look up his address. You also clarified the help you provided was not Motor Carrier business.

Listed below is a recap of what was found on the report:

- On July 23, 2012 @ 1:21 p.m.; July 27, 2012 @ 7:31 a.m. & 10:26 a.m.; August 15, 2012 @ 2:42 p.m.; September 4, 2012 @ 2:54 p.m.; September 20, 2012 @ 6:38 a.m.; October 1, 2012 @ 11:04 a.m.; & November 8, 2012 @ 8:33 a.m. DMV data software records indicate that you accessed Non-Motor Carrier, aka male citizen. (Exhibit D)

The CARRS report shows you accessed the records of a female citizen on 3 occasions. You identified the female citizen as the wife of the male citizen and provided many details about the two's personal lives, demonstrating a familiar relationship with both. You were unable to recall the reasons for having accessed the female citizen's records.

Listed below is a recap of what was found on the report:

- On July 23, 2012 @ 1:21 p.m. & 2:44 p.m. and also on July 27, 2012 @ 7:31 a.m. DMV data software records indicate that you accessed records for Non-Motor Carrier female citizen. (Exhibit D)

In addition to the CARRS report, information obtained during the course of the investigation and by your own admission, supports you also discussed information related to the male citizen with the Carson City Sheriff, representing yourself as an employee of the DMV, for personal reasons outside your normal scope of duty. (Exhibit D) When asked why you contacted the Sheriff's office you said, "I did call to find out who he needed to contact. I did ask what he needed to do to straighten the issue out." You failed to provide an explanation for representing yourself as an employee of DMV, other than to say "if I did it was habit, force of habit."

NPD-41 Attachment
Employee Name: Cara O'Keefe
Employee ID# 025693
Budget Account: 810/4717
Location: Carson City

This breach is determined to be Information Abuse, which violates the DMV Computer Usage Policy. (NRS 242.105, NRS 281 section 1, and NAC 284.650). (Exhibit E) The Computer Usage Policy states, "the information contained in DMV System records is for use only for Departmental business and is proprietary information. Information from the DMV System should not be used for any purpose other than for completing authorized transactions for customers. All information in the DMV System is confidential, covered by the privacy act, and cannot be distributed to non-authorized persons." Additionally, you signed a Director's Memo with the Subject: Department Records acknowledging your understanding of the Department Policy regarding the access of Department Records. (Exhibit F)

Cara, you demonstrated a lack of sound judgment and willful disobedience by repeatedly accessing the DMV's database of confidential records for personal reasons. In addition you misrepresented your authority in an attempt to obtain information for individuals which was outside the scope of your job.

II. VIOLATIONS:

A. From the Nevada Administrative Code:

NAC 284.646 Dismissals. (NRS 284.065, 284.155, 284.383, 284.385)

1. An appointing authority may dismiss an employee for any cause set forth in NAC 284.650 if:
 - (a) The agency with which the employee is employed has adopted any rules or policies which authorize the dismissal of an employee for such a cause; or
 - (b) The seriousness of the offense or condition warrants such dismissal.
2. An appointing authority may immediately dismiss an employee for the following causes, unless the conduct is authorized pursuant to a rule or policy adopted by the agency with which the employee is employed:
 - (b) Unauthorized release or use of confidential information.

NAC 284.650 Causes for disciplinary action. (NRS 284.065, 284.155, 284.383) Appropriate disciplinary or corrective action may be taken for any of the following causes:

1. Activity which is incompatible with an employee's conditions of employment established by law or which violates a provision of NAC 284.653 or 284.738 to 284.771, inclusive.
6. Insubordination or willful disobedience.
18. Misrepresentation of official capacity or authority.

B. From the Nevada Department of Motor Vehicles Prohibitions and Penalties:

TYPES OF DISCIPLINARY ACTIONS

1. **ORAL WARNING:** By the supervisor(s) responsible for the employee's activities. This action may be either oral or written, or both. Oral warnings reduced to writing are maintained in the supervisor's file. Oral Warnings are not forwarded to the employee's Department personnel file or to the State Department of Personnel, Records Division.
2. **WRITTEN REPRIMAND:** By the supervisor(s) responsible for the employee's activities. This action should be both oral and written. It must be signed by the supervisor and employee, a copy given to the employee, and a copy sent to DMV Personnel for the employee's file and the Department of Personnel, Records Division. Written Reprimands must be on the standardized form NPD-52. If employee refuses to sign the form, state this fact on the form and obtain the signature of a witness.
3. **SUSPENSION:** Without pay for a period of no more than 30 working days: Requires NPD-41 form - Specificity of Charges. If employee refuses to sign form, state this fact on the form and obtain the signature of a witness.
4. **DEMOTION:** To a lower class: Requires NPD-41 form - Specificity of Charges. If employee refuses to sign form, state this fact on the form and obtain the signature of a witness.
5. **DISMISSAL from service:** Requires NPD-41 form - Specificity of Charges. If employee refuses to sign form, state this fact on the form and obtain the signature of a witness.

RA 0005

NPD-41 Attachment
 Employee Name: Cara O'Keefe
 Employee ID# 025693
 Budget Account: 810/4717
 Location: Carson City

Department of Motor Vehicles Prohibitions & Penalties

| | 1st Offense | | 2nd Offense | | Additional | |
|---|-------------|------|-------------|------|------------|------|
| | Min. | Max. | Min. | Max. | Min. | Max. |
| B. Performance on the Job | | | | | | |
| 23. Disregard and/or deliberate failure to comply with or enforce statewide, department or office regulations and policies. | 2 | 5 | 3 | 5 | 4 | 5 |
| C. Neglect of, or Inexcusable absence from, the job. | | | | | | |
| 4. Conducting personal business during working hours. | 1 | 2 | 3 | 5 | 3 | 5 |
| G. Misuse of Information Technology | | | | | | |
| 1. The use, or manipulation of production data or information outside the scope of one's job responsibilities, or for non-business or personal reasons, is strictly prohibited and may be subject to prosecution under NRS 205.481. | 5 | - | - | - | - | - |
| H. Other acts of misconduct or incompatibility | | | | | | |
| 4. Unauthorized or improper disclosure of confidential information. | 1 | 5 | 2 | 5 | 3 | 5 |
| 7. Acting in an official capacity without authorization. | 1 | 5 | 2 | 5 | 3 | 5 |

C. DMV Policy and Procedure

Computer Usage Policy, Policy DMV 2.19.6

Section: Information Abuse

As found in NRS 242.105, NRS 281 section 1, and NAC 284.650: Information contained in DMV system records is for use only for Departmental and business and is proprietary information. Information from the DMV System should not be used for any purpose other than for completing authorized transactions for customers.

D. Date of last signed Work Performance Standards: 05/01/2012

III. DATE OF HIRE WITH DMV: 12/11/2006 – 12/05/2012 returned 09/18/2013

IV. PRIOR CORRECTIVE/ DISCIPLINARY ACTIONS:

| Date | Type of Discipline | Reason (s) |
|--------------|--------------------|------------|
| None on file | | |

NPD-41 Attachment
 Employee Name: Cara O'Keefe
 Employee ID# 025893
 Budget Account: 810/4717
 Location: Carson City

V. EVALUATIONS:

| Date | Rating |
|------------|-------------------|
| 03/11/2007 | Meets Standards |
| 07/11/2007 | Exceeds Standards |
| 11/11/2007 | Meets Standards |
| 12/11/2008 | Exceeds Standards |
| 12/11/2009 | Exceeds Standards |
| 12/11/2010 | Exceeds Standards |
| 12/11/2011 | Exceeds Standards |

VI. TRAINING:

| Date | Hours | Topic of Training |
|------------|-------|---|
| 03/09/2006 | 3.5 | Gen Dev - Orientation to State Employment |
| 04/04/2008 | 3.0 | Sexual Harassment Prevention |
| 04/25/2006 | 4.0 | Controllers Office Advantage Financial - Navigation |
| 06/06/2006 | 3.5 | Controllers Office Advantage Financial - Cash Receipts |
| 06/21/2006 | 18.5 | UTS Phase 2 - Accounting / Processing |
| 07/17/2006 | 8.0 | UTS Phase 2 - Accounting / Processing Refresher |
| 07/20/2006 | 0.0 | UTS Phase 2 - Conversion |
| 10/11/2006 | 4.0 | Controllers Office Advantage Financial - Restricted JV's and Decentralized JV's |
| 10/11/2006 | 3.5 | Controllers Office Advantage Financial - Payment Vouchers |
| 11/28/2006 | 0.0 | IFS - HR Advantage Timesheet Entry |
| 11/28/2006 | 3.0 | IFS - HR Advantage Navigation |
| 01/09/2007 | 2.0 | Funds Handling- revisited |
| 01/30/2007 | 1.0 | Preventing Sexual Harassment in the Workplace |
| 03/22/2007 | 4.0 | Risk Management Defensive Driving |
| 05/10/2007 | 3.5 | Communication - Whats my Style |
| 05/11/2007 | 4.0 | MS Excel - Advance |
| 06/25/2007 | 3.5 | Its All About Attitude: Its all About Me |
| 06/26/2007 | 3.5 | Communication: Listen Up |
| 06/26/2007 | 3.5 | Communication: Back to Basics |
| 06/27/2007 | 3.5 | Customer Service: Office Etiquette |
| 06/27/2007 | 3.5 | Customer Service: Practices |

RA 0007

NPD-41 Attachment
 Employee Name: Cara O'Keefe
 Employee ID#: 025693
 Budget Account: 810/4717
 Location: Carson City

| | | |
|------------|-----|---|
| 06/28/2007 | 3.5 | Communication: Writing for Success II |
| 06/28/2007 | 3.5 | Communication: Writing for Success I |
| 09/03/2008 | 3.0 | The Leader FISH! Philosophy Introduction |
| 02/26/2009 | 8.0 | Nevada Commercial Online Registration |
| 09/29/2009 | 5.5 | Risk Management CPR/AED/First Aid |
| 05/13/2010 | 3.5 | Bomb Threat and Evacuation Plan |
| 09/21/2010 | 4.0 | Risk Management Defensive Driving |
| 10/04/2010 | 0.5 | Sexual Harassment Prevention Revisited (Online Course) |
| 12/09/2010 | 4.0 | Risk Management Workplace Violence: Recognition & Prevention |
| 03/21/2011 | 1.0 | Response to Active Shooting Events |
| 09/14/2011 | 5.5 | Risk Management CPR/AED/First Aid |
| 12/07/2011 | 4.0 | The Five Waves of Trust |
| 01/09/2012 | 0.0 | Nevada Information Security Awareness |
| 01/31/2012 | 7.0 | Public Speaking |
| 04/11/2012 | 4.0 | Emotional Intelligence |
| 05/10/2012 | 2.0 | Who Moved My Cheese |
| 09/05/2012 | 4.0 | Mixing Four Generation in the Workplace |
| 09/13/2012 | 7.0 | Self-Efficacy Seminar |
| 12/20/2012 | 7.0 | Supervisory Leadership |
| 02/05/2013 | 1.5 | Fire Marshall Fire Safety & Extinguisher Training |
| 02/04/2013 | 0.0 | Introduction to Financial Regulation Self Study |
| 02/28/2013 | 3.5 | Respectful Workplace |
| 04/11/2013 | 3.5 | Customer Service: Understanding Those We Serve |
| 04/17/2013 | 3.5 | Time Management: Making the Most of Ourselves at Work |
| 05/07/2013 | 4.0 | Working With You is Killing Me |
| 05/15/2013 | 7.0 | Dealing with Difficult Behavior and Interpersonal Relationships |
| 07/15/2013 | 0.5 | Sexual Harassment Prevention (Refresher) |

VII. LETTERS OF REFERENCE, COMMENDATION, AND/OR APPRECIATION:
 N/A

RA 0008

NPD-41 Attachment
Employee Name: Cara O'Keefe
Employee ID# 025693
Budget Account: 810/4717
Location: Carson City

VIII. CONCLUSION AND BASIS FOR RECOMMENDATION:

Cara is being disciplined for violations of the Nevada Administrative Code 284.650.

6. Insubordination or willful disobedience.

Evidence to support this charge is contained in exhibit D, the DMV access to records report. Specifically, this exhibit shows that you accessed personal records of two different non Motor Carrier customers. Your testimony indicates that you considered the male citizen to be "like a son", "known him for 10-15 years". Exhibit D indicates you accessed records of another non Motor Carrier person, the female citizen, on two occasions for unknown reasons. Since they are non Motor Carrier customers access to their records was for reasons outside the scope of your duty. Exhibit E sets forth the DMVs policy in using confidential proprietary software records for personal reasons. Your testimony indicates you accessed confidential records using the DMV database for reasons outside the scope of duty on multiple occasions. Exhibit F signed by you indicates that you were aware of the DMVs Policy and Procedures regarding Computer Usage and the penalty for violating them.

18. Misrepresentation of official capacity or authority.

Evidence to support this charge is contained in evidence gathered during the investigation. It was concluded you called the Carson City sheriff's office and, whether intentional or unintentional, represented yourself as an employee of DMV, misleading the sheriff's office representative. This call was made in an effort to assist the male citizen, identified as a family friend, for personal reasons and therefore a call made as a DMV employee would be a misrepresentation of your official capacity.

Evidence that further supports these charges includes:

Violations to Department Prohibitions and Penalties intended as a tool to describe behavior that is subject to discipline and the types of corrective and disciplinary actions.

B. Performance on the job

23. Disregard and/or deliberate failure to comply with or enforce statewide, department or office regulations and policies.

Evidence to support this charge is contained in Exhibit D documenting the specific report that shows queries to accounts for personal reasons outside the scope of your job. Your actions demonstrated a disregard for NAC, DMV Prohibitions and Penalties, DMV policy, and the director's letter dated 4/25/2011.

C. Neglect of, or inexcusable absence from, the job.

4. Conducting personal business during working hours.

Evidence to support this charge is contained in Exhibit D documenting the specific report that shows queries to accounts of non-Motor Carrier customers. Additional evidence to support this is your testimony obtained during the investigation that the male citizen was a friend and that you were helping him with his driver's license issues.

G. Misuse of Information Technology

1. The use, or manipulation of production data or information outside the scope of one's job responsibilities, or for non-business or personal reasons, is strictly prohibited...

Evidence to support this charge is contained in Exhibit D documenting the specific report that shows queries to accounts of non-Motor Carrier customers. Additional evidence to support this is your testimony obtained during the investigation that the male citizen was a friend and that you were helping him with his driver's license issues. NAC 284.646 authorizes an agency to immediately dismiss an employee for unauthorized release or use of confidential

NPD-41 Attachment
Employee Name: Cara O'Keefe
Employee ID# 025693
Budget Account: 810/4717
Location: Carson City

information. By accessing the proprietary DMV software to assist a family friend for personal reasons, outside the scope of your job duties, you clearly used confidential information without the appropriate authorization.

H. Other acts of misconduct or incompatibility

4. Unauthorized or improper disclosure of confidential information.

Evidence to support this charge is contained in Exhibit D documenting the specific report that shows queries to accounts that are non-Motor Carrier customers. Also evidence to support this is your testimony that calls were placed to the Carson City Sheriff's office in an attempt to help the male citizen with his driver's license issues where in you were disclosing information to the Carson City Sheriff's office obtained from proprietary DMV software.

7. Acting in an official capacity without authorization.

Evidence to support this charge is contained in your testimony where you indicate that you placed calls to the Carson City Sheriff's office in an attempt to help the male citizen with his driver's license issues. Contacting a law enforcement authority on behalf of an individual regarding driver's license issues does not fall under the job scope of a Revenue Officer in the Motor Carrier Division.

Computer Usage Policy, Policy DMV 2.19.6

Section: Information Abuse

Evidence to support this charge is contained in Exhibit D documenting the specific report that shows queries to accounts of non-Motor Carrier customers. Additional evidence to support this is your testimony obtained during the investigation that the male citizen was a friend and that you were helping him with his driver's license issues; and that you were not sure why you accessed the female citizen's record. NAC 284.646 authorizes an agency to immediately dismiss an employee for unauthorized release or use of confidential information. By accessing the proprietary DMV software to assist a family friend for personal reasons, outside the scope of your job duties, you clearly used confidential information without the appropriate authorization.

As a state employee, you represent the state of Nevada; your actions and your negligence are the actions of the agency and this causes the Department to lose credibility with the customers, the public and the other government entities with which we work. If confidentiality of records and data is compromised for personal gain or use, then the state is at risk for liability for breach of confidentiality. If working relationships with law enforcement agencies are breached by misrepresenting the authority you have to obtain information, then the trust between these agencies is violated and again confidentiality is breached.

Based on the severity of the violation and the failure to follow and adhere to Department policies it is my recommendation, for the good of the state, your employment be terminated.

NPD-41 Attachment
 Employee Name; Cara O'Keefe
 Employee ID# 025693
 Budget Account: 810/4717
 Location: Carson City

IX. EXHIBITS:

| Exhibit | Date | Author | Description |
|----------------|----------------------------------|---|--|
| A | 9-16-2013 | Karen Stoll Supervisor DMV | Notice of Employee Rights During an Internal Investigation (Information Abuse) |
| B | 9-16-2013 | Wayne Seidel Administrator Motor Carrier, DMV | Notice of Administrative Leave with Pay |
| C | 10/8/2013 | Karen Stoll Supervisor DMV | Notice of Employee Rights During an Internal Investigation (Re-Notice for 2nd Interview) (Information Abuse) |
| D | 7/23/12 – 11/08/12 | DMV Proprietary Data Base | Access to records report – Non Motor Carrier Customers |
| E | 9/15/11 & 8/12/13 | DMV Motor Vehicles Information Technology Division | DMV Computer Usage Policy Manual |
| F | 4/25/2011 | Bruce H. Breslow Director, DMV | Memo to all DMV employees regarding Department Records. Discusses access to records outside scope of duty and remedies afforded the DMV for violation(s). Executed by Cara O'Keefe on May 3, 2011 |

Brian Sandoval
Governor



555 Wright Way
Carson City, Nevada 89711-0900
Telephone (775) 684-4368
www.dmvnv.com

Troy L. Dillard
Director

December 9, 2013

| | | |
|----------|---|----------|
| EMPLOYER | ✓ | EMPLOYEE |
| EXHIBIT | b | |
| MARKED | ✓ | |
| ADMITTED | ✓ | |

To: Troy L. Dillard, Director
Department of Motor Vehicles

FROM: Terri Carter, Administrator, Management Services & Programs
Department of Motor Vehicles

Subject: Pre-Disciplinary Hearing
Cara O'Keefe

On December 6, 2013, at 9:00 a.m., I held a pre-disciplinary hearing for Cara O'Keefe. In attendance at this meeting were Cara O'Keefe and myself. The reason for this hearing was the Specificity of Charges issued against Ms. O'Keefe by the Motor Carrier Division for violating the following:

A. From the Nevada Administrative Code:

NAC 284.646 Dismissals. (NRS 284.065, 284.155, 284.383, 284.385)

1. An appointing authority may dismiss an employee for any cause set forth in NAC 284.650 if:
 - (a) The agency with which the employee is employed has adopted any rules or policies which authorize the dismissal of an employee for such a cause; or
 - (b) The seriousness of the offense or condition warrants such dismissal.
2. An appointing authority may immediately dismiss an employee for the following causes, unless the conduct is authorized pursuant to a rule or policy adopted by the agency with which the employee is employed:
 - (b) Unauthorized release or use of confidential information

NAC 284.646 Causes for disciplinary action. (NRS 284.065, 284.155, 284.383)

Appropriate disciplinary or corrective action may be taken for any of the following causes:

1. Activity which is incompatible with an employee's conditions of employment established by law or which violates a provision of NAC 284.653 or 284.738 to 284.771, inclusive.
6. Insubordination or willful disobedience.
7. Misrepresentation of official capacity or authority.

RA 0012

B. From the Nevada Department of Motor Vehicles Prohibitions and Penalties:

TYPES OF DISCIPLINARY ACTIONS

1. **ORAL WARNING:** By the supervisor(s) responsible for the employee's activities. This action may be either oral or written, or both. Oral warnings reduced to writing are maintained in the supervisor's file. Oral Warnings are not forwarded to the employee's Department personnel file or to the State Department of Personnel, Records Division.
2. **WRITTEN REPRIMAND:** By the supervisor(s) responsible for the employee's activities. This action should be both oral and written. It must be signed by the supervisor and employee, a copy given to the employee, and a copy sent to DMV Personnel for the employee's file and the Department of Personnel, Records Division. Written Reprimands must be on the standardized form NPD-52. If employee refuses to sign the form, state this fact on the form and obtain the signature of a witness.
3. **SUSPENSION:** Without pay for a period of no more than 30 working days: Requires NPD-41 form - Specificity of Charges. If employee refuses to sign form, state this fact on the form and obtain the signature of a witness.
4. **DEMOTION:** To a lower class: Requires NPD-41 form - Specificity of Charges. If employee refuses to sign form, state this fact on the form and obtain the signature of a witness.
5. **DISMISSAL from service:** Requires NPD-41 form - Specificity of Charges. If employee refuses to sign form, state this fact on the form and obtain the signature of a witness.

Department of Motor Vehicles Prohibitions & Penalties

| | 1 st Offence | | 2 nd Offence | | Additional | |
|---|-------------------------|------|-------------------------|------|------------|------|
| | Min. | Max. | Min. | Max. | Min. | Max. |
| B. Performance on the job | | | | | | |
| 23. Disregard and/or deliberate failure to comply with or enforce statewide, department or office regulations and policies. | 2 | 5 | 3 | 5 | 4 | 5 |
| C. Neglect of, or inexcusable absence from the job | | | | | | |
| 4. Conducting personal business during working hours. | 1 | 2 | 3 | 5 | 3 | 5 |
| G. Misuse of Information Technology | | | | | | |
| 1. The use, or manipulation of production data or information outside the scope of one's job responsibilities, or for non-business or personal reasons, is strictly prohibited and may be subject to prosecution under NRS 205.481. | 5 | - | - | - | - | - |
| H. Other acts of misconduct or incompatibility | | | | | | |
| 4. Unauthorized or improper disclosure of confidential information | 1 | 5 | 2 | 5 | 3 | 5 |
| 7. Acting in an official capacity without | 1 | 5 | 2 | 5 | 3 | 5 |

| | | | |
|---------------|--|--|--|
| authorization | | | |
|---------------|--|--|--|

**DMV Policy 2.19.6, Computer Usage Policy Manual
Information Abuse**

As found in NRS 242.105, NRS 281 section 1, and NAC 284.650: Information contained in DMV system records is for use only for Departmental and business and is proprietary information. Information from the DMV system should not be used for any purpose other than for completing authorized transactions for customers.

I discussed the Pre-disciplinary Hearing process with Cara and read the review of the purpose of the hearing, the charges, and the grounds.

I then opened the hearing for Ms. O'Keefe to present her response to the charges and the grounds provided by her division. Ms. O'Keefe began by stating she had prepared a written response and would provide me with a copy (Employee Exhibit 1). Ms. O'Keefe read her written statement to me and noted she had not received the notarized letter referenced in her statement due to an issue with her mail delivery. Ms. O'Keefe said she expected to receive the letter and would provide it to either Human Resources or myself. On December 9, 2013, at approximately 3:00 p.m. Ms. O'Keefe provided a copy of an email from the family friend indicating he gave her permission to access his records (Employee Exhibit 5).

I asked Ms. O'Keefe if she would respond to each of the prohibitions and penalty violations:

Item B23: Ms. O'Keefe stated she did not give information that was not authorized by the family friend. The family friend provided her with his driver's license number and that is what she gave to the Sheriff's office. Ms. O'Keefe stated she was trying to resolve an issue with the friend's address because he had not received any notifications from the department regarding his driver's license status. She further stated she looked at the male and female friends' records to verify if an address change had been completed.

Item C4: Ms. O'Keefe stated this was a DMV-related issue and she accessed the records during her break and lunch periods. Ms. O'Keefe could not recall her work hours.

Item G1: Ms. O'Keefe stated again this was a DMV-related issue and that she has assisted other non-Motor Carrier customers during the course of her employment. She further stated she did not manipulate any data, but looked up the data to validate the information the family friend gave to her.

Item H4: Ms. O'Keefe reported she did not give any information other than the driver's license number which was provided by the family friend. Ms. O'Keefe

admits she gave his name and driver's license number to the Sheriff's office. Cara stated she believes the Sheriff's office did not return her call because she was calling on the friend's behalf, so she provided him with the information to contact the Sheriff's office.

Item H7: Ms. O'Keefe stated she did not act in an official capacity and that it was a reflex/knee jerk reaction to say, "Cara with Motor Carrier".

Ms. O'Keefe stated her details could have been clearer if this had been done more timely. Cara stated if this was a terminable offense it should have been addressed sooner. I asked Cara what she would deem a suitable disciplinary action and she responded no disciplinary action is warranted because she viewed the information with the family friend's permission.

Based on the documentation provided in the NPD-41, Ms. O'Keefe's written statement and supporting documentation, and information gathered during the December 6, 2013, hearing, I concur with the recommendation of the supervisor to terminate Ms. O'Keefe based on the violations set forth in accordance with the Department of Motor Vehicles Prohibitions and Penalties. This act was outside the scope of her responsibilities and was done for personal reasons. The fact that the family friend gave her permission does not justify violating laws and policies. In addition, misuse of information technology is a terminable offense for a first time violation.

Brian Sandoval
Governor



Troy Dillard
Director

555 Wright Way
Carson City, Nevada 89711-0900
Telephone (775) 684-4368
www.dmvnv.com

December 13, 2013

Cara O'Keefe
1775 Myles Way
Carson City, NV 89701

| | | | |
|----------|-------------------------------------|------------|--------------------------|
| EMPLOYER | <input checked="" type="checkbox"/> | EMPLOYEE | <input type="checkbox"/> |
| EXHIBIT | <input checked="" type="checkbox"/> | | |
| MARKED | <input checked="" type="checkbox"/> | | |
| ADMITTED | <input checked="" type="checkbox"/> | DETERMINED | <input type="checkbox"/> |

Ms. O'Keefe:

On November 22, 2013, you were presented with a Specificity of Charges recommending termination from state service that charged you with the following violations:

NAC 284.646 Dismissals. (NRS 284.065, 284.155, 284.383, 284.385)

1. An appointing authority may dismiss an employee for any cause set forth in NAC 284.650 if:

(a) The agency with which the employee is employed has adopted any rules or policies which authorize the dismissal of an employee for such a cause; or

(b) The seriousness of the offense or condition warrants such dismissal.

2. An appointing authority may immediately dismiss an employee for the following causes, unless the conduct is authorized pursuant to a rule or policy adopted by the agency with which the employee is employed:

(b) Unauthorized release or use of confidential information.

NAC 284.650 Causes for disciplinary action. (NRS 284.065, 284.155, 284.383)
Appropriate disciplinary or corrective action may be taken for any of the following causes:

1. Activity which is incompatible with an employee's conditions of employment established by law or which violates a provision of NAC 284.653 or 284.738 to 284.771, inclusive.

6. Insubordination or willful disobedience.

18. Misrepresentation of official capacity or authority.

Department of Motor Vehicles Penalties and Prohibitions

B. Performance on the Job

23. Disregard and/or deliberate failure to comply with or enforce statewide, department or office regulations and policies.

C. Neglect of, or inexcusable absence from, the job

4. Conducting personal business during working hours.

G. Misuse of Information Technology

1. The use, or manipulation of production data or information outside the scope of one's job responsibilities, or for non-business or personal reasons, is strictly prohibited and may be subject to prosecution under NRS 205.481.

RA 0016

- H. Other acts of misconduct or incompatibility
 - 4. Unauthorized or Improper disclosure of confidential information.
 - 7. Acting in an official capacity without authorization.

Department of Motor Vehicles Policy and Procedure

Computer Usage Policy, Policy DMV 2.19.6

Section: Information Abuse

As found in NRS 242.105, NRS 281 section 1, and NAC 284.650: Information contained in DMV system records is for use only for Departmental business and is proprietary information. Information from the DMV System should not be used for any purpose other than for completing authorized transactions for customers.

You were afforded an opportunity to provide supporting documentation and/or explain your actions to pre-disciplinary hearing representative, Terri Carter, Administrator, Management Services and Programs Division, on December 6, 2013. You attended the pre-disciplinary hearing. I am in receipt of the pre-disciplinary hearing officer's report.

During the pre-disciplinary hearing you provided an excerpt from the State of Nevada Employee Handbook and referenced NAC 284.638 and expressed concern regarding the timeframe in which this situation was handled. The Department was not aware of this situation until after you had promoted to another Department, and you were no longer under our authority. Once the Department was notified you were returning, we were obligated to investigate.

Ms. Carter's report concluded, "Based on the documentation provided in the NPD-41, Ms. O'Keefe's written statement and supporting documentation, and information gathered during the December 6, 2013 hearing, I concur with the recommendation of the supervisor to terminate Ms. O'Keefe based on the violations set forth in accordance with the Department of Motor Vehicles Prohibitions and Penalties. This act was outside the scope of her responsibilities and was done for personal reasons. The fact that the family friend gave her permission does not justify violating laws and policies. In addition, misuse of information technology is a terminable offense for a first time violation."

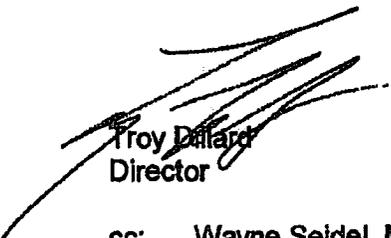
Though I am able to appreciate your effort to provide good customer service, I cannot excuse clear and deliberate deviations from policies and procedures. You acted outside of your Revenue Officer job duties when you represented yourself to another government agency outside of your authority. Using CARRS (DMV records data base) to obtain information outside of the scope of your position is a blatant violation the Computer Usage Policy. As stated by your supervisor in the NPD-41, "As a state employee, you represent the State of Nevada; your actions and your negligence are the actions of the agency and this causes the Department to lose credibility with the customers, the public and the other government entities with which we work."

**Cara O'Keefe
December 13, 2013
Page 3 of 3**

It is my determination, after review of the Specificity of Charges; your statements during the pre-disciplinary hearing; the recommendation of Ms. Carter; and the recommendation of your supervisor, it is in the best interest of the State of Nevada to terminate your employment effective December 16, 2013.

In accordance with NRS 284.390 you have the right to appeal this decision; such a request must be addressed to the Director of the Nevada Division of Human Resource Management and submitted on Request for Hearing regarding Dismissal, Suspension, Demotion or Involuntary Transfer form (NPD-54) within 10 days of the effective date of the termination. This form can be found on the Department of Personnel website at www.hr.nv.gov.

Sincerely,



**Troy Dillard
Director**

**cc: Wayne Seidel, Motor Carrier Division Administrator
Alys Dobel, HR Administrator
Official Personnel File**

RA 0018

RECEIVED
DEC 17 2013

**REQUEST FOR HEARING REGARDING
DISMISSAL, SUSPENSION, DEMOTION
OR INVOLUNTARY TRANSFER**
PLEASE PRINT ALL INFORMATION

NEVADA DIV. OF HR MANAGEMENT
GRIEVANCES APPEALS
CARSON CITY, NEVADA

Appellant Information

| | |
|--|--|
| Name of appellant: <u>Cara O'Keefe</u> | Agency of Employment: <u>DMV</u> |
| Mailing Address: <u>1775 Myles Way Carson City, NV 89701</u> | Division/Section: <u>Motor Carrier City: Carson City</u> |
| Work Phone: _____ Contact Phone: <u>75-297-2900</u> | Job Title: <u>Revenue Officer II</u> |
| Email: <u>wcbokeefe5@gmail.com</u> | Employee ID#: <u>25093</u> |

Appellate Action

Effective date of action: 12/16/13
 Note: If you wish to appeal your discipline, please be aware that pursuant to NRS 284.390, an appeal is deemed timely if it is postmarked within 10 working days after the proposed effective date of the disciplinary action.

Please check applicable action: Dismissal Suspension Demotion Involuntary Transfer

Employment status at time of the action appealed (check all that apply):
 Classified Unclassified Permanent Seasonal Temporary

Were you serving a probationary or trial period at the time of the action you are appealing? Yes No

In the case of discipline, explain briefly why the action taken against you was not reasonable.
See attached

In the case of an involuntary transfer, explain how the transfer was made for the purpose of harassing you.

What remedy are you seeking? Dismissal of Charges

Designation of Representative

You may represent yourself in this appeal, or you may be represented by an attorney or a person of your choosing. If you are representing yourself, do NOT complete this section. You may also designate a representative at a later date.
 "I hereby designate Jeffrey S. Blanck to serve as my representative during the course of this appeal. I understand that my representative is authorized to act on my behalf."

| | |
|---|---|
| Representative's mailing address: <u>485 W. 5th St. Reno, NV 89503</u> | Representative's phone number: Fax: <u>775-323-5949</u> Email address: <u>j.blanck@jeffreyblancklaw.com</u> |
|---|---|

SIGN HERE TO MAKE YOUR DESIGNATION OF REPRESENTATIVE EFFECTIVE

Appellant Signature: Cara O'Keefe Date: 12/17/13

Appellant Signature

Signature of Appellant or Designated Representative:

12/17/13
Date:

By signing this form you are requesting a hearing to determine the reasonableness of the discipline or involuntary transfer and are authorizing the Division of Human Resource Management to provide a copy of your personnel record to the Hearing Officer.

Please mail or fax this form to:

Division of Human Resource Management
Clerk to the Hearing Officers
209 E. Musser St., Room 101
Carson City, Nevada 89701-4204
Fax (775) 684-0118

APPEAL INSTRUCTIONS

GENERAL: Please print all information requested on this form. You are eligible to file an appeal if you are a permanent, classified State employee. The appeal procedure and statements made on this form do not include all the rights available to an appellant. You should review NRS 284 and NAC 284 prior to filing an appeal. Appeal hearings are open to the public and hearing officer decisions are public information.

If you require additional space to include information about your appeal you may provide an attachment. You do not need to provide all back-up documents with this form, you will have an opportunity to submit additional material in support of your appeal prior to your hearing.

WHEN TO FILE AN APPEAL: Your appeal must be filed during the period beginning with the effective date of the action you are appealing and ending on the 10th working day after the effective date. You may not file your appeal before the effective date of the action you are appealing. If your appeal is filed after the 10th working day of the effective date of action, it may be dismissed as untimely. The date of the filing is the date the appeal is postmarked, the date of the fax transmission, or the date of receipt if you personally deliver it to the Division of Human Resource Management.

HOW TO FILE AN APPEAL: You may file your appeal by mail, by fax, or by personal delivery. The appeal form must be completely filled out and must contain your signature or your designated representative's signature.

WHERE TO FILE AN APPEAL: You must address your appeal to the Administrator of the Division of Human Resource Management, 209 E. Musser St., Room 101, Carson City, Nevada 89701-4204, Fax (775) 684-0118, Phone (775) 684-0109.

To deliver your appeal in person, please bring it to the Division of Human Resource Management, Division Administrator's Office, 100 N. Stewart St., Suite 200, Carson City, Nevada.

WHISTLEBLOWING APPEAL: If you believe the action you are appealing was taken because of "whistleblowing" activities, you must use form NPD-53 "Request For Hearing Under The Provisions of NRS 281.641".

1. I received disparate treatment because another employee with a similar, but much worse, violation received only a suspension after being presented with a restraining order from her "customer."
2. The issue was not addressed until more than one (1) year after the supposed violation. If it was a terminable offense, it should have been investigated and addressed in a timely fashion. The issue should not have been deemed as "invalid," and as a resolution send me to another state agency to "deal" with.
3. I was given permission by the customer to assist him and no transaction ever occurred. I only validated information for him.
4. Because I knew this person I made it a point to assist him on my break or lunch even though it was a DMV issue, not a Motor Carrier issue.
5. We are, as State Employees, encouraged on a daily basis to provide excellent customer service to the point of above and beyond what is expected of us. However, because I did this, I am being threatened with termination. I have never been disciplined in any way, shape, or form in nine (9) years with the State of Nevada.

1 BEFORE THE NEVADA STATE PERSONNEL COMMISSION
2 HEARING OFFICER

3 CARA O'KEEFE,

4 Petitioner-Employee,

Case No.: CC-07-13-JG

5 vs.

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

8 Respondent-Employer.
9

10 FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

11 THIS MATTER CAME on for an administrative hearing before
12 the undersigned Administrative Hearing Officer for the Nevada
13 State Personnel Commission on the 25th day of March, 2014,
14 pursuant to the Petitioner-Employee's appeal from termination
15 from State employment. Petitioner-Employee was present and
16 represented by Jeffrey S. Blanck, Esq. Respondent-Employer was
17 represented by Cynthia R. Hoover, Esq., Deputy Attorney
18 General. The evidence of record consists of testimony from ten
19 witnesses, Respondent-Employer's exhibits marked A through C,
20 and Employee-Petitioner's exhibits marked 2 and 3.
21

22 The undersigned Administrative Hearing Officer, having
23 heard the testimony presented, and considered the exhibits
24 offered and the arguments of the parties, does hereby make the
25 following Findings of Fact, Conclusions of Law and Decision.
26
27
28

FINDINGS OF FACT

1
2 Cara O'Keefe (hereinafter referred to as "Employee") was
3 employed as a revenue officer for the DMV Motor Carrier
4 Division. [Specificity of Charges, Employer's Exhibit A].
5 Employee was initially hired with the DMV from December 11,
6 2006 until December 5, 2012, and then rehired on September 16,
7 2013. [Exhibit A]. She has not had any prior disciplinary
8 actions.
9

10 As set forth in the Specificity of Charges, Employee has
11 received the following performance evaluations:
12

13 12/11/11 Exceeds Standards
14 12/11/10 Exceeds Standards
15 12/11/09 Exceeds Standards
16 12/11/08 Exceeds Standards
17 11/11/07 Meets Standards
18 07/11/07 Exceeds Standards
19 03/11/07 Meets Standards

20 On September 16, 2013, Employee received the Notice of
21 Employee Rights During an Internal Investigation ("Notice").
22 [Exhibit A. p. 11]. The Notice states that Employee is the
23 subject of internal administrative investigation relevant to a
24 violation of the Department of Motor Vehicles Computer Usage
25 policy:
26

Information Abuse

27 As found in NRS 242.105, NRS 281 section 1, and NAC
28 284.650:
Information contained in DMV system record is for use only
for Departmental business and is proprietary information.
Information from the DMV System should not be used for any

1 purpose other than for completing authorized transactions for
customers.

2 1. The use, or manipulation of, production data or
3 information outside the scope of one's job responsibilities, or
4 for non-business or personal reasons, is strictly prohibited
and may be subject to prosecution under NRS 205.481.

5 The Notice also informed Employee of her questioning
6 session on September 18, 2013, and her right to have counsel
7 present. Also on September 16, 2013, Employee received notice
8 that she is being placed on paid administrative leave,
9 effective that day. [Exhibit A, p. 13]. On October 8, 2013
10 Employee received another Notice of Employee Rights,
11 reiterating the same allegations, and informing her of a
12 scheduled questioning on October 10, 2013. [Exhibit A, p. 15]

13 On November 22, 2013, Employee received the NPD-41
14 ("Specificity of Charges"), in which Karen Stoll, Revenue
15 Officer III of the DMV, informed Employee that it is in the
16 best interest of the State of Nevada to terminate her State
17 service.¹ The Specificity of Charges references the following
18 causes for disciplinary action under Nevada Administrative Code
19 (NAC) 284.650:
20
21

22 1. Activity which is incompatible with an employee's
23 conditions of employment established by law or which violates
24 provisions of NAC 284.653 or 284.738 to 284.771, inclusive.

25 6. Insubordination or willful disobedience.

26 18. Misrepresentation of official capacity or authority.
27
28

¹Employer's Exhibit A.

1 The Specificity of Charges further references the
2 following Department of Motor Vehicles Prohibitions and
3 Penalties ("DMVPP") as follows:

4 **B. PERFORMANCE ON THE JOB**

5 23. Disregard and/or deliberate failure to comply with
6 or enforce statewide, department or office regulations and
7 policies.

8 **C. NEGLIGENCE OF, OR INEXCUSABLE ABSENCE FROM, THE JOB**

9 4. Conducting personal business during working hours.

10 **G. MISUSE OF INFORMATION TECHNOLOGY**

11 1. The use, or manipulation of production data or
12 information outside the scope of one's job responsibilities, or
13 for non-business or personal reasons, is strictly prohibited
14 and may be subject to prosecution under NRS 205.481.

15 **H. OTHER ACTS OF MISCONDUCT OR INCOMPATABILITY**

16 4. Unauthorized or improper disclosure of confidential
17 information.

18 7. Acting in an official capacity without
19 authorization.

20 The basis for the suspension is set forth in the "Summary
21 of Facts" section on page 2 of the Specificity of Charges,
22 which includes the following:

23 The results of the investigation, validated by your own
24 admission and the information obtained through the DMV CARRS
25 (formerly known as DMV Application) access reports for your
26 user ID, confirm you accessed the confidential DMV database
27 information for reasons outside the scope of duty.

28 The CARRS report shows that you accessed the records of a
male citizen on 7 occasions. You identified your relationship
with the male friend as a family friend. You reported having
helped the citizen with a DUI situation and reported the reason
for accessing his records on two occasions was to obtain a date
from the record and to look up his address.

The CARRS report shows you accessed the records of a
female citizen on 3 occasions. You identified the female
citizen as the wife of the male citizen and provided many

1 details about the two's personal lives, demonstrating a
familiar relationship with both.

2 In addition to the CARRS report, information obtained
3 during the course of the investigation and by your own
4 admission, supports you also discussed information related to
5 the male citizen with the Carson City Sheriff, representing
yourself as an employee of the DMV, for personal reasons
outside the normal scope of duty.

6 Based on the above, Employer concluded as follows on page
7 8 of the Specificity of Charges (NPD-41):

8 As a state employee, you represent the state of Nevada;
9 your actions and your negligence are the actions of the agency
10 and this causes the Department to lose credibility with the
11 customers, the public and the other government entities with
12 which we work. If confidentiality of records and data is
13 compromised for personal gain or use, then the state is at risk
14 for liability for breach of confidentiality. If working
relationships with law enforcement agencies are breached by
misrepresenting the authority you have to obtain information,
then the trust between these agencies is violated and again
confidentiality is breached.

15 On December 6, 2013, Terri Carter, Administrator,
16 Management Services and Programs, DMV, held a pre-disciplinary
17 hearing. [Employer's Exhibit B, pp. 49-52]. Ms. Carter noted
18 that the act was outside the scope of her responsibilities and
19 was done for personal reasons, and concurred with the
20 recommendation to terminate Employee. On December 13, 2013,
21 Troy Dillard, Director, DMV, stated in that "[i]t is my
22 determination, after review of the Specificity of Charges; your
23 statements during the pre-disciplinary hearing; the
24 recommendation of Ms. Carter; and the recommendation of your
25 supervisor, it is in the best interest of the State of Nevada
26
27
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1 to terminate your employment." [Employer's Exhibit C, pp. 61-
2 63]. Employee filed a timely appeal.

3 Following opening statements at the hearing on March 25,
4 2014, Employer called Cara O'keefe (Employee) as its first
5 witness. Employee stated that she had worked as a revenue
6 officer for the motor carrier division of the DMV for seven
7 years. She said that she left the DMV on December 5, 2012, and
8 went to work for the Division of Insurance for seven months.
9 She also said that she was rejected from probation at the
10 Division of Insurance, so the DMV had to take her back. She
11 stated that her job duties at the DMV involved licensing,
12 registration, taxes for big rigs and personal vehicles,
13 collection of delinquent accounts, sending out letters,
14 locating debtors, and filing tax liens. Employee further
15 testified that Motor Carrier employees have no authority to
16 issue drivers licenses, and they do not deal with DUI's. If
17 they get those calls they refer them to another DMV division.
18 Employee stated that Motor Carrier employees may use the
19 confidential database, but not for personal or non-business
20 reasons, and DMV Policy prohibits employees from conducting
21 personal transactions. Employee acknowledged that she signed
22 and understood the Memorandum from then DMV Director Bruce
23 Breslow, which states that a first offense of the Prohibition
24
25
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1 and Penalty G(1) "can result in termination."² [Exhibit A, p.
2 48]. Employee said that there is nothing in this document that
3 permits an employee to look up documents even if a friend gives
4 them permission. Employee also referenced the DMV Computer
5 Usage Policy Manual, dated September 15, 2011 [Exhibit A, pp.
6 19, 44], which provides that [i]nformation from the DMV System
7 should not be used for any purpose other than for completing
8 authorized transactions for customers." Employee stated that
9 she accessed the confidential DMV database for her friend
10 Daniel and to look up his wife's records, and she had a
11 discussion with both of them about accessing the records.
12 Employee acknowledged that Exhibit A, p. 17 is a log of when
13 she accessed their records, which indicates that she accessed
14 Daniel's records in July, August, September and November of
15 2012. She admitted that she first called the Carson City
16 Sheriff's Office and asked them about the process after a DUI,
17 and she provided them with Daniel's driver's license, which she
18 obtained from him and not the DMV Database. She said that she
19 accessed Daniel's records from the database because he asked
20 her information and she was helping him fill out paperwork. She
21 admitted that she "could and should" have referred him to Field
22
23
24
25
26

27 ²Prohibition and Penalty G(1) provides that "[t]he use, or manipulation of,
28 production data or information outside the scope of one's job
responsibilities, or for non-business or personal reasons, is strictly
prohibited and may be subject to prosecution under NRS 205.481."

1 Services or Central Services. She also said that Daniel was not
2 getting his paperwork, but he was too embarrassed to go to the
3 DMV because he knew some of the people there. Employee
4 acknowledged that Daniel and his wife were not her customers.
5 She did not recall telling the investigator that she did not
6 access Daniel's wife's records. She said that she called the
7 Sheriff's Office during her break, but she looked at the
8 records during her work hours while she was not conducting
9 official business.
10

11 Next, Employer called DMV Revenue Officer Angie Messman as
12 a witness. She stated that she worked for four years in the
13 Motor Carrier Division of the DMV as a Revenue Officer 2. She
14 assesses fines if carriers are late on assessments and previous
15 fines. Ms. Messman said that she was Employee's coworker for
16 several years, and they sat next to each other, with a
17 partition in between, but they could still hear each other. Ms.
18 Messman testified that in August of 2012 she heard Employee
19 make a phone call, ask to talk to Erica, identify herself as a
20 DMV employee, and state that a "customer had returned again."
21 Ms. Messman said that she heard Employee say that there was a
22 fax regarding a driver's license that had not been returned or
23 received, but she did not recall if she mentioned a DUI. Ms.
24 Messman further testified that they do not deal directly with
25 customers, or licensing for customers, or DUI issues. She said
26
27
28

1 that they may check licenses to make sure they have the correct
2 person responsible for the vehicle in order to put a lien on a
3 vehicle, but if someone called them with a license issue she
4 would refer them to the License Division. Sometime in December
5 of 2012 she reported this phone call to Karen in Management.
6 Ms. Messman added that she did not immediately go to Karen
7 after the phone call because in the past she had complained to
8 Karen about Employee regarding a procedure, and Karen had said
9 that Employee's conduct was okay.

11 On cross-examination Ms. Messman said that her job
12 function includes reporting on co-workers, but there is nothing
13 in writing about this duty. She also said that they do not need
14 to go into the same system when they are filing a lien, and
15 they do not see a license when filing a lien. For a lien they
16 fill out a form and go to the County Recorder. Ms. Messman said
17 that after August 10th there were no other incidents with
18 Employee.

21 On redirect Ms. Messman said that she remembers this
22 incident because she wrote down the details on a sticky pad
23 since Employee misrepresented herself to another agency, and
24 stated that the "customer had returned" even though he [Daniel]
25 was not her customer.

27 In response to a Hearing Officer question, Ms. Messman
28 said that they only have to log into the System to get a

1 driver's license if there is non-compliance, but they do not do
2 this for every single lien.

3 Employer called Michelle Schober as their next witness.
4 Ms. Schober said that she has worked for the DMV for 21 years,
5 and eight to nine of those years have been with the Motor
6 Carrier Division. She has been an Auditor 2 since April of
7 2013. She said that she was previously a revenue officer with
8 Employee, and her cubicle was across from Employee's cubicle.
9

10 Ms. Schober testified that she overheard Employee's
11 conversation in 2012 when she called the Sheriff's Office and
12 implied that she works in the driver's license division, taking
13 care of licenses. During the conversation on August 10, 2012,
14 she overheard Employee ask to talk to Erika, that a "customer
15 had been at the counter", and he was trying to get a restricted
16 license but the DMV had not sent the forms. Ms. Schober said
17 that she agonized over whether to report the conversation to
18 her supervisor, but she told Karen [Stoll] about the
19 conversation after her co-worker, Angie, asked her to come
20 forward. She was also waiting to see if there was another
21 incident before she told her supervisor. Ms. Schober further
22 stated that the Carrier Division does not deal with customer
23 driver's license issues.
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27 On cross-examination Ms. Schober said that she heard
28 Employee make another call to the Sheriff's Office, but she

1 could not hear the person on the other end of the phone. Ms.
2 Schober acknowledged that she did not report Employee's call to
3 her supervisor until December of 2012, but she did think that
4 it was serious, taking notes on both calls.

5 Employee's next witness was Ann Yukish-Lee, a DMV Central
6 Services Manager 2. Ms. Yukish-Lee said that she manages the
7 driver's license group at the DMV. She explained that her
8 employees do not have occasion to call the courts or the
9 sheriff's office for DUI revocations. Ms. Yukish-Lee further
10 stated that if a Motor Carrier employee gets a call about a DUI
11 revocation they refer the call to her office, and their office
12 is the only unit that deals with DUI revocations. On cross
13 examination Ms. Yukish-Lee examined Employee's Exhibit 3, the
14 Supervisor's Guide to Prohibitions and Penalties, and stated
15 that she does not know if this has been updated since 2003.

16 Employee next called Alys Dobel, the DMV Human Resources
17 Administrator, who testified that she has worked in human
18 resources for the state for over 20 years. Part of her current
19 job is to review disciplinary actions, looking at NAC 284.646
20 and the DMV Prohibitions, and comparing the actions with prior
21 cases. Ms. Dobel opined that the discipline in this case is
22 consistent with prior disciplinary cases. She noted that
23 although the cases are never exactly the same, this is their
24 fifth case involving the same violation[s], and the discipline
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1 has been consistent for the last four years while she worked at
2 the DMV. All of the employees signed the Memorandum from the
3 then-DMV Director, acknowledging that information technology
4 violations can result in termination. [Exhibit A, p. 48]. She
5 added that a first offense information technology violation
6 under the DMV Prohibitions and Penalties Section G(1) is a
7 level 5, and in the prior cases the employees were either fired
8 or allowed to resign. [Exhibit A, p. 4].

10 On cross examination Ms. Dobel said that she helped draft
11 the Memorandum, and acknowledged that it says that a first
12 offense "can" result in termination, leaving discretion,
13 despite the fact that termination is recommended for G(1)
14 violations of the Prohibitions and Penalties. Ms. Dobel said
15 that prior to 2011, employees were not terminated for this
16 offense, and she recalled an incident where an employee
17 accessed DMV information to stalk her ex-boyfriend, and that
18 employee only received a suspension. She said that the purpose
19 of the Memorandum was to emphasize the rules because they were
20 being broken.

23 Ms. Dobel examined Employee's file [Exhibit 2], and noted
24 that her next evaluation was due on December 11, 2012, but it
25 was not done. She does not recall ever seeing the Supervisor's
26 Guide [Exhibit 3]. Ms. Dobel acknowledged that the Guide states
27 that "prompt action" is required for discipline, they are to
28

1 consider an employee's prior discipline, and all discipline
2 should be preceded by communication. [Exhibit 3, pp. 6, 7]. Ms.
3 Dobel further acknowledged that Employee was never accused of
4 perpetrating fraud on the system or her supervisors, and the
5 goal is to keep employees employed. Ms. Dobel also stated that
6 H(4) and G(1) overlap, but H(4) is a level 1-5 offense. Ms.
7 Dobel also stated that in the past they have not pursued
8 discipline after an employee transfers out, and she has never
9 written a specificity of charges for an employee in another
10 department.
11

12 On redirect Ms. Dobel noted that the Supervisor's Guide
13 within **Employee's Exhibit 3** does not state an effective date.
14 She also testified that she was not working at the DMV when the
15 alleged stalking incident took place with another employee,
16 which was in February of 2010, but since she has worked there
17 the discipline has been consistent, although nobody has been
18 charged with forgery. Ms. Dobel said that the Notice of
19 Employee Rights [Exhibit A, p. 15] was provided to Employee two
20 days before the interview, as required by statute and
21 regulation. Ms. Dobel said that NAC 284.650 covers unauthorized
22 "use" of confidential data, and that can include just accessing
23 the information and looking at documents. She is unaware of any
24 written policy or regulation that would allow her to go to
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1 another state agency and inform them that there was a potential
2 violation by one of their current employees.

3 Next, Karen Stoll testified for Employer, initially
4 stating that she is a DMV Motor Carrier Officer 3, and she
5 supervises revenue officers, including Employee. Ms. Stoll said
6 that in December of 2012 she learned about Employee's conduct
7 when two employees separately expressed concern that she may
8 have used information in the CARRS database. In August when she
9 learned that Employee was coming back to the DMV, they
10 determined that they should revisit the alleged conduct. She
11 said that she went through the DMV records, looking up queries
12 in the software and activity logs, but she did not find the two
13 individuals [Daniel and his wife Jacqueline] in the activity
14 logs. They determined that this had to be investigated, and
15 proceed to the next step. Ms. Stoll noted that they gave
16 Employee the proper notice that she was being investigated.
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20 Ms. Stoll further testified that between July 23, 2012 and
21 November 8, 2012, the computer records show that Employee
22 accessed Daniel's records seven times, and Jacqueline's records
23 three to four times. [Exhibit A, p. 17]. Ms. Stoll said that
24 Motor Carrier employees do not have detailed information about
25 driver's licenses, and those inquires should be referred to the
26 Driver's License Division, because they need to be doing their
27 job collecting. She added that revenue officers only need to
28

1 access driver's license database to confirm an identity or
2 verify a debt, and not for DUI's. She further stated that even
3 if a person gives an employee permission, there are no rules or
4 regulations permitting access for this purpose. Ms. Stoll said
5 that she looked to see if the names were motor carrier
6 customers, or partners to a LLC, but she could not find an
7 account that had to do with a motor carrier. Ms. Stoll stated
8 that Employee was not a good employee, but she also said that
9 Employee "fabulously" handled her accounts. After Employee left
10 Ms. Stoll said that she had to spend time on three to four of
11 her accounts per month that had to be resolved. Overall Ms.
12 Stoll said that Employee worked outside the scope of her job
13 when she accessed the database, and a supervisor should know
14 about this because it was against policy and procedure.
15

16
17 On cross-examination Ms. Stoll said that she was not aware
18 of the other incident with another employee stalking her ex-
19 boyfriend after accessing DMV confidential information. Her
20 supervisor, Dawn Sheets, gave her the directive to investigate
21 this incident. She does wish that the other employees had told
22 her about this sooner. Ms. Stoll also said that once someone
23 logs onto the computer all information accessed is considered
24 confidential. Ms. Stoll also acknowledged that before Employee
25 left she never had a conversation with her about being
26 displeased about her performance. She said that she has never
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1 seen the Supervisor's Guide in Exhibit 3, but the DMV has
2 adopted policies and procedures dealing with discipline in a
3 prompt manner.

4 On redirect examination Ms. Stoll said that she emailed
5 Employee before she returned, but there was no reason for her
6 to call her to let her know of the investigation, particularly
7 since she was not sure if it would lead to a specificity of
8 charges. Lastly, Ms. Stoll said that she recommended
9 termination of Employee because she accessed proprietary
10 information on non-customers, the other employees came forth
11 with the information, and she used computers for personal use
12 outside the scope of her job.
13
14

15 Next, Wayne Seidel, Administrator for the Motor Carrier
16 Division of the DMV, testified on behalf of Employer. He stated
17 that he has been in this top position for the Motor Carrier
18 Division since January of 2011. He signed the SOC and approved
19 the termination based on the information that he reviewed,
20 including the fact that she accessed accounts for Daniel and
21 Jacqueline on numerous occasions, and she contacted the
22 Sheriff's Office for a driver's license issue, which is outside
23 of her job duties. Mr. Seidel recalled a prior case in which an
24 employee sent out a confidential file to her boyfriend's
25 computer, and they recommended termination, and the employee
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1 ultimately resigned. Mr. Seidel said that they have a zero
2 tolerance policy that was set under Director Breslow.

3 On cross-examination Mr. Seidel said that when he reviewed
4 this case he relied on staff reports, without any independent
5 information. Mr. Seidel stated that they have a progressive
6 discipline policy. Mr. Seidel further testified that not all
7 employees have been terminated for unauthorized access to DMV
8 data, and he was unfamiliar with the 2009 stalking case. Mr.
9 Seidel acknowledged that Mr. Breslow's Memorandum used
10 discretionary language for computer usage violations when it
11 states that a first offense "can result" in termination, and
12 "[a]ppropriate disciplinary action" will be taken. [Exhibit A,
13 p. 48]. Mr. Seidel acknowledged that the earlier case he
14 discussed involved an employee who actually took the
15 information and sent it to someone else.
16
17

18 Employee's first witness was Tammy Holt, who testified
19 that she worked for the DMV for 23 years until she retired in
20 August of 2012. Ms. Holt stated that she overheard "Jennifer"
21 telling Nicole Baker in the breakroom that she only received a
22 two week suspension for accessing information to obtain her ex-
23 husband's address.
24

25 On cross-examination Ms. Holt said that she only overheard
26 this conversation, which was sometime around 2010, two years
27 before she left, and there was no mention of a TPO in this
28

1 conversation. Ms. Holt said that she never looked into this
2 other incident or saw the SOC.

3 Next, Employee called Lisa Fredley, who said that she
4 worked as an administrative assistant in Licensing for the DMV
5 for eight years prior to taking a job with Employment Training.
6 Ms. Fredley stated that she had a conversation with Jennifer
7 Irving, whereupon she [Irving] bragged that she looked up her
8 ex-husband's girlfriend's address and called her a couple
9 hundred times at work, and she also went to the girlfriend's
10 house before she obtained a TPO. Ms. Fredley said that Ms.
11 Irving only received a suspension for two to three weeks, which
12 was consecutive so that she would not lose her benefits. Ms.
13 Fredley also said that if customers asked her questions that
14 she could not answer she would transfer them to another
15 department.
16
17

18 On cross-examination Ms. Fredley said that she is good
19 friends with Employee, and they have seen each other outside of
20 work. She acknowledged that she never saw the SOC in the Irving
21 case.
22

23 Next, Ms. O'Keefe testified on her behalf. She initially
24 stated that she has been a revenue officer for the DMV during
25 her seven years in the Motor Carrier Division. She said that
26 she was not informed of the alleged misconduct in this case
27 before she left on December 5, 2012, to work at the Nevada
28

1 Division of Insurance. Employee further stated that while she
2 worked for the DMV she was told that she brought in above
3 average revenue for delinquent licensing fees and taxes. She
4 said that before she went back to work for the DMV she was
5 considering working for the Medicaid Department, but she
6 decided to return to the DMV because her husband had recently
7 been promoted, the DMV was closer to her home, and she liked
8 the people at the DMV. She recalled sending two email to Ms.
9 Stoll prior to returning to work there. She also recalled
10 talking to Ms. Stoll on the phone about what time she should be
11 there for work.
12
13

14 Employee further testified that had she been told about
15 the investigation she would have taken the Medicaid job
16 instead. When she came in for work she signed the paperwork,
17 and then she was told to leave. She said that she was
18 interviewed, but nothing was explained to her and there was
19 nothing in writing. Employee further testified that she had
20 heard that an employee could still be disciplined even if they
21 left to work for another state agency. She felt like she was
22 never given an opportunity to defend herself. She said that
23 Director Breslow made a big deal about helping customers, which
24 included helping motor carriers who she had developed a rapport
25 with after many years of working together. She said that she
26 was just looking at the screen, and she never provided
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1 information to Daniel, the Sheriff's Office or Daniel's wife.
2 She viewed herself as a DMV employee, not just a Motor Carrier
3 employee, and others had the same view. When she called the
4 Sheriff's Office she admittedly identified herself as Cara from
5 Motor Carrier. She said that the Sheriff's Office had to send
6 the citation to the DMV, and she asked how long it would be for
7 them to send the citation because the DMV had not received it.
8 The second time that she called the Sheriff's Office she said
9 that she still had not received the citation, but again she did
10 not provide them with any information. The Memorandum [Exhibit
11 A, p. 48] suggests that such a violation does not mean
12 automatic termination. She feels that accessing the information
13 was for DMV business purposes, and she did not send any
14 information to someone else. She said that she never
15 misrepresented her authority to the Sheriff's Office, or
16 represented that she worked in the Licensing Division. She also
17 said that she is aware of other employee who have not been
18 terminated for the same conduct.

22 Employee examined Exhibit B, p. 60, which is a letter from
23 Mr. Cunningham stating that he authorized her to access his
24 records, which she provided because they asked for this during
25 the investigation. She further said that Policies and
26 Procedures G(1) does not apply to her because the information
27 was not used for non-business or personal use, and she did not
28

1 manipulate information. She said that her supervisor was aware
2 that she would receive a broad range of question in telephone
3 calls, not necessarily Motor Carrier calls. She said that she
4 only pulled up Daniel's wife's screen to see if her address was
5 listed as the same as his, because she heard that if her
6 address was different there was a possibility that the
7 information from the Sheriff's Office had gone to her address
8 in error.
9

10 On cross-examination Employee stated that she only turned
11 down an interview with the Medicare Division, and not a job
12 offer. She said that she was totally in the dark about why she
13 was being investigated. Employee acknowledged that they could
14 have asked her about Daniel Cunningham during her first
15 interview, but she does not recall. She said that they did ask
16 about Daniel Cunningham during her second interview. Employee
17 stated that she was not provided enough information even though
18 both of the Notice of Employee Rights stated that the
19 investigation was with regards to an alleged violation of
20 Department of Motor Vehicle Computer Usage policy. [Exhibit A,
21 pp. 11, 15]. During the Pre-Disciplinary Hearing Employee had
22 said that she called the Sheriff's Office during her break, but
23 now she does not recall if it was done during her break or
24 while she was working. She further testified that prior
25 supervisors, including Kelly Quintero, had told her that if an
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1 employee goes to work for another state agency they can still
2 be disciplined. She said that she just asked the Sheriff's
3 Office about the process and procedure, and she did provide
4 them with Daniel's drivers license number. Employee also said
5 that she helped Daniel because he is a friend but she would
6 have done the same for her trucker customers. She said that she
7 did not misrepresent her authority when she just asked them
8 about the process for issuing DUI's, and how long before they
9 mail the citation to the DMV, and whoever she talked to at the
10 Sheriff's Office said they would call her back. Employee said
11 that she looked up Daniel's account in November simply to see
12 if they had received the records from the Sheriff's Office. She
13 did this on her own, and not after a call from Daniel. She said
14 that she basically wanted to find out how long it takes for the
15 DMV to receive the citation from the Sheriff's Office because
16 Daniel wanted to fill out an application for a restricted
17 license.

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21 In response to a Hearing Officer question, Employee said
22 that she did not recall if she made the calls and inquiries
23 during her breaks, but she acknowledged that the log within
24 **Exhibit A, p. 17** indicates that some of the times were not done
25 during her breaks.

26
27 Employer then recalled Alys Dobel as a rebuttal witness.
28 Ms. Dobel stated that other employees have been disciplined

1 since the 2011 Memorandum, but not for technology issues. She
2 again stated that she is not familiar with the Supervisor's
3 Guide within Employee's Exhibit 3.

4 On cross-examination Ms. Dobel said that she did not start
5 working in Human Resources until 2010. She did not recall if
6 she told Ms. Stoll not to discuss the investigation with
7 Employee.
8

9 And finally, Employer called Doreen Rigsby as a rebuttal
10 witness. Ms. Rigsby stated that she works for Central Services
11 for the DMV, and she was the investigator on this case. Ms.
12 Rigsby said that during her first interview with Employee she
13 specifically asked Employee if she represented herself as a DMV
14 employee during a phone call, and also if she knew Daniel
15 Cunningham.
16

17 At the conclusion of the testimony of the witnesses the
18 parties presented oral arguments and this matter was submitted
19 for a decision.
20

21 If any Findings of Fact set forth above is more correctly
22 deemed a Conclusion of Law, it shall be deemed as such.

23 CONCLUSIONS OF LAW

24 Employee's appeal to undersigned Administrative Hearing
25 Officer of the State of Nevada Department of Personnel was
26 timely filed and the determination of the merits of said appeal
27
28

1 is properly within the jurisdiction of the undersigned
2 Administrative Hearing Officer.

3 In Whalen v. Welliver, 60 Nev. 154, 104 P.2d 188 (1940),
4 the Court held that the discipline of a permanent classified
5 employee necessitates a showing of "legal cause", which is
6 defined as follows:
7

8 The cause must be one which specifically relates
9 to and affects the administration of the office,
10 and must be restricted to something of a
11 substantial nature directly affecting the rights
12 and interests of the public. The cause must be
13 one touching the qualifications of the officer or
14 the performance of his duties, showing that he is
15 not a fit or proper person to hold the office.
16 Id. at 159.

17 In reviewing the actions taken by the employer against the
18 employee, it is the duty of the Administrative Hearing Officer
19 to ascertain if there is substantial evidence of legal cause,
20 and to ensure that the employer did not act arbitrarily or
21 capriciously, thus abusing its discretion. Board of
22 Chiropractic Examiners v. Babtkis, 83 Nev. 385, 432 P.2d 98
(1967); Gandy v. State of Nevada ex. rel. It's Div. of
Investigations, 96 Nev. 281, 601 P.2d 975 (1980).

23 Substantial evidence has been defined as evidence which a
24 reasonable mind might accept as adequate to support a
25 conclusion. Richardson v. Perales, 402 U.S. 389 (1971); State
26 Emp. Security v. Hilton Hotels, 102 Nev. 606, 792 P.2d 497
27 (1986). Evidence sufficient to support an administrative
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1 decision is not equated with a preponderance of the evidence,
2 as there may be cases wherein two conflicting views may each be
3 supported by substantial evidence. Robinson Transp. Co. v.
4 P.S.C., 159 N.W. 2d 636 (Wis. 1968).

5 In Meadow v. The Civil Service Board of LVMPD, 105 Nev.
6 624, 781 P.2d 772 (1989), the Nevada Supreme Court held that
7 "[to] be arbitrary and capricious, the decision of the
8 administrative agency must be in disregard to the facts and
9 circumstances involved."
10

11 As stated in Dredge v. State ex.rel. Dep't of Prisons, 105
12 Nev. 39, 769 P.2d 56 (1989):
13

14 It was the task of the hearing officer to determine
15 whether the NDOP's decision to terminate Dredge was
16 based on evidence that would enable NDOP to conclude
17 that the good of the public service would be served
18 by Dredge's dismissal. See NRS 284.390(5); Oliver v.
19 Spitz, 76 Nev. 5, 348 P.2d 158 (1960). Moreover, the
20 critical need to maintain a high level of security
21 within the prison system entitles the appointing
22 authority's decision to deference whenever security
23 concerns are implicated in an employee's termination.³

24 NRS 284.385 allows an appointing authority to discipline a
25 permanent classified employee with the State of Nevada "when he
26 considers the good of the public service will be served
27 thereby." Thus, in reviewing the actions taken by the employer
28 against the employee, it is the duty of the administrative

³Undersigned Hearing Officer acknowledges that in this proceeding there are no allegations regarding security violations, and therefore such deference is not required.

1 hearing officer to make an independent determination as to
2 whether there is sufficient evidence showing that the
3 discipline would serve the good of the public service. As set
4 forth in Knapp v. State Dep't of Prisons, 111 Nev. 420, 892
5 P.2d 575 (1995):

6
7 The district judge adopted the hearing officer's
8 findings of fact and accepted his conclusions as to
9 the offenses proven, but reversed the officer's
10 reversal of Knapp's dismissal. The judge erroneously
11 assumed the DOP's decision to fire Knapp was entitled
12 to deference and concluded the hearing officer had
13 acted arbitrarily and capriciously by substituting
14 his judgment for the DOP's.

15 Generally a hearing officer does not defer to the
16 appointing authority's decision. A hearing officer's
17 task is to determine whether there is evidence
18 showing that the dismissal would serve the good of
19 the public. Dredge, at 42, 769 P.2d at 58 (citing NRS
20 284.385(1)(a)). A hearing officer 'determines the
21 reasonableness' of the dismissal, demotion, or
22 suspension. NRS 284.390(1). 'The hearing officer
23 shall make no assumptions of innocence or guilt but
24 shall be guided in his decision by the weight of the
25 evidence as it appears to him at the hearing.' NAC
26 284.788.

27 Furthermore, discipline must comply with the principles of
28 progressive discipline. NRS 284.383(1) specifically provides
that "except in cases of serious violations of law or
regulations, less severe measures are applied first after which
more severe measures are applied only if less severe measures
have failed to correct the deficiencies."

The reliable, substantial and probative evidence supports
a finding that on at least ten occasions between July and

1 November of 2012, Employee accessed the DMV database to look up
2 the driver's license records of two non Motor Carrier
3 customers.

4 The reliable, substantial and probative evidence also
5 supports a finding that in August of 2012 Employee called the
6 Carson City Sheriff's Office on two occasions in order to
7 assist a non-Common Carrier customer and family friend,
8 identifying herself as a DMV employee.

9
10 The reliable, substantial and probative evidence
11 establishes the Employee should be disciplined for violations
12 of NAC 284.650(1), Activity Which is Incompatible with
13 Employees Conditions of Employment or Violates NAC 284.738 to
14 NAC 284.771, NAC 284.650(6), Insubordination or Willful
15 Disobedience, NAC 284.650(18), Misrepresentation of Official
16 Capacity or Authority. The reliable, substantial and probative
17 evidence also establishes that Employee should be disciplined
18 for the following Department Prohibitions and Penalties:
19 B(23), Performance on the Job: Disregard and/or Deliberate
20 Failure to Comply with or Enforce Statewide, Department or
21 Office Regulations and Policies, C(4), Conducting Personal
22 Business During Work Hours, G(1) Misuse of Information
23 Technology, and H(7), Acting in an Official Capacity Without
24 Authorization.
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1 Nonetheless, this Hearing Officer concludes that
2 Employee's conduct was not a "serious violation of law or
3 regulation" to merit termination prior to imposition of less
4 severe disciplinary measures. NRS 284.383(1). It is undisputed
5 that Employee's supervisor did not learn about Employee's
6 conduct until December of 2012, and several of Employer's
7 witnesses testified that they cannot pursue discipline on a DMV
8 Employee who no longer works for them. Nonetheless, there is no
9 written policy in this regard. Moreover, it seems disingenuous
10 that the DMV considered this a "serious" offense on the one
11 hand, but did not initiate disciplinary action until nearly
12 nine months after it learned of the alleged violations, and
13 after Employee was scheduled to return to work at the DMV.
14 Furthermore, although Employer argued that Employee's
15 termination was commensurate with disciplinary action imposed
16 on five other DMV employees involved in similar incidents,
17 Employer did not provide any specific evidence to corroborate
18 this assertion. In fact there was credible testimony by both
19 parties' witnesses that prior to 2011, employees were not
20 terminated for similar conduct, including an incident where an
21 employee accessed DMV information to stalk her ex-husband, and
22 that employee only received a suspension.
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27 This Hearing Officer also notes that NRS 284.387 sets
28 forth the procedural rights of employees in disciplinary

1 actions, including the right to written notice of allegations
2 before questioning, the right to have an attorney present when
3 they are questioned regarding the allegations, and deadlines
4 for the completion of an internal investigation. The plain
5 language in NRS 284.387 suggests legislative intent to provide
6 state employees with due process and fundamental fairness,
7 which includes prompt adjudication of possible disciplinary
8 actions and notice of the allegations. The reliable,
9 substantial and probative evidence supports a finding that
10 Employer did not take immediate corrective actions when it
11 learned about the alleged conduct in December of 2012.
12 Moreover, undersigned Hearing Officer has Due Process concerns
13 about the fact that DMV staff did not notify Employee about the
14 investigation prior to the day she thought that she was
15 returning to work, on September 16, 2013, when they informed
16 her that she was ~~not~~ returning to work but rather she was being
17 placed on administrative leave. Moreover, her first questioning
18 session was not until September 18, 2013, more than 9 months
19 after her supervisor was informed by her co-workers about the
20 incident.

21 The reliable, substantial and probative evidence also
22 indicates an inconsistency between Prohibition and Penalty
23 G(1), Misuse of Information Technology, and the Memorandum
24 regarding this offense from then-DMV Director Bruce Breslow.
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1 [Exhibit A, p. 48]. Whereas Prohibition and Penalty G(1) is a
2 Class 5 violation which strictly prohibits the "use, or
3 manipulation of production data or information outside the
4 scope of one's job responsibilities, or for non-business or
5 personal reasons", the Memorandum merely states that a first
6 offense of the Prohibition and Penalty G(1) "can result in
7 termination" and "[a]ppropriate disciplinary action" will be
8 taken if violations of this policy occur, suggesting that the
9 level of discipline for this offense is discretionary.
10

11 In light of the above, this Hearing Officer concludes that
12 the reliable, substantial and probative evidence does not
13 establish that termination will serve the good of the public
14 service, and therefore the decision to terminate Employee
15 should be reversed. A thirty (30) calendar suspension without
16 pay is more appropriate for this conduct, particularly
17 considering the nature of the offense, including the fact that
18 Employee did not manipulate data or disclose data, Employee's
19 seven years of state service without prior discipline, and the
20 DMV's failure to promptly investigate this matter and take
21 immediate corrective action. Therefore, it is the opinion of
22 this Hearing Officer that discipline commensurate with these
23 violations should be imposed.⁴
24
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26

27
28 ⁴Although Employee argued that her conduct did not rise to the level of
criminal forgery, and therefore she should not be punished for the G(1)

1 If any Conclusion of Law set forth above is more correctly
2 deemed a Finding of Fact, it shall be deemed as such.

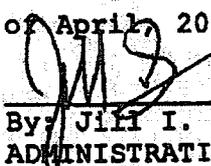
3 DECISION

4 Based upon the foregoing Findings of Fact and Conclusions
5 of Law, and

6 GOOD CAUSE APPEARING THEREFORE,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action
8 of Employer to terminate Employee Cara O'Keefe from State
9 Service should therefore be and hereby is REVERSED, with a
10 recommendation that Employee be returned to state employment
11 and given a thirty (30) calendar day suspension without pay.
12

13 DATED this 22nd day of April, 2014.

14 
15 By: Jill I. Greiner, Esq.
16 ADMINISTRATIVE HEARING OFFICER
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27 violation, this argument is without merit because G(1) merely states that an
28 employee may be subject to criminal prosecution for such conduct, but it
does not require proof of forgery that amounts to a criminal offense.

CERTIFICATE OF SERVICE

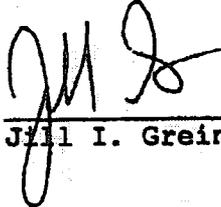
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Pursuant to NRCP 5(b), I certify that on the 22nd day of April, 2014, I deposited for mailing at Reno, Nevada, postage prepaid, a true copy of the attached document addressed as follows:

Cynthia R. Hoover, Esq.
Deputy Attorney General
Attorney General's Office
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511

Jeffrey Blank, Esq.
485 West 5th Street
Reno, Nevada 89504

Krista L. Heald
Clerk to the Hearing Officers
Division of Human Resource Management
100 North Stewart Street, Suite 200
Carson City, Nevada 89701



Jill I. Greiner

1 CATHERINE CORTEZ MASTO
 Attorney General
 2 CYNTHIA R. HOOVER
 Deputy Attorney General
 3 Nevada Bar No. 8122
 Bureau of Litigation, Personnel Division
 4 5420 Kietzke Lane, Suite 202
 Reno, Nevada 89511
 5 Tel: 775-850-4125
 Fax: 775-888-1822
 6 Ch Hoover@ag.nv.gov

RECEIVED

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2014 MAY 21 PM 3:20

ALAN GLOYER
 CLERK
 DEPUTY

JUN 17 2014

NEVADA DIV. OF HR MANAGEMENT
 GRIEVANCES APPEALS
 CARSON CITY, NEVADA
 Attorneys for Plaintiffs
 State of Nevada, ex rel., its
 Department of Motor Vehicles

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,

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.

Case No. 1408 0010310

Dept. No. 25

PETITION FOR JUDICIAL REVIEW

Petitioner STATE OF NEVADA ex rel., its DEPARTMENT OF MOTOR VEHICLES ("DMV"), by and through counsel, CATHERINE CORTEZ MASTO, Attorney General of the State of Nevada, and CYNTHIA R. HOOVER, Deputy Attorney General, and pursuant to NRS 284.390(8) and NRS 233B.010 et seq., petitions the Court as follows:

1. Petitioner requests judicial review of the final decision of the Nevada State Personnel Administrative Hearing Officer dated April 22, 2014, for Case No. CC-07-13-JG.
2. This Court has jurisdiction pursuant to NRS 233B.130.
3. This Petition has been filed in accordance with NRS 233B.130(2).
4. Petitioner has been aggrieved by the final decision of the Hearing Officer, attached

Office of the Attorney General
 5420 Kietzke Lane, Suite 202
 Reno, NV 89511

Office of the Attorney General
5420 Kietzke Lane, Suite 202
Reno, NV 89511

1 as Exhibit 1, and Petitioner's rights have been prejudiced because the final decision is:

- 2 a) In violation of constitutional or statutory provisions;
- 3 b) In excess of the statutory authority of the agency;
- 4 c) Affected by other error of law;
- 5 d) Clearly erroneous in view of the reliable, probative, and substantial
- 6 evidence on the whole record; or
- 7 e) Arbitrary or capricious, and characterized by abuse of discretion.

8 5. Petitioner reserves the right to file a Memorandum of Points and Authorities after
9 a copy of the entire record on appeal has been transmitted to the Court in accordance with
10 NRS 233B.133.

11 6. Petitioner reserves its right to request oral argument on this matter pursuant to
12 NRS 233B.133(4).

13 WHEREFORE, Petitioner prays as follows:

14 1. That this Court conduct a review of the final decision of the Nevada State
15 Personnel Administrative Hearing Officer and enter an Order setting aside the decision; and

16 2. For such further and other relief as the Court deems equitable and just in the
17 premises.

18 DATED this 21st day of May, 2014.

CATHERINE CORTEZ MASTO
ATTORNEY GENERAL

By: Cynthia R. Hoover
CYNTHIA R. HOOVER
Deputy Attorney General
Bureau of Litigation
Personnel Division
Nevada Bar No. 8122
5420 Kietzke Lane, Suite 202
Reno, NV 89511
(775) 850-4125
Attorneys for Petitioner

Office of the Attorney General
5420 Rietzke Lane, Suite 202
Reno, NV 89511

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 21st day of May, 2014, I deposited for mailing, a true and correct copy of Petition for Judicial Review to:

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

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

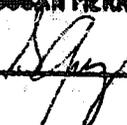
Department of Administration
Division of Human Resource Management
209 East Musser Street, Room 101
Carson City, Nevada 89701-4204


Tarah L. Goodlander, LSI
An Employee of the State of Nevada

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2015 JUN 15 PM 3:34

SUSAN MERRIWETHER
CLERK

BY  DEPUTY

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

8 -o0o-

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

CASE NO. 14 OC 00103 1B

DEPT. 2

11 **Petitioners,**

12 **vs.**

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

17 **Respondents,**

18
19 **ORDER GRANTING PETITION FOR JUDICIAL REVIEW AND SETTING**
20 **ASIDE HEARING OFFICER'S DECISION**

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

24
25 **ISSUE AND CONCLUSION**

26 **Did the hearing officer's reversal of DMV's termination of Employee prejudice**
27 **substantial rights of DMV because the decision was affected by error of law, clearly**
28

RA 0057

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

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

5

6

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that DMV's Petition for Judicial Review of the Hearing Officer's Decision and Order is GRANTED. The 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

15

16

17

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

18

19

20

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

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

21

22

23

24

25

26

27

28

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


Susan Greenburg
Judicial Assistant

1 NO. 140C00103 IB

2 Dept II

REC'D Dept: No.

2015 JUL 21 PM 1:57

3 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

SUSAN MERRITT
CLERK

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

4 STATE OF NEVADA IN AND AGAINST

5 THE COUNTY OF CARSON

7 Cara O'Keefe)
8)
9 Petitioner-Employee,) NOTICE OF APPEAL
10)
11 vs.)
12)
13 State of Nevada, ex. rel., it's Department,)
14)
15 of Motor Vehicles)
16)
17 Respondent, Employer)

18
19 Notice is hereby given that the petitioner, Cara O'Keefe, hereby appeals to the
20 Supreme Court of Nevada (from the final judgment) (from the Order Granting Petition for
21 Judicial Review and Setting Aside Hearing Officer's Decision) entered in this action
22 on the 21st, day of July, 2015.

23 Dated this 21st, day of July, 2015

24 Cara O'Keefe
25 Cara O'Keefe
26 1775 Myles Way
27 Carson City, Nevada 89701

28 RA 0063

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.

Cara L. O'Keefe
Signature of Appellant

CARA L. O'KEEFE
Print Name of Appellant

1775 Myles Way
Address

Carson City NV 89701
City/State/Zip

775 297-2906
Telephone

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARA O'KEEFE, an Individual,) Court of Appeals Case No. 68460
) District Court Case No. 14 OC 00103 1 B
) Appellant,)
) vs.)
))
STATE OF NEVADA, *ex rel.*, its)
DEPARTMENT OF MOTOR)
VEHICLES,)
))
) Respondent.)
_____)

RESPONDENT'S APPENDIX
VOLUME II

ADAM PAUL LAXALT
Nevada Attorney General
DOMINIKA J. BATTEN
Nevada State Bar No. 12258
Deputy Attorney General
Bureau of Litigation,
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Telephone: (775) 850-4117
Email: dbatten@ag.nv.gov
Attorneys for Respondent

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BEFORE THE HEARING OFFICER

| | | |
|-------------------------|---|-----------------------|
| In the Matter of: |) | |
| |) | |
| CARA O'KEEFE, |) | |
| |) | CASE NO.: CC-07-13-JG |
| Petitioner-Employee, |) | |
| |) | |
| vs. |) | |
| |) | |
| STATE OF NEVADA, ex |) | |
| rel., ITS DEPARTMENT OF |) | |
| MOTOR VEHICLES, |) | |
| |) | |
| Respondent-Employer. |) | |

TRANSCRIPT OF PROCEEDINGS
 BEFORE THE
 HONORABLE JILL GREINER, ESQ.
 HEARING OFFICER
 TUESDAY, MARCH 24, 2014

STATE LIBRARY AND ARCHIVES BUILDING
 100 NORTH STEWART STREET
 CARSON CITY, NEVADA 89701

Ordered by: State of Nevada
 Division of Human Resource Management
 100 North Stewart Street, Suite 200
 Carson City, NV 89701

APPEARANCES

On behalf of the Claimant:

Jeffrey S. Blanck, Esq.

On behalf of the Employer:

Cynthia Hoover, Esq.
Deputy Attorney General

I N D E XWITNESSESPageFor Petitioner:

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P R O C E E D I N G S

MARCH 25, 2014

1 HEARING OFFICER: And this is Cara O'Keefe,
2
3 Petitioner/Employee v. State of Nevada, Department of Motor
4
5 Vehicles, and its Case No. CC-07-13-JG.

6 My name is Jill Greiner. I'm the hearing officer
7
8 in this hearing. And will the parties present please make
9
10 their appearances, starting with the appellant.

11 MR. BLANCK: Jeff Blanck --

12 HEARING OFFICER: Petitioner.

13 MR. BLANCK: -- attorney for Cara O'Keefe.

14 MS. O'KEEFE: Cara O'Keefe.

15 HEARING OFFICER: Thank you.

16 MS. HOOVER: Cynthia Hoover, attorney for the
17
18 State of Nevada, Department of Motor Vehicles. This -- with
19
20 me is Karen Stoll, who is the supervising revenue officer
21
22 for the Division of Motor Carrier in the Department of Motor
23
24 Vehicles. Also in the room today is Tarah Goodlander. She
25
is my legal assistant. She's here to observe and she's
going to help me with witnesses.

HEARING OFFICER: Okay. Just one preliminary
matter. I have a prehearing statement from the Department
of Motor Vehicles, and it's marked Exhibits A through C. My
understanding is -- am I correct in assuming that this is
going -- that you're going to move to admit this document.

1 And I don't know if there's any objection --
2 MS. HOOVER: Yes.
3 HEARING OFFICER: -- from the employee. Are you
4 moving to --
5 MR. BLANCK: The exhibits, no. I don't know if
6 that -- are the prehearing statements admitted into
7 evidence?
8 HEARING OFFICER: No, I mean, but it's attached to
9 the prehearing statement.
10 MR. BLANCK: No, those exhibits -- I don't have
11 any objections.
12 HEARING OFFICER: A through C. And I think that
13 we discussed this before; that you'll be using those, as
14 well.
15 MR. BLANCK: Yeah, and I --
16 HEARING OFFICER: (Inaudible).
17 MR. BLANCK: -- (inaudible).
18 HEARING OFFICER: Okay. What -- then those are
19 Employee's exhibits marked 1 through 3.
20 (Petitioner's Exhibits 1 through 3 were marked for
21 identification.)
22 MR. BLANCK: Yes.
23 HEARING OFFICER: Would you like to move to admit
24 those, at this point or do you want to --
25 MR. BLANCK: I would like to do so.

1 HEARING OFFICER: Ms. Hoover, any objections?

2 MS. HOOVER: I haven't seen these yet, so could I
3 take a look at them and maybe we could deal with this later,
4 after a break or something?

5 HEARING OFFICER: Sure. Sure.

6 MS. HOOVER: Because I haven't seen them.

7 MR. BLANCK: Well, she may not have seen them, but
8 they were provided by the agency.

9 HEARING OFFICER: They were provided by the agency
10 (inaudible)?

11 MR. BLANCK: Yes, (inaudible).

12 MS. HOOVER: I just wanted to --

13 HEARING OFFICER: But you (inaudible) --

14 MR. BLANCK: Sure.

15 MS. HOOVER: -- (inaudible).

16 HEARING OFFICER: She is entitled to look over it
17 and then make sure that that's (inaudible).

18 MR. BLANCK: Yeah, just a -- specificity -- I have
19 specificity and they have specificity. I think it's the
20 identical document. I didn't change anything.

21 HEARING OFFICER: So (inaudible) documents, but
22 still (inaudible) --

23 MS. HOOVER: And I haven't seen this one before.
24 The supervisors got (inaudible).

25 MR. BLANCK: Right. Yeah, that's Number 3.

1 HEARING OFFICER: So I do want her to have a
2 chance to review this before I --

3 MS. HOOVER: Okay.

4 HEARING OFFICER: So it's your preference to
5 (inaudible) a break or a --

6 MS. HOOVER: Yes.

7 HEARING OFFICER: All right. Any other
8 preliminary matters?

9 MR. BLANCK: I don't think so.

10 HEARING OFFICER: Okay. Ms. Hoover, would you
11 like to start with an opening statement?

12 MS. HOOVER: I would. Good morning. We're here
13 on the appeal hearing of Cara O'Keefe, who was fired after
14 she went into the confidential DMV database and accessed
15 information of two people who are not Motor Carrier
16 customers.

17 She worked in the Division of Motor Carrier and --
18 as a revenue officer, which meant she collected bad debt,
19 put liens on people's vehicles. But she was not anybody who
20 issued a driver's license. In fact, at Motor Carrier
21 there's no way for anybody to issue a driver's license,
22 because they work upstairs. They don't have access to the
23 machines that would make driver's licenses.

24 She was terminated for misuse of information
25 technology, acting in an official capacity without

1 authorization, unauthorized or improper disclosure of
2 confidential information, conducting personal business
3 during working hours, and failure to comply with office
4 regulations and policies. Under NAC 284.646, an employee
5 can be terminated immediately for unauthorized release or
6 use of confidential information.

7 You'll hear evidence today that Cara's phone calls
8 were so disturbing to two DMV employees that they agonized
9 over reporting the calls to their superiors. O'Keefe
10 represented to the Carson City Sheriff's Office that she was
11 a DMV employee handling a DUI revocation issue for a
12 customer. And this is just a service that Motor Carrier
13 Division does not provide.

14 You will also hear that Central Records employees
15 who do handle driver's license revocation issues call the
16 court. They don't call the sheriff's office if there is a
17 paperwork discrepancy. Although O'Keefe has claimed she was
18 just giving good customer service, that's really false. The
19 proper thing to do is to refer the call to either Field
20 Services or Central Services, divisions that actually handle
21 driver's license issues.

22 O'Keefe had no authority to search the driver
23 license database to help a customer who was not a Motor
24 Carrier customer. DMV employees are forbidden also from
25 conducting any transactions for friends and family. So the

1 fact that the gentleman in question is referred to as a
2 family friend only makes her violation worse.

3 While she claims she did not actually conduct the
4 transaction, she did go into the confidential database, and
5 there's evidence to show that she did that, to look at
6 information and then discuss that information with sheriff's
7 department. This is strictly forbidden and carries a
8 penalty of termination for the first offense.

9 O'Keefe has claimed that she had permission from
10 this man to look at the record, but it doesn't matter. A
11 Nevada resident cannot give a DMV employee permission to
12 violate DMV policies and procedures and Nevada law. O'Keefe
13 was forbidden by statute, regulation, and DMV policies from
14 accessing that database, except in her work as a revenue
15 officer for the Motor Carrier Division.

16 And she never received anyone's permission to look
17 up the man's wife's records. In fact, Karen Stoll, who is a
18 supervising revenue officer, if you call her phone you will
19 get -- and you get voicemail, you'll hear a message
20 directing people with driver's license questions to call
21 Field Services, because Motor Carrier simply does not do
22 this work.

23 The testimony will also show that five DMV
24 employees have been fired for similar violations since 2011,
25 when then-director Bruce Breslow sent out a memo informing

1 all DMV employees that they would be fired for a first
2 offense of accessing the DMV confidential database outside
3 the scope of their job responsibilities. That is precisely
4 what O'Keefe did. She actually signed receipt of that memo
5 and it's part of the evidence.

6 The testimony will show that O'Keefe was treated
7 consistently with how other DMV employees have been treated.
8 Now, I know that there's been some issue that she was not --
9 this was not investigated immediately. What happened,
10 Ms. O'Keefe was working for DMV and she got a promotion to
11 another state agency. And when she was working for that
12 state agency, this issue came to light.

13 Two employees reported it and because O'Keefe was
14 not working for DMV, DMV did not do anything further. They
15 had real jurisdiction over her. However, she was reverted
16 back to DMV after a certain period of time and she was able
17 to take that job again, when the other agency either --
18 rejected her from probation.

19 So when she came back, this matter was still
20 pending. She was put on admin leave and that's when the
21 investigation took place. And they determined that she had
22 accessed the confidential database numerous times without a
23 business reason to do so. And after the investigation, they
24 determined that to be consistent, as all others employees in
25 this same -- who have done the same sort of thing, that

1 termination was the appropriate discipline. The State of
2 Nevada requests that you uphold this discipline.

3 HEARING OFFICER: Thank you. Mr. Blanck.

4 MR. BLANCK: Good morning. Cara O'Keefe is a
5 long-time employee with DMV and has excellent, above
6 standard evaluations. No prior history of any discipline
7 whatsoever. The State uses a system of progressive
8 discipline and progressive penalties that relate what -- how
9 you can discipline somebody, from a verbal to termination,
10 and we'll go through those.

11 What she did, and she admits that she made some
12 minor violations, don't justify termination, and that's our
13 position. Not that she was perfect; that she followed the
14 rules to the letter, but she didn't do anything that
15 justifies her being fired. She gets calls all the time, and
16 she'll testify to that fact, and people ask her questions
17 about DMV in general. And all the DMV officers, when they
18 get up, will say, yeah, we give out additional information,
19 because they're calling DMV.

20 Now, she got permission to look up a friend's
21 record. And what's going to be interesting is the testimony
22 that DMV can block her access to various records they don't
23 want her to have. She didn't go past any blocks or
24 firewalls to access anything. And, basically, she got this
25 man's home address and it was regarding a DUI. And he just

1 didn't know what the status was, one way or the other, with
2 the sheriff's office or with DMV, because they coordinate.

3 You'll hear her testimony. She did call the
4 sheriff, and the first time, out of habit, just said she's
5 from the DMV, but didn't talk to anybody. She called back;
6 didn't give that same representation. There was no
7 disclosure of confidential information to anybody; to the
8 sheriff or anyone. She just said where's the DUI, and
9 you'll hear her testimony, what's the status.

10 Now, that's the "accusation" that she's saying,
11 you know, she breached confidentiality. Well, you'll hear
12 the testimony that, you know, she looked at these things.
13 Other employees, you know, have looked at similar things.
14 And if they don't want her to have access to these screens,
15 they can block it. So there's a big question mark there of
16 what they can or can't do with IT, because there's a whole
17 slew of information she'll testify to that she can access.
18 She'd have to go somewhere else, and she never did that.

19 The timing is the big factor. If she was told in
20 December, or -- but these took place in August of 2000--

21 MS. O'KEEFE: '12.

22 MR. BLANCK: '12. We're in June -- or not June.
23 We're in March of 2014, you know, so in August of '12, it's
24 December of '12. Nothing happens when they learn about it.
25 That's four months right there, four months later. And then

1 it's September of '13 before they say we're going to be
2 terminating you. A year.

3 She could have gone in, and she'll testify to
4 that, I could have gotten a transcript from the sheriff to
5 say exactly what I asked or told them to show that there was
6 no violation and no display of confidential information.
7 But she can't do that, because it's too late. And what's
8 going to be pointed out in the testimony is, in their own
9 specificity, their reason for not doing any investigation in
10 December, when they found out about it, was they say it's
11 not necessary. Well, if this is such a terrible event, how
12 can it not be necessary, and we'll bring out that
13 information.

14 Now, she did leave the DMV and -- in December 5th,
15 and then returned and she talked to her supervisor, who will
16 testify, about coming back. Well, no one told her, her
17 supervisor or anyone saying, well, if you come back we're
18 going to put you on leave with pay and investigate you for a
19 terminable offense.

20 Matter of fact, her testimony is going to be is
21 they say great, can't wait to have you here. Well, she
22 never came back and was allowed to work. When she got back,
23 they put her on leave and then investigated her, and then
24 ultimately terminated her. And to set her up like that,
25 because she had other opportunities to do to other state

1 agencies. Using their own standards, she'll testify to,
2 that if it's not necessary to investigate I could've gone
3 somewhere else and not been in this situation. They didn't
4 give her that option.

5 There will testimony about what are the applicable
6 penalties and what was Mr. Breslow's letter, but
7 Mr. Breslow's letter did not say anyone who violates certain
8 provisions shall be terminated. He used the word "can" and
9 "appropriate discipline." So the only allegation that will
10 show you that it's mandatory termination regards to misuse
11 of information that could lead to criminal fraud charges
12 being filed, and that'll be in the record.

13 She didn't violate that. All the other
14 prohibitions and penalties have a range. And Ms. O'Keefe is
15 definitely, with her excellent record, should be at the
16 bottom of the range and not at the top. As far as other
17 employees, we'll have testimony that there were other
18 employees that did access confidential information. They
19 used it for their personal purposes to hunt down their
20 boyfriends' ex-girlfriends, and had temporary restraining
21 orders issued against them for stalking them. Based on the
22 information they obtained, they're still working for the
23 DMV. They got -- she got a two-week suspension.

24 Nothing's changed. The same standards applied
25 back when this was '09, '10, but that person is still

1 working. So this blatant allegation that everybody's been
2 terminated, we will show, is not true.

3 Now, what Ms. O'Keefe is looking for here is to
4 say you're right, and she'll testify to it, that there was a
5 friend, it was personal information, but all she looked up
6 on the screen -- she never printed anything out. She didn't
7 send anything to anyone and she didn't even tell the sheriff
8 anything that they didn't already know. So this disclosure,
9 it makes it sound like we have another, you know, NSA
10 scandal going on here of all this classified information
11 flowing out and it didn't happen.

12 Was it appropriate and should it have been done?
13 And we're -- and she'll testify saying, no, now she knows
14 don't do it at all. Even though they -- their motto is "We
15 can help," and she's trying to help, that went too far. So
16 based on all this we feel she should have her job back. If
17 they want to impose other discipline that's fine, but this
18 is not a terminable offense. Thank you.

19 HEARING OFFICER: Thank you. All right. Before -
20 - I assume the employee is -- employer is ready to call the
21 first witness. I just want to clarify on the record that
22 Employer's Exhibits A through C are admitted. I didn't make
23 that clear earlier.

24 (Respondent's Exhibits A through C were marked for
25 identification and received in evidence.)

1 HEARING OFFICER: Ms. Hoover, are you ready to
2 call your first witness?

3 MS. HOOVER: I am. Cara O'Keefe.

4 HEARING OFFICER: There's a sheet -- a sign-in
5 sheet. If you would sign in if you haven't done so already.

6 MS. O'KEEFE: I'm sorry, I can't hear you.

7 HEARING OFFICER: Oh, sorry. There's a sign-in
8 sheet.

9 MS. O'KEEFE: Okay.

10 HEARING OFFICER: If you could sign in.

11 MS. O'KEEFE: Okay. What do you want me to put
12 for agency?

13 HEARING OFFICER: (Inaudible).

14 MS. O'KEEFE: Leave it blank?

15 HEARING OFFICER: Yeah.

16 MS. O'KEEFE: Okay.

17 HEARING OFFICER: All right. I'm going to go
18 ahead and swear you in. Can you raise your right hand,
19 please.

20 (WHEREUPON, the witness is sworn.)

21 CARA O'KEEFE

22 HAVING BEEN CALLED AND SWORN, TESTIFIED AS FOLLOWS:

23 THE WITNESS: I do.

24 HEARING OFFICER: Okay. Why don't you start with
25 your name and --

1 THE WITNESS: My name is Cara O'Keefe.

2 DIRECT EXAMINATION

3 BY STATE:

4 Q And could you spell your last name for the record.

5 A O apostrophe K-E-E-F-E.

6 Q And probably you should spell your first name,
7 since it's --

8 A Cara, C-A-R-A.

9 Q Thank you. Where do you work now?

10 A I currently work for Sierra Nevada Media Group.

11 Q CR [sic] Nevada.

12 A Media Group.

13 Q Okay. And how long have you worked there?

14 A Just a couple weeks.

15 Q Okay. Where did you work in August of 2012?

16 A August would've been DMV.

17 Q And how long did you work for DMV?

18 A I believe it was seven years, at that point.

19 Q And how long were you in the Motor Carrier
20 Division?

21 A Seven years.

22 Q Okay. And did you also work there in November of
23 2008 [sic]?

24 A I'm sorry?

25 Q November of 2012, did you work there in

1 November --

2 A Yes.

3 Q -- of 2012?

4 A Yes.

5 Q When did you leave DMV?

6 A My last day was December 5, 2012, I believe.

7 Q Okay. And where did you go after DMV?

8 A To the State of Nevada, Division of Insurance.

9 Q Okay. And how long did you work there?

10 A Nine months.

11 Q And were you rejected from probation?

12 A It was a -- yes. Yes.

13 Q Okay.

14 A I was.

15 Q And so that was -- isn't it true that that job at
16 the Division of Insurance was a promotion?

17 A Yes.

18 Q So then you could bump back to your old job?

19 A Correct.

20 Q And isn't it true that DMV had to take you back,
21 at that point?

22 A My understanding is yes.

23 Q Okay. And -- okay. And isn't it true that when
24 you worked at Motor Carrier you were in the -- when you
25 worked at DMV you were in Motor Carrier Division?

1 A Correct.

2 Q And you worked as a revenue officer?

3 A Correct.

4 Q Did you work as a revenue officer for the entire
5 seven years?

6 A For -- yes.

7 Q Okay. And what does that job entail?

8 A It entails anything that has to do with licensing,
9 registration, tax returns for motor carriers in the State of
10 Nevada.

11 Q And those are what we typically, in lay terms,
12 call the big rigs that are on the roads?

13 A Yes, work trucks. Yes.

14 Q Those big, huge, semi tractor-trailer things?

15 A Yes.

16 Q Okay. And isn't it true that your job in Motor
17 Carrier involved collecting delinquent accounts?

18 A Yes.

19 Q And doing research regarding those accounts?

20 A Correct.

21 Q And you sent out violation letters; isn't that
22 true?

23 A Correct.

24 Q And assessed fines?

25 A And -- I'm sorry?

1 Q You assessed fines?

2 A Yes.

3 Q Did you locate debtors?

4 A Yes.

5 Q And did you file tax liens?

6 A Yes.

7 Q Okay. And that was all involving big rigs?

8 A Yes.

9 Q The motor carriers?

10 A Well, liens were not always filed on big rigs. We
11 also did it on personal vehicles and such, as well.

12 Q Okay. All right. Now, isn't it true that Motor
13 Carrier has no ability to issue a regular driver's license
14 for Nevada residents?

15 A That is correct.

16 Q Okay. All right. And isn't it true that in Motor
17 Carrier revenue officers don't deal with DUI revocations?

18 A We don't typically deal with them. That is
19 correct.

20 Q Okay. That's not part of a revenue officer's job?

21 A No. We do get calls and questions about those
22 types of things, but we don't typically deal with them.

23 Q And isn't it true that you should refer those
24 calls to either Central Services or Field Services?

25 A If -- yes, if they get more detailed questions we

1 absolutely will refer them.

2 Q Okay. Now, when -- you reverted back to your
3 prior position at DMV in 2013; isn't that correct?

4 A Yes.

5 Q And then you were placed on administrative leave
6 when you returned; isn't that correct?

7 A Correct.

8 Q Now, isn't it true that Motor Carrier employees
9 may use the DMV confidential database to place liens on
10 vehicles?

11 A We may, yes. We -- that's what we use it for,
12 yes.

13 Q Okay. Now -- and isn't it true that policy
14 forbids employees from using that confidential database for
15 personal reasons?

16 A For personal reasons, yes.

17 Q So you're not allowed to look up your own records
18 even?

19 A I -- as far as I know, yeah, you should not be
20 doing that. I know people do it, but you should not be
21 doing that.

22 Q Okay. And you're not allowed to use that database
23 for nonbusiness reasons?

24 A Correct.

25 Q Okay. And isn't it true that DMV policy prohibits

1 employees from conducting transactions for family or
2 friends?

3 A Correct.

4 Q Okay. Now, could you turn to Page 48 in that
5 exhibit packet? There are big numbers at the bottom. And
6 can you tell me what that is?

7 HEARING OFFICER: I'm sorry, where are we?

8 MS. HOOVER: Page 48. Page Number 48. It's in
9 Exhibit A.

10 HEARING OFFICER: Thank you.

11 THE WITNESS: It is memorandum for all DMV
12 employees from Bruce Breslow.

13 BY STATE:

14 Q Okay. And is that your signature on the bottom?

15 A Yes, it is.

16 Q And I want to talk about that for a second. If
17 you -- excuse me. Can you look at Paragraph 2 and tell me
18 what that says.

19 A "Prohibition and penalty G-1 states that use or
20 manipulation of production data or information outside the
21 scope of one's job responsibilities or for nonbusiness or
22 personal reasons is strictly prohibited and may be subject
23 to prosecution under NRS 205.481. The first offense can
24 result in termination."

25 Q And that's in bold and underlined --

1 A Uh-huh.

2 Q -- "The first offense can result in termination"?

3 A Yes.

4 Q Did you understand that when you signed this
5 document?

6 A Yes.

7 Q Okay. And now if you go the third paragraph, in
8 the second sentence, what does that say?

9 A The second sentence. "For use only for
10 departmental business and is proprietary information."

11 Q This --

12 A Oh.

13 Q -- the full -- the first -- well, the first full
14 sentence in the second paragraph, second line.

15 MR. BLANCK: Let me just object. It --

16 MS. HOOVER: Information --

17 MR. BLANCK: -- the document says what it says.

18 Is there a question about what it says or just if she read
19 it?

20 MS. HOOVER: Well, I want to know --

21 HEARING OFFICER: I think she's getting to it.

22 MS. HOOVER: -- if she's aware of the provisions
23 that are in here, because it's important.

24 MR. BLANCK: Okay. I understand that, but having
25 her read them, I mean, read the whole document we're going

1 to be here a long time. So if there's a -- I mean that
2 question's fine.

3 HEARING OFFICER: Overruled. If there's an
4 objection --

5 MR. BLANCK: Okay.

6 HEARING OFFICER: -- then I think you should be
7 allowed to go through it. I mean, you could try to speed it
8 up.

9 MS. HOOVER: Okay. In the --

10 HEARING OFFICER: I think -- I think the purpose
11 of having her read it is to make sure she understands
12 actually what -- which sentence she was referring to.

13 MS. HOOVER: That's correct.

14 BY STATE:

15 Q The sentence that starts "Information" on the
16 second line of the third paragraph, could you read that,
17 please.

18 A Okay. "Information from the DMV system should not
19 be used for any --

20 MR. BLANCK: Excuse me. Let me just object. If
21 she wants to have her read it to herself and then ask her a
22 question that's fine, but just to read it to put it on the
23 record I don't -- doesn't serve any purpose. And that's my
24 objection. It's -- the document speaks for itself.

25 HEARING OFFICER: Ms. Hoover?

1 MS. HOOVER: Well, I want to put it in the record
2 as to what it says and I want to ask her a question about
3 it; to make sure that she understood what she was signing.

4 MR. BLANCK: She already said she understood and
5 there's no -- she's trying to -- there's no statement from
6 her that she didn't understand.

7 HEARING OFFICER: I understand what you're saying,
8 Mr. Blanck, about --

9 MR. BLANCK: Okay.

10 HEARING OFFICER: -- the rule, but I think if she
11 wants to go through this and make sure she understands it,
12 reading it out loud, that's fine. Go ahead.

13 THE WITNESS: Okay. "Information from the DMV
14 system should not be used for any purpose other than for
15 completing authorized transactions for customers. All
16 information in the DMV system is confidential covered by the
17 Privacy Act and cannot be distributed to nonauthorized
18 persons."

19 BY STATE:

20 Q All right. Did you read this entire document
21 before you signed it?

22 A Yes.

23 Q Did you understand it?

24 A Yes.

25 Q Okay. And when -- and when is the date that you

1 signed this document?

2 A May 3, 2011.

3 Q Okay. And you were aware in the fifth paragraph
4 it says, "Appropriate disciplinary action will be taken if
5 violations of policy occur as they concern DMV records"?

6 A Uh-huh. Yes.

7 Q All right. Anywhere in this memorandum does it
8 say you can look up records for a friend if he gives you
9 permission?

10 A No.

11 Q Do you know of any policy of DMV that permits you
12 to look up records for a friend if they "give you
13 permission"?

14 A No.

15 Q Okay. And doesn't it say in the first paragraph
16 that you can't process transaction on your own records or
17 records of family, friends or acquaintances?

18 A Yes.

19 Q Okay. Now, if you turn to Page 44, are you
20 familiar with the DMV Computer Usage Policy, having worked
21 there for seven years?

22 A Yes.

23 Q And if you look on Page 44, there's a section
24 called Information of Use.

25 A Yes.

1 Q And doesn't it say that the "Information should
2 not be used for any purpose other than completing authorized
3 transactions of customers"?

4 A Correct.

5 Q Okay. And then if you turn to Page -- can you
6 identify -- let's see.

7 HEARING OFFICER: You were at 44 of Exhibit A?

8 MS. HOOVER: Yeah.

9 HEARING OFFICER: Okay.

10 BY STATE:

11 Q And if you turn to Page 33, that's -- isn't it
12 true that's the Computer Usage Policy Manual --

13 A Yes.

14 Q -- of DMV? And the date on that, can you read
15 that?

16 A On -- I don't -- on Page 33?

17 Q On Page 33, there's a date for when that came out.

18 A August 12, 2013.

19 Q Okay. And the one before that, if you look at
20 Page 19, can you tell me what that is?

21 A Computer Usage Policy Manual.

22 Q And what is the date of that one?

23 A September 15, 2011.

24 Q All right. And then if you go to Page 30, I
25 think, there's another section on Information of Use; isn't

1 that true?

2 A Yes.

3 Q And doesn't it say essentially the same thing;
4 that you cannot use it for any purpose other than completing
5 authorized transactions?

6 A Yes.

7 Q Okay. Now, isn't it true that you accessed the
8 DMV confidential database on behalf of a friend with the
9 first name of Daniel?

10 A Yes.

11 Q And if you look at -- and isn't it true that he's
12 your friend?

13 A Yes. Yes, I know him.

14 Q And isn't it true that you also accessed the
15 confidential database of his wife --

16 A Yes.

17 Q -- concerning his wife's records?

18 A Yes.

19 Q And isn't it true that you did have a discussion
20 with her about accessing those records?

21 A Correct.

22 Q So if you could turn to Page 17 of Exhibit A,
23 isn't it true that this is the log that DMV presented of
24 when you accessed those records?

25 A Yeah.

1 Q And it looks as if -- when you look at those
2 records under DTS, that's the date timestamp, it looks as if
3 you accessed those records in July, August, September,
4 October, and November.

5 A That's what it says, yes.

6 Q And you accessed the records of a Jacqueline on
7 four occasions in July of 2012?

8 A Yes.

9 Q And then you accessed the records of Daniel all
10 the way up through November of 2008?

11 A That's the stamp on it, yes.

12 Q Okay. And isn't it true you called the Carson
13 City Sheriff's Office after checking these records?

14 A I'm sorry, can you clarify?

15 Q Did you -- didn't you call the Carson City
16 Sheriff's Office?

17 A I did call their records department, yes.

18 Q And isn't it true you made such calls on more than
19 one occasion?

20 A Yes.

21 Q And isn't it true you were -- you were talking to
22 the sheriff's department about Daniel's DUI?

23 A I asked them about the process. I did not
24 specifically speak of his DUI.

25 Q You did not -- you did not use his name?

1 A I gave her his driver's license number when she
2 asked me questions about it, about what I needed to know. I
3 gave her his driver's license number.

4 Q And where did you get that driver's license
5 number?

6 A From Daniel.

7 Q And you didn't get it from the DMV database?

8 A No.

9 Q And why were you checking his records so many
10 different times?

11 A I can't -- because it was so long ago, I can't
12 tell specifically each incident that I pulled it up and
13 looked, but he was asking me to help him fill out some
14 paperwork. He didn't understand the paperwork. And I did
15 not know the process, but I knew who I could ask. But he
16 didn't have certain information, and that's why I looked
17 into his record.

18 Q Why didn't you refer him to Field Services?

19 A Because he trusted me. He had just gotten a new
20 job.

21 Q Why didn't you refer him to Field Services?

22 A Because I told him I would help him fill the
23 paperwork out.

24 Q Isn't it true that you should refer him to Field
25 Services or Central Services for such questions?

1 A I -- yes, I could have. Yes.

2 Q Isn't it true that you should have done that?

3 A At this point, yes, I should have.

4 Q Okay. Why did you access the records of his wife?

5 A Because Daniel stated he was not getting
6 information mailed to him that the DMV employees were saying
7 had been sent out. I was informed about a glitch in the
8 system, where if a -- even though they're separate records,
9 if the husband and wife have -- if there's a different
10 address, if they separate and they change anything or they
11 move and it's changed on one and not on the other, that
12 something in the system would send it to a specific address.
13 So if the husband has one address and the wife has a
14 different address that the mail possibly could have gone to
15 the wife's address.

16 Q Why didn't you refer him to Field Services?

17 A Because he was embarrassed. He knows people there
18 and he did not -- he trusted me. He asked for my help.

19 Q Right. But shouldn't you have referred him to
20 Field Services or Central Services for these questions?

21 MR. BLANCK: Objection. Asked and answered.

22 MS. HOOVER: This is a different question. This
23 is about the wife's records.

24 MR. BLANCK: Now it is. Before it wasn't.

25 HEARING OFFICER: Restate the question.

1 BY STATE:

2 Q Why didn't you refer him to Field Services or to
3 Central Services? Isn't it true that's what you should have
4 done?

5 A Yes.

6 Q Isn't it true that Daniel and his wife were not
7 Motor Carrier customers?

8 A Correct.

9 Q They have -- they don't drive big rigs. They --

10 A Correct.

11 Q -- don't own a big fleet of trucks.

12 A Correct.

13 Q They don't have to pay fuel tax on big rigs.

14 A Correct.

15 Q And, initially, isn't it true you told the
16 investigator you didn't look at the woman's records?

17 A No, I do not recall saying that.

18 Q Okay. And isn't it true you told the
19 predisciplinary officer you couldn't remember your work
20 hours?

21 A I knew that I worked 4/10s, but I didn't recall if
22 it was 6:00 to 4:00, 7:00 to 5:00. And I would work
23 sometimes Monday to Thursday or Tuesday to Friday, depending
24 on workload and what was going on. But I knew I worked
25 4/10s.

1 Q And isn't it true that you worked mostly from 6:30
2 to 3:30?

3 A If I -- like I said, I don't recall.

4 Q And isn't it true that you told everyone that you
5 looked at the records during your break?

6 A No. I made the phone call to the sheriff
7 department; one on my lunch and one on my break.

8 Q Okay. But you actually looked at the records
9 then, you're saying, during business hours?

10 A When he called and asked, yes.

11 Q Okay. And you used the state computer to look at
12 those records?

13 A I'm sorry, can you --

14 Q You used the state computer to look at those
15 records?

16 A Yes.

17 Q You did that in the workplace where you -- where
18 you are paid to do Motor Carrier work?

19 A Yes.

20 Q Okay. And you weren't doing official business of
21 Motor Carrier when you looked at those records?

22 A I was not doing Motor Carrier business.

23 Q Who was your supervisor on December 28th of 2012?

24 A That would be Terri Chambers.

25 Q And where does Terri Chambers work?

1 A Division of Insurance.

2 Q Okay. So isn't it true that no one at DMV in late
3 December 2012 could have done anything about your
4 employment? You were -- you were working in a different
5 state agency at the time.

6 A I don't know the -- I was still with the State of
7 Nevada.

8 Q But you were working for the Division of
9 Insurance?

10 A I was working for Division of Insurance.

11 Q Okay.

12 MS. HOOVER: I have no other questions at this
13 time.

14 HEARING OFFICER: Mr. Blanck, do you want to go
15 ahead and cross or (inaudible)?

16 MR. BLANCK: I think I'll just reserve questions
17 when I call her as my witness.

18 HEARING OFFICER: Okay.

19 MR. BLANCK: So I don't have any questions at this
20 time.

21 HEARING OFFICER: Okay. You can sit down. Thank
22 you.

23 MS. HOOVER: Ms. Goodlander, we need Angie next.

24 MR. BLANCK: So who's the next witness?

25 MS. HOOVER: Angela Messmann.

1 HEARING OFFICER: Good morning.

2 MS. MESSMANN: Good morning.

3 HEARING OFFICER: You can go ahead and sign in
4 there. I'm going to go ahead and swear you in. Can raise
5 your right hand, please.

6 (WHEREUPON, the witness is sworn.)

7 ANGIE MESSMANN

8 HAVING BEEN CALLED AND SWORN, TESTIFIED AS FOLLOWS:

9 THE WITNESS: I do.

10 HEARING OFFICER: Can you state your first and
11 last name and spell them as well.

12 THE WITNESS: Angie Messmann, M-E-S-S-M-A-N-N.

13 HEARING OFFICER: Can you spell that -- both first
14 and last name?

15 THE WITNESS: Oh. Angie, A-N-G-I-E.

16 HEARING OFFICER: And your last name too.

17 THE WITNESS: Messmann, M-E-S-S-M-A-N-N.

18 HEARING OFFICER: Okay. Go ahead.

19 MS. HOOVER: Okay.

20 DIRECT EXAMINATION

21 BY STATE:

22 Q Where do you work?

23 A I work for the Motor Carrier Division of DMV.

24 Q And how long have you worked there?

25 A Four years.

1 Q And what's your title?

2 A I'm a Revenue Officer II.

3 Q And what does that job entail?

4 A We collect debt owed to the Motor Carrier
5 Division.

6 HEARING OFFICER: I'm sorry to interrupt. What's
7 your title?

8 THE WITNESS: Revenue Officer II.

9 BY STATE:

10 Q Okay. And can you repeat what your job entails.

11 A Our job is to assess fines if carriers are late on
12 various required documentation or payments. Then we attempt
13 to collect the debt or secure the debt.

14 Q Okay. And do you know Cara O'Keefe?

15 A I do.

16 Q And how do you know her?

17 A She was my coworker for a number of years.

18 Q Okay. And where did she sit in relation to where
19 you sit in Motor Carrier?

20 A She sat next to me. We shared a common wall.

21 Q Okay. Could you hear her on the phone?

22 A I could. There are partitions -- five-foot
23 partitions that separate us. It's not separate offices.

24 Q Okay. And does sound carry over those partitions?

25 A Oh, yes.

1 Q Okay. Can you tell me about a phone call she made
2 or received in August of 2012?

3 A Yeah, this particular conversation that I
4 overheard, she was on the phone. She had asked to speak
5 with an Erica. There was silence for a few moments and then
6 she identified herself as being from DMV, and that a
7 customer had returned again, indicating to me that this was
8 an additional conversation. And that there was some
9 conversation about a fax not being received or a fax that
10 needed to be sent. And then it was a very short
11 conversation, two or three minutes long, and then that was
12 it.

13 Q And did she talk about a DUI at that time?

14 A Not that I recall. Just conversation about a fax
15 and that the customer had returned.

16 Q Okay. And was a customer standing by her cubicle
17 at that time?

18 A No.

19 Q Okay. So there wasn't any customer --

20 A No. We work on --

21 Q -- (inaudible)?

22 A -- the second floor --

23 Q Okay.

24 A -- which is not accessible to the public.

25 Q Okay. All right. And did you know who she was

1 talking to at the time?

2 A Not at the time. I knew it was an Erica.

3 Q Okay. And did she make a second call?

4 A I only overheard the one call.

5 Q Okay.

6 A But the fact that she said "again" kind of
7 indicated to me --

8 MR. BLANCK: Objection. Calls for speculation.
9 Asked and answered.

10 HEARING OFFICER: I think the witness has the
11 right to explain her answer. I guess the problem I see more
12 is that she just wasn't specifically responding to a
13 question. If you could ask her a specific question and
14 we'll go from there.

15 MS. HOOVER: Okay.

16 BY STATE:

17 Q You said that Cara had said that the customer had
18 returned again. And you said that you indicated that there
19 may have been a different phone call; is that correct? The
20 second phone call?

21 A That was how I felt the conversation was going,
22 yes.

23 Q And did -- at that time, did she talk about a
24 driver's license issue?

25 A Yeah, that it was a fax regarding a driver's

1 license issue.

2 Q And do you deal with driver's license issues for
3 customers in your job as a revenue officer?

4 A We only deal with -- not specifically in order to
5 help customers. That's not part of our job scope. We do
6 have occasion to review a driver's license. In order to
7 secure debt we have to make sure that we have the right
8 person, so we may review a driver's license to ensure that
9 we are, indeed, filing a lien against the correct person or
10 placing title stops against the correct individual that's
11 responsible for the debt. But we would not assist anybody
12 in a driver's license capacity.

13 Q So if you're going to lien someone's personal
14 vehicle then -- am I understanding that then you may check a
15 driver's license record to make sure that that is the same
16 person?

17 A That's correct. We may in order to ensure that
18 we, indeed, have the correct individual.

19 Q Okay. Because sometimes when you put liens on
20 cars the cars have been sold; is that correct?

21 A That's exactly correct. We want to make sure that
22 the title stops that we're placing and the liens that we're
23 filing are, indeed, the correct individuals that are
24 responsible.

25 Q Okay. But you don't -- then am I correct in

1 understanding that you don't get involved in any kind of DUI
2 issues?

3 A That's correct.

4 Q With customers?

5 A Correct.

6 Q And if someone called you about that, what would
7 you do?

8 A If someone called me to ask me about a driver's
9 license situation, I would give them the number to Driver's
10 License.

11 Q Okay. And is that the -- is that how you're
12 trained to do that?

13 A Yes.

14 Q Okay. All right. Now -- and then when did you
15 report this to management?

16 A I debated it for quite a while whether or not to
17 say anything. I think eventually did tell Karen. I want to
18 say it was in the month of December, although I'm not
19 exactly sure of the date.

20 Q Okay. All right. And why were you debating it?

21 A I was debating it because I had gone to Karen in
22 the past about procedural issues that Cara did not follow
23 like the rest of us. And I felt that I was kind of met
24 with, well, that is how Cara works her cases; that's her
25 way.

1 MR. BLANCK: Let me just object to strike. It's
2 not part of the specificity and it's also hearsay as to what
3 was going on between her and her supervisor, and it's not
4 related to these allegations.

5 HEARING OFFICER: Ms. Hoover?

6 MS. HOOVER: I'm trying to get into the record the
7 time frame as to why she delayed reporting this. I think in
8 Mr. Blanck's opening statement he said that the time issue
9 of why there was a delay in investigating it was a key
10 issue. And that I'm trying to elicit from the witness why
11 there was a delay in reporting this, because when they
12 overheard the calls it was several months before they
13 reported it.

14 HEARING OFFICER: Mr. Blanck, do you want to
15 respond at all to that?

16 MR. BLANCK: Yeah, I think she already asked and
17 answered. She just -- she said she was thinking about it
18 and then -- and then delayed. What she's going into is
19 she's making accusations against my client that she alleges
20 justifies her delay, and I'm like -- to me that's just --
21 it's broadening it too far. We're going to be here a long
22 time if I have to go over all these other allegations.

23 HEARING OFFICER: Again, I understand where you're
24 coming from and I'm going to overrule the objection though.
25 I think that it as far as the exact charges to this case

1 they're not necessarily dispositive. But I think it does go
2 to the time frame which is something that you brought up for
3 that --

4 MR. BLANCK: Sure.

5 HEARING OFFICER: -- so overruled. Go ahead and
6 answer the question.

7 THE WITNESS: I'm sorry, can you repeat the
8 question?

9 MS. HOOVER: Do you have it on there? I think it
10 was why you -- I think you answered it and then he moved to
11 strike your answer, so I think that we're okay.

12 MR. BLANCK: Yes.

13 THE WITNESS: Okay

14 HEARING OFFICER: That's correct.

15 BY STATE:

16 Q Okay. And then you finally reported it in
17 December. Do you remember why it took (inaudible)?

18 A There was -- there was a discussion about a job
19 opening and possibly her applying for it. So since Cara had
20 been gone a while I felt that my supervisor was more open to
21 hear the information that I was -- that I had decided not to
22 tell her at the time. She had been more -- made more aware
23 since Cara had been gone. More issues had gone to her
24 directly since Cara wasn't there to take care of them
25 herself. And she could see herself that --

1 MR. BLANCK: Let me just object. It lacks
2 foundation. How does she know more issues went to her
3 directly unless she reported them?

4 HEARING OFFICER: Ms. Hoover?

5 MS. HOOVER: I just -- my question was why she
6 waited. It wasn't about other issues, so --

7 MR. BLANCK: Then move to strike.

8 HEARING OFFICER: Ms. Hoover?

9 MS. HOOVER: I don't really care about the other
10 issues. What I'm really trying to ascertain is that there
11 was a delay and she had a basis for that delay.

12 HEARING OFFICER: Okay. I'll grant your motion to
13 strike, but I -- and Ms. Messmann, if you could just focus
14 in on the issue -- or the question, the specific focus on
15 the delay.

16 THE WITNESS: Okay. Well, the conversation was
17 the -- that there was another job opening in DMV. So then I
18 felt it was an appropriate time to tell my supervisor that
19 if some -- that if she was being considered for another
20 position that I felt it was important that she be more
21 closely supervised than she had been in the past for this
22 reason. And then that's when I told her.

23 MS. HOOVER: Okay. I have no further questions.

24 HEARING OFFICER: All right.

25 MR. BLANCK: Yes.

CROSS-EXAMINATION

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BY MR. BLANCK:

Q Is it Ms. Messmann?

A Uh-huh.

Q It's not your job duty to report on defects or performances of your coworkers, is it?

A I feel it's my responsibility that if --

Q Please listen to my question. Is it your job function or not to report on coworkers' duties and job performance?

A It is my duty if they do something outside of procedure.

Q And where is that written in your job description? That's in your job description as in Motor Vehicle Carrier is to report on your coworkers? Did you ever see that in writing?

A I do not know.

Q You've never seen that in writing, have you?

MS. HOOVER: I think that mischaracterizes what she said. I think your follow-up question mischaracterized what she said.

HEARING OFFICER: I think we're heading far into semantics.

MR. BLANCK: Yeah.

HEARING OFFICER: If there's an objection, it's

1 overruled. But, Mr. Blanck, I'd ask you to stick with the -

2 -

3 MR. BLANCK: Sure.

4 HEARING OFFICER: -- (inaudible).

5 BY MR. BLANCK:

6 Q You mentioned you heard her make this comment in
7 August, right?

8 A Uh-huh.

9 Q What date?

10 A The 10th.

11 W The 10th of August?

12 A Yes.

13 Q What time?

14 A At 10:27.

15 Q What was she wearing?

16 A I don't recall.

17 Q What were you wearing?

18 A I don't recall.

19 Q What did she -- what was her conversation after
20 that one?

21 A She got up and left her cubicle.

22 Q And when did she come back?

23 A I do not know.

24 Q And when she got on the phone again, who did she
25 talk to?

1 A I do not know.

2 Q Who did she talk with the day before?

3 A I do not know.

4 Q Who did she talk to the week after that?

5 A I don't know.

6 Q Okay. So -- but this one particular conversation
7 for four months you remember, correct, that's your
8 testimony?

9 A After the conversation I heard --

10 Q Answer my question, please. But you're saying --
11 your testimony is that you remember this one specific
12 conversation, yes or no?

13 A I remember it because I wrote it down.

14 Q I didn't ask why you remember it.

15 HEARING OFFICER: Mr. Blanck, can you just not be
16 so argumentative, please.

17 MR. BLANCK: I'm not -- I'm trying to get a yes or
18 no answer.

19 HEARING OFFICER: This is a state employee who's
20 just trying to give testimony.

21 MR. BLANCK: And yes or no's are very simple for a
22 state employee. So let me go to the next question.

23 BY MR. BLANCK:

24 Q If it was really serious, you wouldn't have waited
25 for months, would you?

1 MS. HOOVER: I think she asked -- she answered
2 that already.

3 MR. BLANCK: I'm entitled to ask that question.

4 BY MR. BLANCK:

5 Q If it was really serious, you wouldn't have waited
6 four months to bring it up, would you?

7 A I wasn't sure how serious it was.

8 HEARING OFFICER: Overruled.

9 MR. BLANCK: Okay.

10 BY MR. BLANCK:

11 Q You weren't -- okay. And then I think your
12 testimony is that when you found out that there was another
13 opening you didn't want Cara to apply for it or to get it
14 based on this past information you personally had; is that
15 accurate?

16 A No, that's not accurate.

17 Q You thought her boss should know what she had been
18 doing; is that what your statement is?

19 A As I said before, I felt that she might require
20 more -- closer supervision than she had been in the past for
21 the -- for that reason.

22 Q Have you been trained as a supervisor?

23 A I have been a supervisor in the past, yes.

24 Q In the past but you're not now?

25 A I'm not now.

1 Q Were you demoted, fired, what?

2 A No.

3 Q And isn't it true you have to go into the same
4 system to check someone's driver's license as you would to
5 file a lien?

6 A No. Liens are filed differently. It's a form
7 that's filled out and submitted through the County
8 Recorder's Office.

9 Q I know that. Okay. You misunderstood my
10 question. You go into the same system though when you're
11 filing a lien as you would to check a driver's license.
12 They'd be in the same place in the same system.

13 A No. We file a lien differently.

14 Q I know. But when you pull up the information to
15 file a lien, do you also see the person's driver's license?

16 A No, you don't. You get --

17 Q You never see the person's driver's license?

18 A To file a lien, you fill out a form and you submit
19 it to the County Recorder's Office. To view somebody's
20 driver's license, you go into N-Course (phonetic) to view
21 them.

22 Q And you're --

23 A Excuse me, DMV App.

24 Q And you're able to do that from your desk?

25 A You are.

1 Q And why are you able -- why do you need to be able
2 to do that?

3 A As I stated before, in order to secure -- in order
4 to make sure that you are -- that you are filing liens and
5 doing things to the appropriate responsible party.

6 Q So haven't you helped some friends with DMV issues
7 yourself?

8 A I've given people phone numbers to call if it's
9 outside my scope.

10 Q And then after this August 10th conversation, you
11 kept working with Cara, correct?

12 A Yes.

13 Q No other incidents until she -- until the time she
14 left on December 5th, were there?

15 A Not that I'm aware of, no.

16 Q Okay. So you're listening to Cara's
17 conversation -- I gather at the time you're listening to her
18 conversation and you're not doing your work. You're
19 listening to her?

20 A Yeah.

21 MR. BLANCK: No further questions.

22 HEARING OFFICER: Redirect?

23 REDIRECT EXAMINATION

24 BY STATE:

25 Q Can you tell us why you happened to remember that

1 conversation?

2 A I remember the conversation because after it was
3 over I wrote down on a sticky the date, the time, and the
4 approximate duration of the call.

5 Q And why did --

6 A And who she spoke to.

7 Q Okay. And why did you do that?

8 A The reason I did that is because I felt that she
9 had misrepresented herself to another agency, and I
10 personally thought that that was wrong. And so I wrote it
11 down and took some time debating what to do with that
12 information.

13 Q Okay. And you said you believe she misrepresented
14 herself. How so?

15 A Well, the fact that she said that the customer had
16 returned. It wasn't her customer. She was doing something,
17 I felt, that was not within the scope of her job.

18 Q Okay. Thank you.

19 MS. HOOVER: Nothing further.

20 HEARING OFFICER: Recross?

21 MR. BLANCK: Yeah.

22 RECROSS-EXAMINATION

23 BY MR. BLANCK:

24 Q What happened to the sticky with the date and the
25 time on it?

1 A I put it underneath some papers that I have and I
2 kept it underneath my phone for quite some time.

3 Q It's gone now though, right?

4 A Yeah.

5 Q So you can't look at it?

6 A No.

7 Q And you weren't on the other end of the phone
8 conversation so you really don't know what was said in the
9 complete conversation, do you?

10 A That's correct. I do not.

11 Q So when you felt she was misrepresenting herself,
12 you don't -- you have half a conversation, so you have no
13 full facts to base that on, do you?

14 A That was my impression, at the time.

15 Q Okay. Just an impression, correct?

16 A (Inaudible response).

17 HEARING OFFICER: Was that a yes or no?

18 THE WITNESS: Yes.

19 HEARING OFFICER: Thank you.

20 BY MR. BLANCK:

21 Q And this thing about the customer, customers can
22 call in on the phone, can't they?

23 A They could, yes.

24 Q Yeah, so when you said, you know, that on behalf
25 of a customer, you don't know all of Cara's customers, do

1 you?

2 A I do not.

3 MR. BLANCK: No further questions.

4 HEARING OFFICER: Any redirect?

5 MS. HOOVER: I just have one other question.

6 REDIRECT EXAMINATION

7 BY STATE:

8 Q It's not your job to investigate personnel issues,
9 is it?

10 A No, it's not.

11 Q Okay. Thank you.

12 MR. BLANCK: One follow-up for that.

13 RE CROSS-EXAMINATION

14 BY MR. BLANCK:

15 Q As a matter of fact, it's not even your job to
16 report on your fellow employees?

17 MS. HOOVER: Asked and answered.

18 HEARING OFFICER: Sustained.

19 MR. BLANCK: Let me just rephrase it a different
20 way.

21 BY MR. BLANCK:

22 Q If you're spending your time listening to Cara's
23 conversations, you're not doing your work and that's a
24 violation of your job duties, isn't it?

25 A If I'm not doing my work that is a violation of my

1 job duties, yes.

2 MR. BLANCK: No further questions.

3 REDIRECT EXAMINATION

4 BY STATE:

5 Q Were you doing -- were you doing your work that
6 day?

7 A I had done -- yes, I had done my work that day and
8 days consequent to that.

9 MS. HOOVER: Thank you.

10 MR. BLANCK: No further questions.

11 HEARING OFFICER: I just have one question --
12 clarification and maybe you already explained this. But you
13 said when you're filling out a form for a lien and then you
14 go to the County Recorder; is that right? Is that what you
15 said?

16 THE WITNESS: The lien is forwarded to the
17 County -- to the County in which the -- in which the person
18 resides or has property --

19 HEARING OFFICER: Okay.

20 THE WITNESS: -- and it's filed there at the
21 Recorder's Office.

22 HEARING OFFICER: So you fill out a form?

23 THE WITNESS: Yeah.

24 HEARING OFFICER: Okay.

25 THE WITNESS: I believe it's some kind of Excel or

1 Word document form.

2 HEARING OFFICER: Okay. And you don't see any
3 driver's licenses when you're filling out that form?

4 THE WITNESS: Not when you fill out the form.
5 It's not -- it's not in the same program.

6 HEARING OFFICER: Okay. And under what
7 circumstances do you see the driver's license? You said to
8 make sure -- I know earlier you said you have to (inaudible)
9 --

10 THE WITNESS: You actually have to log into a
11 system that's now called CARRS. At the time, it was called
12 DMV App. You actually have to log into that system, go into
13 driver's license, type in either the driver's license number
14 or the person that you are trying to research and the
15 information comes up that way.

16 HEARING OFFICER: Okay. So you do that before you
17 get the lien? In all cases? It's a two-part question.

18 THE WITNESS: Well, it kind of -- usually, I know
19 I do it when they go into noncompliance. If they're not in
20 noncompliance there's no reason for me to file a lien.

21 HEARING OFFICER: So you -- but as far as looking
22 at their driver's license, you only go in there to look at
23 noncompliance?

24 THE WITNESS: Yes. When they -- that's how I do
25 my report to --

1 HEARING OFFICER: Okay.

2 THE WITNESS: -- work my case load, is when
3 somebody goes into noncompliance then they're sent a
4 certified letter and that starts a lien and title stop
5 process. So at that time I would then look up the driver's
6 license.

7 HEARING OFFICER: Okay.

8 THE WITNESS: I don't look up the driver's license
9 for every one of my carriers.

10 HEARING OFFICER: Okay. Thank you. Does that
11 lead to any further questions from counsel?

12 MR. BLANCK: No, Your Honor.

13 MS. HOOVER: No, I don't think so.

14 HEARING OFFICER: Okay. Thank you very much.

15 THE WITNESS: Okay. Thank you.

16 HEARING OFFICER: May we excuse this witness?

17 MR. BLANCK: Yes, that's fine.

18 HEARING OFFICER: Do you want to continue on with
19 the next witness or take a break?

20 MS. HOOVER: Take a short break.

21 HEARING OFFICER: Okay. Five to ten minutes.

22 (off the record)

23 HEARING OFFICER: Did you sign in?

24 Ms. Schober: I did.

25 HEARING OFFICER: Okay. Thank you.

1 MS. HOOVER: The next witness has brought her
2 notes that she entered into the computer, and I had copies
3 made. So if everybody wants a copy to look at them, she
4 will authenticate them.

5 MR. BLANCK: I object. A week ago you said all
6 evidence needed to be submitted. This wasn't even on the
7 list. And she's going to be using her notes?

8 MS. HOOVER: Well, a witness is allowed to use
9 anything to refresh their memories, you know, under rules of
10 evidence.

11 MR. BLANCK: Yeah.

12 MS. HOOVER: And I -- and because she's going to
13 use it, I am making copies available. You just asked about
14 the sticky note and that you didn't have a copy and you
15 couldn't inspect it. I'm making this available so you can
16 inspect it.

17 MR. BLANCK: How can you refresh -- and this is a
18 recollection, when she hasn't even asked a question.

19 MS. HOOVER: Well --

20 HEARING OFFICER: Well, I think she's anticipating
21 that being an issue.

22 MR. BLANCK: She may anticipate but --

23 MS. HOOVER: I don't know, she's very nervous.

24 MR. BLANCK: And that's fine. And if she wants to
25 refresh her recollection with something, it doesn't come

1 into the record. You could use a rock to refresh your
2 recollection. It doesn't make it evidence.

3 HEARING OFFICER: Well, that's not what she's
4 asking it to be part of the record (inaudible) --

5 MR. BLANCK: Well --

6 MS. HOOVER: I'm not -- I'm offering it up so you
7 can see it, because you were upset that you couldn't see the
8 sticky note. So I bring this in and offer it to you, and if
9 you don't want to see it then --

10 MR. BLANCK: No.

11 MS. HOOVER: -- that's fine.

12 MR. BLANCK: What I object to is they're
13 responsible to provide all evidence in support of their
14 case. And --

15 HEARING OFFICER: Well, she said they were
16 anticipating using --

17 MR. BLANCK: Right.

18 HEARING OFFICER: -- (inaudible).

19 MR. BLANCK: Well, if they -- if they're not
20 anticipating using it, it still seems like we're being
21 blindsided. I didn't even know these notes existed. How
22 can I ask for them?

23 HEARING OFFICER: Well, as she explained it
24 earlier -- a minute ago -- it's not -- I don't believe it's
25 being offered as an exhibit into the record. I think it's

1 just --

2 MR. BLANCK: But it's --

3 HEARING OFFICER: -- she needs something to
4 refresh her memory (inaudible).

5 MR. BLANCK: I understand -- I understand that.
6 However, if it's -- if it's going to be substantive and
7 critical to the case, I know the normal rules of discovery,
8 federal court and state require that you turn over all
9 evidence that you feel may have relevance. They've had this
10 and they didn't turn it over, and now I'm being blindsided.
11 I know they're going to use it to refresh her recollection.
12 I understand that. I mean you can use anything to do that.
13 You can show her a picture, you know, for that matter. But
14 if this is actually her notes that she took regarding this
15 incident that she's being terminated for, why weren't we
16 given that document?

17 MS. HOOVER: The State's under no obligation to
18 reveal all of the investigative materials that we use. We
19 put the evidence that is relevant into the SOC. The
20 investigator's report, all that stuff does not get disclosed
21 to the employee. Basically, they get what's in the SOC, the
22 exhibits, and the charges. And that's what we're required
23 under the law to provide and that is what we provided.

24 MR. BLANCK: And that's all you get to use, as
25 well. So if they're saying they have a whole bunch of

1 documents they want to use under this refresh recollection,
2 they can use the items she represented. Show her the
3 specificity and refresh her recollection.

4 HEARING OFFICER: I don't think that's the
5 situation here, and your objection is overruled. You can
6 certainly raise it again, but at this point in time it's
7 overruled. And we'll proceed with this witness. If you
8 could raise your right hand, please.

9 (WHEREUPON, the witness is sworn.)

10 MICHELLE SCHOBER

11 HAVING BEEN CALLED AND SWORN, TESTIFIED AS FOLLOWS:

12 THE WITNESS: Yes.

13 HEARING OFFICER: Okay. Please state and spell
14 both your first and your last name.

15 THE WITNESS: My name is Michelle Schober.
16 M-I-C-H-E-L-L-E, Schober, S-C-H-O "B," as in "boy," E-R.

17 HEARING OFFICER: Thank you.

18 DIRECT EXAMINATION

19 BY STATE:

20 Q All right. And, Michelle, where do you work?

21 A I work at the Department of Motor Vehicles, Motor
22 Carrier section.

23 Q And how long have you worked there?

24 A I've worked for the Department of Motor Vehicles
25 for almost 21 years. Excuse me. I've been with Motor

1 Carrier since 2005.

2 Q So eight or nine years at Motor Carrier?

3 A Yes.

4 Q Is that fair to say? And what's your job there?

5 A Currently, I'm an Auditor II.

6 Q Okay. And what is -- what is -- what are your job
7 duties?

8 A I audit our carriers for IFTA and IRP, which is
9 International Registration Plan and International Fuel Tax,
10 to make sure that they are following the rules and paying
11 their correct taxes and registration fees.

12 HEARING OFFICER: Sorry, with International --

13 THE WITNESS: International Registration Plan and
14 International Fuel Tax Association.

15 MS. HOOVER: Agreement.

16 THE WITNESS: Agreement. Sorry.

17 BY STATE:

18 Q And the International Fuel Tax Agreement is a
19 complicated plan for distributing taxes on motor carriers?

20 A For fuel taxes to the --

21 Q Various states?

22 A And Canadian providences, yes.

23 Q Okay. All right. And do you know Cara O'Keefe?

24 A Yes, I do.

25 Q And in what capacity?

1 A She and I were revenue officers together in Motor
2 Carrier.

3 Q Okay. And when did you become an auditor?

4 A April of 2013.

5 Q Okay. And in August of 2012, you were a revenue
6 officer?

7 A Yes, I was.

8 Q And where did you sit in relation to Cara O'Keefe?

9 A I sat in the same row kind of kitty-corner from
10 her. There's four cubicles right there and I was
11 kitty-corner from her.

12 Q Okay. And then did you have occasion to hear a
13 phone call from her on August 8, 2012?

14 A Yes, I did.

15 Q And what did you overhear in that phone call?

16 A Excuse me. I overheard her calling the sheriff's
17 department and explained that she needed to talk to someone
18 about records, and then she was transferred to a person
19 named Erica. And she implied that she was working with
20 driver's licenses and she was trying to get this
21 straightened out so this person could get their driver's
22 license -- a restricted driver's license.

23 Q Okay. And she -- did she identify herself as an
24 employee of DMV?

25 A Yes, she did.

1 Q And was the first name of that customer Daniel?

2 A Yes.

3 Q Okay. And so she -- you -- she indicated she was
4 responsible for getting this driver's license revocation
5 sorted out?

6 MR. BLANCK: Objection.

7 MS. HOOVER: Is that your testimony?

8 MR. BLANCK: Objection. Leading.

9 HEARING OFFICER: Sustained.

10 BY STATE:

11 Q Could you -- could you tell me what your
12 impression was of what she told the sheriff's department?

13 MR. BLANCK: Objection. Impression calls for
14 speculation.

15 HEARING OFFICER: Overruled.

16 BY STATE:

17 Q You can go ahead and answer the question.

18 A Okay. Can you reask the question?

19 Q Can you tell me what you -- what your impression
20 was of what she told the sheriff's department in relation to
21 her job at DMV?

22 A It was my impression that she was letting the
23 person assume that she was of --

24 MR. BLANCK: Objection. Objection. Letting the
25 person assume is speculation.

1 HEARING OFFICER: Technical rules of evidence
2 don't apply and I can take relieve of her testimony. I mean
3 --

4 MR. BLANCK: All right.

5 HEARING OFFICER: -- I want to hear what she has -
6 -

7 MR. BLANCK: All right. You're taking -- I
8 understand.

9 HEARING OFFICER: Thank you.

10 THE WITNESS: It made it sound like she was an
11 employee that would take care of driver's license issues.

12 BY STATE:

13 Q Okay. And is that your job -- was that your job
14 as a revenue officer?

15 A No. We had nothing to do with driver's licenses.

16 Q Okay. Did you overhear a second call?

17 A Yes. A couple days later on the 10th --

18 Q Okay.

19 A -- she called again and asked to talk to Erica.

20 HEARING OFFICER: Is that August 10th?

21 THE WITNESS: Yes. And asked to talk to Erica,
22 and said that the customer was again at the counter and they
23 were still trying to get the, whatever, paperwork figured
24 out so that he could get a restricted license. And she
25 asked if it was because DMV had not returned some forms. I

1 don't know how driver's license works, so I don't know what
2 forms they're talking about. And she said she was going to
3 go down and find out what the mailing processes were and
4 then she hung up and she left and went somewhere. I'm
5 assuming downstairs, but I don't know that.

6 BY STATE:

7 Q Okay. And she said that there was a customer at
8 the counter?

9 A She said the customer had been at the counter that
10 morning.

11 Q Had been at the counter. Do you have a counter in
12 Motor Carrier for the customers to come in?

13 A Yes, but not for driver's license issues.

14 Q Okay. All right. And then when did you report
15 this to your supervisor?

16 A It was probably mid to late December. I really --
17 I agonized over it for a couple weeks on whether I was going
18 to say anything. Basically, I gave myself the parameters if
19 I heard anything else then I would, but I didn't. I had
20 written a statement as it was happening so I would remember.

21 Q Okay.

22 A And so I had that on my computer, but I didn't
23 give it to anybody until it was asked for in mid to late
24 December of '12.

25 Q And who asked you for it?

1 A My coworker, Angie, came out and told me that I
2 needed to go give it to Karen. And so then I printed it out
3 and I went and gave it to Karen.

4 Q Okay. All right.

5 MS. HOOVER: I don't have any further questions.

6 HEARING OFFICER: Cross?

7 MR. BLANCK: Yes.

8 CROSS-EXAMINATION

9 BY MR. BLANCK:

10 Q Ms. Schober, you described your working area as
11 there's partitions. I mean it's not a walled-in office; is
12 that accurate (inaudible)?

13 A Correct.

14 Q And so were you in the same partition or on the
15 other side of a partition from Ms. O'Keefe?

16 A I'm across -- kitty-corner across the aisle.

17 Q Okay. So there was -- your openings -- I'm trying
18 to just (inaudible). Is it just a three-sided cubicle or is
19 there four sides with a slight entrance? What?

20 A Yeah, you can say four sides with a doorway.

21 Q Okay. And you said you overheard Ms. O'Keefe talk
22 to an Erica, correct?

23 A Correct.

24 Q You never talked to Erica yourself, did you?

25 A No, I have not.

1 Q You have no idea what Erica was thinking or what
2 she was doing, do you?

3 A She was answering questions.

4 Q You never heard her answer any questions, did you?

5 A No.

6 Q So, again, you have no idea what Erica did or how
7 she responded?

8 A Obviously, I could not.

9 Q Okay. Matter of fact, you don't even know what
10 Erica's position is with the sheriff's office, correct?

11 A On the 10th --

12 MS. HOOVER: I object as to relevance.

13 MR. BLANCK: It goes to her recollection and
14 her -- and her accuracy of reporting and her assumptions.
15 She's been allowed to assume a lot of things, so...

16 HEARING OFFICER: Overruled.

17 THE WITNESS: Can this --

18 HEARING OFFICER: Because (inaudible) --

19 THE WITNESS: In the second conversation on the
20 10th, when Cara called she asked for Erica in Records.

21 BY MR. BLANCK:

22 Q Okay. And you said she was calling the sheriff's
23 office?

24 A Yes.

25 Q How do you know that?

1 A I do not remember how I knew that, but I had it in
2 my notes that I wrote the day of.

3 Q Okay. So you didn't hear anyone answer the phone
4 sheriff's office, because you weren't on the line, right?

5 A No.

6 Q Okay. So listening to Cara and making these
7 notes, that wasn't part of your job description, was it?

8 A No, it was not.

9 Q So when you're doing that you're not doing what
10 you're assigned to do; is that accurate?

11 A It took about two minutes.

12 Q Okay. And then you said you came -- you know, you
13 said you agonized for a couple of weeks, but you took no
14 action, correct, at that time?

15 A That is correct.

16 Q Okay. And then in December, somebody -- you said
17 Angie asked you for your notes?

18 A She said that I needed to let Karen know about it.
19 And so I printed out my notes --

20 Q Okay. Slow down. Who's Angie?

21 A Angie Messmann.

22 Q Okay. So you never voluntarily produced this
23 information. You were asked for it, correct?

24 A Correct.

25 Q Okay. So if they assert that you came forward,

1 you didn't come forward. You were requested.

2 A I could have denied giving them to them, but I did
3 come --

4 Q Sure.

5 A -- forward after I was requested.

6 Q And if you felt it was an extremely serious
7 incident, you would have reported it right away, wouldn't
8 you?

9 A I thought it was serious, but I was going to give
10 her the benefit of the doubt. And like I said, if I had
11 heard one more instance I would have -- I would have
12 addressed it right then.

13 Q But you didn't?

14 A But I did not, correct.

15 Q But if something occurs that you feel is
16 immediately serious you don't wait, you would tell your
17 supervisor, wouldn't you?

18 A Yes.

19 Q And you said there were -- there were two calls a
20 couple days apart?

21 A Correct.

22 Q And you made notes on the second date?

23 A I made notes on the first and the second date.

24 Q And the second. Okay. And so is it accurate to
25 say over the next four months you were listening to -- or

1 trying to overhear Cara's conversation to see if she did
2 anything else that was inappropriate?

3 A No. It is very hard not to hear Cara's
4 conversation. Her voice tends to carry.

5 Q Other people voices carry (inaudible) area?

6 A Not especially.

7 Q But you can hear people in other cubicles,
8 correct, from your cubicle?

9 A Sometimes you could. Uh-huh.

10 MR. BLANCK: No further questions.

11 HEARING OFFICER: Redirect?

12 REDIRECT EXAMINATION

13 BY STATE:

14 Q So you said that Angie asked you to come forward
15 to give the information to Karen --

16 A Yes.

17 Q -- Stoll?

18 MS. HOOVER: No further questions.

19 HEARING OFFICER: Recross?

20 MR. BLANCK: No.

21 HEARING OFFICER: Okay. No questions, so thank
22 you. You're excused. I assume we're done with this
23 witness.

24 THE WITNESS: Okay. Thank you.

25 HEARING OFFICER: (Inaudible). Good morning.

1 Over -- have a seat over there. There's a sign-in sheet, if
2 you could sign in, please. All right. I'm going to go
3 ahead and swear you in. So please raise your right hand.

4 (WHEREUPON, the witness is sworn.)

5 ANN YUKISH-LEE

6 HAVING BEEN CALLED AND SWORN, TESTIFIED AS FOLLOWS:

7 THE WITNESS: Yes.

8 HEARING OFFICER: Okay. And please start with
9 saying and spelling your first and last name.

10 THE WITNESS: My name is Ann Yukish-Lee. First is
11 spelled A-N-N. Last is spelled Y-U-K-I-S-H hyphen L-E-E.

12 HEARING OFFICER: Thank you.

13 DIRECT EXAMINATION

14 BY STATE:

15 Q Where do you work?

16 A The Department of Motor Vehicles.

17 Q In what division?

18 A Central Services and Records.

19 Q And how long have you been in that job?

20 A I have been in my present job since 2005.

21 Q Okay. And what's your title?

22 A DMV Manager II.

23 Q Okay. And so you manage, excuse me, the group
24 involved with records?

25 A Yes.

1 Q Okay. And does your unit deal with driver's
2 license issues?

3 A Yes, they do.

4 Q Does your unit deal with driver's license
5 revocations?

6 A Yes.

7 Q And does Cara O'Keefe work in your unit?

8 A No.

9 Q So if you're dealing with someone who's had a
10 revoked license, do your employees routinely make calls
11 anywhere to verify information on a DUI revocation?

12 A No.

13 Q They don't make calls?

14 A They do not.

15 Q Okay. And do your employees ever have occasion to
16 call the court?

17 A I would -- I would say they do not have occasion
18 to call the court. It is not normal everyday practice that
19 we contact the court for DUI revocations.

20 Q Okay. Do you contact the sheriff's department --

21 A No.

22 Q -- about a DUI?

23 A No.

24 Q No. So you would not do that?

25 A No.

1 Q Your employees would not do that?

2 A No.

3 Q Okay. And to your knowledge, do Motor Carrier
4 employees ever deal with DUIs or restricted licenses?

5 MR. BLANCK: Can we just -- lack of foundation.
6 I'm not sure her job description -- I don't know if she
7 mentioned Motor Carriers is under her or that she deals with
8 them.

9 MS. HOOVER: I'm asking to her knowledge, do Motor
10 Carrier employees deal with these --

11 MR. BLANCK: And that's what I'm saying, to lay
12 the foundation. Is that part of her job duties to work with
13 Motor Carriers or just generically she's trying to --

14 MS. HOOVER: I think most DMV employees have
15 knowledge of what other divisions do. They may not have the
16 technical expertise to, say, file a tax lien if they're in
17 driver's licenses, but I think they certainly understand how
18 the structure of the organization is.

19 MR. BLANCK: And I appreciate the testimony.
20 That's what -- I just want her -- to have Ms. Yukish-Lee say
21 what she knows about Motor Carrier -- Motor Vehicle.

22 HEARING OFFICER: Well, it goes to the weight, so
23 it's overruled, but I understand your point.

24 BY STATE:

25 Q Do you have a knowledge of what Motor Carrier

1 does?

2 A Yes, I do.

3 Q Okay. And if a Motor Carrier employee gets a call
4 about a DUI and a license revocation, what should they do?

5 A They should forward that --

6 MR. BLANCK: Objection. I don't want to belabor
7 it, but how does she know what they're supposed to do if she
8 doesn't supervise them and she has no -- I'm just saying lay
9 the foundation here rather than just have her come out and
10 say, you know, what the attorney wants her to say.

11 HEARING OFFICER: Ms. Hoover, do you think there's
12 anything else you can say? I mean she's already testified
13 that she's worked for the DMV since 2005.

14 MS. HOOVER: Yes. Is your unit --

15 MR. BLANCK: And did she ever work in Motor
16 Vehicles?

17 MS. HOOVER: -- is your unit the unit that deals
18 with DUI revocations?

19 THE WITNESS: Yes.

20 BY STATE:

21 Q Is your unit the only unit that deals with DUI
22 revocations?

23 A Yes.

24 Q So if someone from another division of DMV gets a
25 call, what's the proper procedure for them?

1 A They should forward that call down to License
2 Review and Financial Responsibility, the unit that processes
3 those DUI revocations.

4 Q Okay. And that's under you?

5 A Yes.

6 Q Okay.

7 MS. HOOVER: All right. I have no further
8 questions.

9 HEARING OFFICER: Cross?

10 MR. BLANCK: Yes.

11 CROSS-EXAMINATION

12 BY MR. BLANCK:

13 Q Ms. Yukish-Lee, there's a binder there on the
14 right.

15 A Uh-huh.

16 Q Could you turn to Exhibit 3, which is the cover
17 page there.

18 MS. HOOVER: This is one that I haven't reviewed,
19 Petitioner's Exhibit 3.

20 MR. BLANCK: Right.

21 MS. HOOVER: So I don't know if this is the latest
22 version of it or not. I don't know, so --

23 MR. BLANCK: Well --

24 MS. HOOVER: -- 2003, which is a decade ago.

25 HEARING OFFICER: (Inaudible) --

1 MR. BLANCK: Let me just ask a question.

2 BY MR. BLANCK:

3 Q Are you familiar with the Supervisor's Guide to
4 Prohibitions and Penalties? (Inaudible).

5 A I've used it, yes.

6 Q Okay. And to your knowledge, and I'll ask you if
7 you know, I have this as June 27, '03. Do you know if this
8 has been updated since then or not?

9 A I have no idea.

10 MR. BLANCK: No further questions.

11 HEARING OFFICER: Ms. Hoover?

12 MS. HOOVER: I have no further questions.

13 HEARING OFFICER: I have no further questions
14 either. All right. (Inaudible)?

15 MS. HOOVER: Yes.

16 HEARING OFFICER: (Inaudible).

17 MR. BLANCK: Pardon?

18 HEARING OFFICER: Are you done with this witness?

19 MR. BLANCK: Yes.

20 HEARING OFFICER: Okay. Thank you.

21 MS. HOOVER: We'll call Alys Dobel next. Thank
22 you, Ann.

23 HEARING OFFICER: Good morning.

24 MS. DOBEL: Good morning.

25 HEARING OFFICER: I'm going to go ahead and swear

1 you in. Raise your right hand, please.

2 (WHEREUPON, the witness is sworn.)

3 Alys DOBEL

4 HAVING BEEN CALLED AND SWORN, TESTIFIED AS FOLLOWS:

5 THE WITNESS: Yes.

6 HEARING OFFICER: Please start with spelling of
7 your first and last name.

8 THE WITNESS: Alys Dobel. Alys is A-L-Y-S. Dobel
9 is "D," like in "David," O "B," like in "boy," E-L.

10 HEARING OFFICER: Thank you.

11 DIRECT EXAMINATION

12 BY STATE:

13 Q All right. Where do you work?

14 A I work for the Department of Motor Vehicles.

15 Q And what is your title?

16 A I am a Personnel Officer III.

17 Q Is that the human resources administrator position
18 at the --

19 A Yes, that's what they call me.

20 Q Okay.

21 A The department does.

22 Q All right. And how long have you been there?

23 A I have been there a little over four years.

24 Q And how long have you worked in human resources
25 for the State of Nevada?

1 A For the State of Nevada, a little over 25 years.

2 Q Okay. And in human resources --

3 A Yes.

4 Q -- was a lot of that time that -- well, where did
5 you work, for which agencies?

6 A In HR?

7 Q Yes.

8 A I worked for Health and Human Services. I worked
9 for Department of Corrections, Department of Personnel,
10 which is now Division of Human Resource Management, and now
11 I work for the Department of Motor Vehicles.

12 Q Okay. Now, do you review discipline as one of
13 your job duties?

14 A Yes.

15 Q And are you familiar with the Cara O'Keefe case?

16 A Yes.

17 Q Did you review the SOC?

18 A Yes.

19 Q Is this discipline consistent with discipline that
20 others have received for similar rules violations?

21 MR. BLANCK: Objection. Leading. I'd rather
22 hear -- she just put the words in her mouth of what she
23 wants her to say.

24 HEARING OFFICER: Again, the technical rules of
25 evidence don't apply.

1 MS. HOOVER: I can rephrase it.

2 HEARING OFFICER: Sure.

3 BY STATE:

4 Q How is -- how does this discipline compare with
5 discipline of other employees who've done similar things?

6 A It's very comparable.

7 Q Okay. Do you review SOCs -- when you review them,
8 what do you look for in terms of, say, consistency?

9 A I look at the Nevada Administrative Code 284.650
10 and I look at the Department of Motor Vehicles Prohibitions
11 and Penalties, and I compare them to whether what the
12 supervisor has written is truly what I believe they should
13 have written for the violations and then I look at it and
14 see what have we done in the past with those similar
15 violations.

16 Q And did you do that with this particular case?

17 A Yes.

18 Q And can you -- and what did you discover?

19 A I discovered that in this particular case that the
20 recommendation on a first offense would be termination.

21 Q And is that consistent with the way others have
22 been disciplined in the past?

23 A Yes.

24 Q Can you -- how many other cases are you aware of
25 since 2011?

1 A There have been four cases besides this one, so
2 this would be the fifth case. And it would be the fifth
3 case. Now, they're not exactly similar in what occurred,
4 but they are very similar in what the violation is. So
5 what -- the situation may be different, but the violation is
6 the same.

7 Q Okay. And would that be -- if you turn to the
8 exhibit in front of you on Page 4.

9 HEARING OFFICER: Employer's Exhibit. What page?

10 MS. HOOVER: Employer's Exhibit A, Page 4.

11 HEARING OFFICER: Thank you.

12 BY STATE:

13 Q Are the violations listed in that grid the one
14 you're talking about?

15 A Yes.

16 Q Okay. And for first offense for misuse of
17 information technology, what is the penalty for that?

18 A It's a five, which is equivalent to a termination.

19 Q Okay. And is that the category that you were
20 looking at?

21 A Yes.

22 Q Okay. So there have been four other employees
23 since 2011 who have been fired for this violation?

24 A That is correct.

25 Q Okay. Have there been any others that were

1 allowed to resign in lieu of termination?

2 A Yes. Yes.

3 Q Okay. So in any case, those people are no longer
4 working for DMV?

5 A That's correct.

6 Q And did all those people that you're referring to
7 sign Bruce Breslow's memo of, I think, April 2011?

8 HEARING OFFICER: Are you referring to all the
9 people that were fired or --

10 MS. HOOVER: The other people that were fired or
11 resigned.

12 HEARING OFFICER: -- resigned. Oh, both
13 (inaudible).

14 MS. HOOVER: Since 2011.

15 HEARING OFFICER: Thanks.

16 THE WITNESS: Yes.

17 BY STATE:

18 Q And that memo, I think is -- I think it's --

19 MR. BLANCK: Are you looking for the Breslow memo?

20 MS. HOOVER: Yeah.

21 MR. BLANCK: Yes?

22 MS. HOOVER: Yes, I am.

23 MR. BLANCK: It's 48.

24 MS. HOOVER: Thank you.

25 BY STATE:

1 Q Okay. Page 48 under Exhibit A. Is that the memo
2 that --

3 A Yes.

4 Q -- the employees signed?

5 A .

6 Q And so the people who have been fired or were
7 allowed to resign, after April 26, 2011, all of those signed
8 this memo?

9 A Yes.

10 Q Okay. And then to your knowledge, since you've
11 worked for DMV, has this been consistent discipline?

12 A Yes, it has been.

13 Q In the past four years?

14 A In the last four years, since I've been at the
15 DMV.

16 Q Okay. Thank you.

17 MS. HOOVER: I don't think I have any further
18 questions --

19 HEARING OFFICER: Cross?

20 MS. HOOVER: -- at this time.

21 CROSS-EXAMINATION

22 BY MR. BLANCK:

23 Q Ms. Dobel, you said you also worked for the --
24 well, then it was the Department of Personnel. How long did
25 you work with the Department of Personnel?

1 A I actually worked for them twice, so let me think.
2 Give me a second. Approximately five to six years.

3 Q Okay. And you mentioned about coming to DMV about
4 people being terminated for violating -- on their Exhibit A,
5 Page 4, that G-1 category; is that correct?

6 A Oh, yes.

7 Q Yeah. Okay.

8 A I'm sorry.

9 Q No, that's all right. Okay. And the five means
10 it's mandatory termination, correct?

11 A That's what we go by, yes.

12 Q In other words, there's no -- well, if you look at
13 the one's above it they give one or two or two to five, and
14 that gives you ranges, and there's a discretion there,
15 right?

16 A Uh-huh. Yes.

17 Q So in this category, if you violate this you have
18 to be terminated. That's the recommendation.

19 A That's the recommendation.

20 Q Okay. Now, if you look at Page 48, that's the
21 Breslow memo. Were you -- well, I mean you've seen it now,
22 but do you remember when you first saw this, if at all?

23 A I helped craft this for the Director.

24 Q Oh, okay. So around the time it was written is
25 when you knew of its existence --

1 A Yes.

2 Q -- in April of 2011?

3 A That's correct.

4 Q Okay. In drafting this, the first paragraph
5 refers to the -- there's issues with people accessing
6 records for family and friends and acquaintances. Do you
7 see that in the first paragraph?

8 A Yes.

9 Q Okay. And that was an issue that you wanted to
10 address, correct?

11 A Yes.

12 Q Now, in the next paragraph it goes to G-1 and
13 states what it says there. And also you put in there "May
14 be subject to prosecution under NRS 205.481." What is that
15 statute?

16 A I would have to look at it again. I cannot
17 recall.

18 Q Okay. You may want to take a look at that first
19 to show that.

20 MR. BLANCK: If I may place this in front of the
21 witness.

22 HEARING OFFICER: (Inaudible) --

23 MR. BLANCK: This is a copy of the NRS.

24 HEARING OFFICER: -- Ms. Hoover?

25 MR. BLANCK: Yeah.

1 HEARING OFFICER: (Inaudible) statute. So NRS,
2 what's that, 205 --

3 MR. BLANCK: 205.481.

4 HEARING OFFICER: Thanks.

5 MR. BLANCK: .481.

6 BY MR. BLANCK:

7 Q So you chose to include that statute in that
8 second paragraph on Page 48, correct, or you and
9 Mr. Breslow?

10 A Yes. I guess I would have to say yes.

11 Q Okay. And that statute is about potential crimes
12 about altering and deleting data, changing programs, and so
13 forth. It's pretty serious stuff, correct?

14 A Yes.

15 Q Okay. And that's what G-1 relates to then, isn't
16 it? That's in reference to that criminal statute.

17 MS. HOOVER: I think that assumes a fact not in
18 evidence. That's not the whole G-1 and there's -- I don't
19 think there's a mention of that in G-1, actually.

20 MR. BLANCK: Actually, let's go back then to
21 Page -- we can clear that up. If you look at Page 4.

22 HEARING OFFICER: Which exhibit?

23 MR. BLANCK: Defendant's Exhibit A, Page 4.

24 HEARING OFFICER: Defendant being employee --
25 employer?

1 MR. BLANCK: Yes.

2 MS. HOOVER: Okay.

3 BY MR. BLANCK:

4 Q The Employer's Exhibit 4 -- Page 4 under Exhibit
5 A. You see the G-1, and at the end there what does it
6 reference?

7 A Are you asking me?

8 Q Yes, (inaudible).

9 A I'm sorry. Okay. It does reference NRS 205.481,
10 but there's a lot --

11 Q Okay.

12 A -- of or's in there.

13 Q I understand that.

14 A Okay.

15 Q But that's put in there for a purpose, isn't it?

16 A Of course, yes.

17 Q Yeah. Okay. And let's go back to Page 44 -- or
18 48, I'm sorry, of the same exhibit. Now, we already
19 established that criminal statute is placed in there,
20 potential prosecution for altering or manipulating data.
21 And then on this second paragraph it says, bold, "The first
22 offense can result in termination." It doesn't say shall or
23 will, does it?

24 A No, it says can.

25 Q So that means there is discretion there. There

1 doesn't have to be termination; is that accurate?

2 A I think it would depend on the circumstances, I
3 guess. I mean you never know when you start looking into
4 these things as to --

5 Q Okay.

6 A -- what's going to happen.

7 Q I understand that.

8 A Okay.

9 Q But I'm just saying his letter doesn't say if you
10 violate G-1 you shall be terminated. He could've said that
11 if he wanted to, couldn't he? No discretion, just if you
12 violate it you're out.

13 A He could write it whichever way he wanted to, yes.

14 Q But he chose this where it says -- that leaves --

15 A Okay.

16 Q -- discretion, okay?

17 A All right.

18 Q And looking at the second to the last paragraph on
19 Page 48.

20 A Okay.

21 Q It says, "Appropriate disciplinary action will be
22 taken if violations occur." And that's what you're talking
23 about. It's just each instance you have to do what's
24 appropriate; is that accurate?

25 A That's correct.

1 Q All right. So it's not that you have to terminate
2 just because of this violation then; would that be accurate?
3 You have to look at the facts and the situation and what
4 occurred?

5 A We do, yes.

6 Q Okay. And this letter was in 2011. Are you aware
7 prior to 2011 of people who had accessed confidential
8 information, used it for their own purposes and who were not
9 terminated?

10 A I am.

11 Q Okay. And some of those individuals still work
12 for the DMV, don't they?

13 A Well, the one that's coming to mind does not.

14 Q Okay. Do you know Jennifer Irving?

15 MS. HOOVER: I object to putting other people's
16 personal information into the record. We're prohibited from
17 doing that and we're not allowed to do it by law. We can't
18 go into other people's personnel records.

19 MR. BLANCK: She can't. I can.

20 MS. HOOVER: But --

21 MR. BLANCK: I'm under (inaudible).

22 MS. HOOVER: -- she is a DMV employee.

23 HEARING OFFICER: She's -- yeah, you're putting
24 her in a situation that jeopardizes her situation.

25 MS. HOOVER: And she has -- she is --

1 MR. BLANCK: I am going to --

2 MS. HOOVER: -- forbidden by law from talking
3 about this.

4 HEARING OFFICER: If you want to reference an
5 employee without using --

6 MR. BLANCK: Well, --

7 HEARING OFFICER: -- a certain name, I would think
8 that that's okay.

9 MR. BLANCK: -- I'll have other witnesses testify
10 as to what that individual said and her punishment was,
11 which isn't precluded because no one from -- you know, the
12 same preclusions don't apply. But she's testified that, you
13 know, it was similar. Those did -- she just testified that
14 prior to that others weren't --

15 MS. HOOVER: She testified --

16 MR. BLANCK: -- terminated.

17 MS. HOOVER: -- she's aware of one who no longer
18 works there. That's what her testimony was. Then you asked
19 her about a name. I object to you putting the name in the
20 record. I don't think that --

21 MR. BLANCK: I'm trying to refresh her
22 recollection.

23 MS. HOOVER: -- I don't think -- I do not think
24 that we are allowed to answer that question.

25 MR. BLANCK: My client's -- let me -- I understand

1 the argument about, you know, bringing up somebody else's
2 personnel record. However, what is at issue is disparate
3 treatment. If she's going to say -- and maybe I can pull
4 the name and I'll give the circumstances and that way we can
5 go from there to see what she remembers or doesn't remember.
6 And that way there's no disclosure of individuals, because
7 she's testified, generically, people have been fired or not
8 fired.

9 HEARING OFFICER: I think that's fine and --

10 MR. BLANCK: Okay.

11 HEARING OFFICER: -- we will --

12 MS. HOOVER: So can we please strike the --

13 HEARING OFFICER: -- strike the name from the
14 record (inaudible).

15 BY MR. BLANCK:

16 Q Are you aware of a woman that worked for DMV who
17 accessed confidential information and stalked her
18 ex-boyfriend's girlfriend, and was given a TPO?

19 A What is a TPO?

20 Q A temporary protective order. She had a court
21 order telling her not to stalk this person.

22 A I'm aware of certain parts of that case, but I'm
23 not aware of a TPO that was --

24 Q Okay. And that person was given a suspension and
25 not terminated, correct?

1 A If it's the person I'm thinking about, yes.

2 Q Okay. And this Breslow letter, the one you helped
3 him draft, to your knowledge those were -- those rules
4 weren't new. He was just -- he was just emphasizing his
5 concerns; is that accurate?

6 A Yes.

7 Q Okay. Those rules had been in existence for
8 years, as far as prohibitions, penalties, and what you
9 should or shouldn't do?

10 A Yes.

11 Q Okay. So back in -- well, in 2009 or 2010,
12 what -- where were you working for the State?

13 A I was working for the Department of Corrections.

14 Q Okay. And were you aware -- in Ms. O'Keefe's
15 scenario, did you look at her personnel file discipline was
16 imposed? Is that a thing you would do?

17 A Yes.

18 Q And you're aware that she had exceeds standards on
19 numerous evaluations?

20 A You know, I haven't looked at her file in a while,
21 so I -- it would --

22 Q Well, if you look in the binder in Exhibit 2.

23 A Okay.

24 Q It says Personnel Service Jacket.

25 HEARING OFFICER: Are you taking about Employee's?

1 MR. BLANCK: Employee's Exhibit 2. And I
2 apologize, I just put it in the way it was delivered. But
3 if you go 20 pages in or so there's a document at the top,
4 it's an Employee Appraisal and Development Report, received
5 January 24, 2012. And I don't know exactly how many pages.
6 If I may assist the witness?

7 HEARING OFFICER: Sure.

8 MR. BLANCK: Because it's --

9 THE WITNESS: Did I go too far?

10 MR. BLANCK: I think so.

11 THE WITNESS: All right.

12 MR. BLANCK: This one.

13 THE WITNESS: Okay.

14 HEARING OFFICER: You (inaudible) --

15 MR. BLANCK: How much -- yes. I apologize.

16 THE WITNESS: At the bottom of the page it says
17 January 25, 2012. It's a stamp.

18 MR. BLANCK: It's stamped, correct?

19 THE WITNESS: Yes.

20 HEARING OFFICER: January 5th or 25th?

21 THE WITNESS: January 25, 2012.

22 MS. HOOVER: It's a -- it's a date stamp?

23 MR. BLANCK: No, it's --

24 THE WITNESS: It's like a number stamp -- not a
25 number stamp, but it's got -- it's a date stamp, yes. But

1 it's not like -- it doesn't have like --

2 HEARING OFFICER: Thank you.

3 MR. BLANCK: Cynthia, do you want me to help you?

4 MS. HOOVER: Yeah, I can't find it.

5 HEARING OFFICER: You're very helpful.

6 MS. HOOVER: That's why we put numbers on ours.

7 MR. BLANCK: Right. Right there. How is that for
8 lucky?

9 MS. HOOVER: Wow. Okay.

10 BY MR. BLANCK:

11 Q Okay. We have a -- the bottom right says
12 "January 25, '12," and the top says "Received January 25,
13 '12." This was an evaluation for Ms. O'Keefe, correct?

14 A Yes.

15 Q And the date -- I guess the date of the evaluation
16 is 12-11-11.

17 A That's the date it was due.

18 Q Okay. And there's dates and signatures below also
19 in December. So if her evaluation is due, would it be due
20 every December? Is that how it works?

21 A If it's an annual evaluation and they haven't
22 promoted up, yes.

23 Q Okay. Because it says under number seven there at
24 the top, "Next evaluation 12-11-12."

25 A Uh-huh.

1 Q Okay. All right. Are you aware that Ms. O'Keefe
2 transferred out of DMV on 12-5-12?

3 A I do know that she did transfer out, but I don't
4 know the specific date.

5 Q Wouldn't her evaluation, though, still be due even
6 for an employee that left that had done like 99 percent of
7 the year? Shouldn't she have been evaluated?

8 A Well, some supervisors will do that, but once they
9 leave our department they're not under our jurisdiction.

10 Q At DMV?

11 A At DMV. Uh-huh. They're still a state employee.

12 Q Okay. But these -- and they're marked -- number
13 10 says exceeds standards. Do you see that there?

14 A I do.

15 Q And it says Wayne Seidel. Do you know -- who is
16 Wayne Seidel?

17 A He's the administrator over the Motor Carrier
18 Division.

19 Q Okay. And up above under 10, it says "Karen
20 Stoll, Revenue Officer," and that -- with a signature.
21 She's the one that checked exceeds standards then as the
22 direct supervisor?

23 A That's typically how these are filled out, yes.

24 Q Okay. Thank you. And if you could turn to the
25 Employee's Exhibit No. 3 in the binder. Have you seen

1 this -- the Supervisor's Guide to Prohibitions and
2 Penalties, have you seen this before?

3 A I'm not recalling this, but it does say Department
4 of Motor Vehicles, so -- but I'm not -- I'm not recalling
5 this.

6 Q So you're recalling, but you went in your current
7 position, they call it the HR Administrator, you don't
8 remember seeing (inaudible) seeing this document?

9 A No.

10 Q How about when -- any other time you've worked
11 with the State, do you remember seeing something similar to
12 this?

13 A A lot of departments have Prohibitions and
14 Penalties, and -- so I'm familiar with Prohibitions and
15 Penalties.

16 Q Okay. And so this is for the -- each department
17 can adopt their own?

18 A Correct.

19 Q Okay. And if you turn to the second page there.
20 I know you haven't seen this, but I'm going to ask you some
21 questions. It says "Introduction." It's saying that the
22 DMV manual, at the last paragraph, has the status and -- of
23 a rule supplemented as such at the same force as a rule and
24 a regulation. Is that your understanding?

25 A What -- okay. I'm --

1 Q Page 2.

2 A Page 2. Okay. So it's after the Table of
3 Contents?

4 Q Yeah, top left.

5 A Okay.

6 MS. HOOVER: No. I object because she doesn't
7 know about this document, and to ask her questions about
8 it -- it hasn't been authenticated by anybody. I --

9 MR. BLANCK: Well, it actually was authenticated
10 by Ms. Yukish-Lee. She said she had seen it and used it.

11 MS. HOOVER: But she didn't know if this was the
12 right version of it, is what her testimony was.

13 MR. BLANCK: Well, if you want to bring somebody
14 that says it isn't, that's fine. Until we hear that --

15 MS. HOOVER: Well, I never saw this exhibit until
16 this morning, so --

17 MR. BLANCK: Let me reemphasize. I listed it as
18 an exhibit. We received this from them and now they're
19 saying they're own documents can't be used or have some lack
20 of -- lack of foundation.

21 MS. HOOVER: I just have never seen it. She's
22 never seen it, so I don't think it's --

23 MR. BLANCK: That's why I'm asking her questions.

24 MS. HOOVER: -- appropriate to ask her
25 questions --

1 HEARING OFFICER: Overruled.

2 MS. HOOVER: -- about it.

3 HEARING OFFICER: Overruled.

4 BY MR. BLANCK:

5 Q Let me just (inaudible). A Prohibitions and
6 Penalties Supervisor's Guide, do they have the same force as
7 rules and regulations? In that.

8 A It's a guide.

9 Q Okay. Let's look at Page 2 at the top, number two
10 there, that last little paragraph.

11 A Okay.

12 HEARING OFFICER: We're still on Exhibit 3?

13 MR. BLANCK: Exhibit 3. Why don't you read that
14 last paragraph out loud, please?

15 HEARING OFFICER: In the Introduction.

16 MR. BLANCK: Pardon?

17 HEARING OFFICER: You're referring to the
18 Introduction.

19 MR. BLANCK: No -- yes, Introduction. There's
20 a -- there's a number two on the top left corner.
21 Could you read that bottom paragraph?

22 THE WITNESS: Okay. "The State Personnel
23 Commission has approved these prohibitions and penalties
24 effective," and then it's got a little date --

25 MR. BLANCK: Yeah.

1 THE WITNESS: -- in parentheses. "Therefore, this
2 manual has the status of a rule supplement, and as such has
3 the same force and effect as the rules and regulations for
4 personnel administration."

5 BY MR. BLANCK:

6 Q Is it your understanding, when a department or
7 division adopts prohibitions and penalties such as this,
8 that's an accurate statement?

9 A I do know that the Personnel Commission does,
10 typically, with most departments, approve their prohibitions
11 and penalties. But prohibitions and penalties can change
12 over time, and sometimes the guides, I would think, would
13 need to be changed. I have not, since I've been at the DMV,
14 read this document.

15 Q Okay. Well, such a guide as this does, you know,
16 it does, in fact, exist for the DMV. Not knowing about it,
17 do you want to read it?

18 A I probably will, yes.

19 Q Okay. Let me have you turn to Page 6 in that same
20 exhibit. There's a bolded paragraph and I know -- I'm just
21 going to ask you; do you agree that a supervisor should
22 promptly take corrective disciplinary action regarding an
23 employee's alleged misconduct?

24 A They should.

25 Q Okay. And if you turn to the next page, 7. Down

1 in the middle there under -- well, actually it looks like a
2 dollar sign, but "Things to Consider" or one says "Similar
3 instances and the employee's previous conduct." You've
4 testified that that's what you looked at in Ms. Cara's case?

5 A Which one is that?

6 Q About one, two, three -- the fourth one from the
7 bottom with the dollar sign.

8 A Oh.

9 Q "Consider the employee's previous conduct."

10 MS. HOOVER: Under Subsection 2?

11 MR. BLANCK: Of -- yeah, on Page 7.

12 THE WITNESS: Page 7. It says, yeah, "Consider
13 the employee's previous conduct," yes.

14 BY MR. BLANCK:

15 Q You did that with Ms. O'Keefe?

16 A Yes.

17 Q Okay. And you realize she had no previous
18 discipline?

19 A You know, once again, I'm pretty sure, but I --
20 it's been a while since I've read that document.

21 Q Okay. Not a problem. And then turn to Page 8,
22 Exhibit 3, under "Types of corrective disciplinary actions."

23 MS. HOOVER: What page?

24 MR. BLANCK: Eight, there in the top left corner.
25 Can you please read that first sentence in that paragraph,

1 please?

2 THE WITNESS: Under "Types of corrective
3 disciplinary --

4 MR. BLANCK: Yes.

5 THE WITNESS: -- actions"? "It is expected that
6 all corrective disciplinary actions have been preceded by
7 ongoing communication between the supervisor and the
8 employee in an effort to correct the situation. Unless, of
9 course, there is no way of anticipating the employee's
10 offense from his or her previous conduct."

11 BY MR. BLANCK:

12 Q And would you agree that's a best practice method
13 to proceed in dealing with employee discipline?

14 A Corrective and disciplinary, yes.

15 Q Then if you turn to Page 9 in this next exhibit --
16 the next page, down at the bottom. It talks about there, in
17 the special note, that "An employee is the subject of an
18 internal administrative investigation that could lead to
19 discipline as outlined above." Then there's two
20 parentheticals. Do you agree that they should be provided
21 with notice in writing of the allegations against them
22 before they're questioned regarding the allegations?

23 A How we interpret that is if it's -- if we believe
24 that it's going to lead to a suspension, demotion or
25 termination we're required by law to notice them.

1 Q Okay. And the same at number two there. I guess
2 they're entitled to representation if it can lead to that
3 (inaudible)?

4 A Right. It's part of the notice that we provide
5 today.

6 HEARING OFFICER: Are you under -- are you on Page
7 9?

8 MR. BLANCK: Nine at the bottom, special note.

9 HEARING OFFICER: All right.

10 BY MR. BLANCK:

11 Q And does the State, to your knowledge as an HR
12 person, adhere to the policy or the practice of progressive
13 discipline?

14 A Yes.

15 Q Okay. And then in Ms. O'Keefe's situation, no one
16 presented you with any information that she had allegedly
17 printed out or given to somebody from the DMV; is that
18 accurate?

19 A Could you rephrase the question? I'm not sure.

20 Q Sure. Ms. O'Keefe was not accused or you have no
21 evidence that she actually gave documents that she was not
22 supposed to give to somebody. She didn't print anything
23 out.

24 A Not that I'm aware of.

25 Q And you're also -- there was no allegations that

1 Ms. O'Keefe did not alter or modify any documents in DMV
2 records. Would that be accurate?

3 A Not that I'm aware of.

4 Q Okay. And so she really didn't -- or she's not
5 accused of perpetrating any fraud on the system or on her
6 supervisors?

7 A She did go into the system and she did use the
8 system for a nonbusiness purpose.

9 Q Okay.

10 A And we --

11 Q Okay.

12 A So the use of going into the system --

13 Q Right. She went in --

14 A Okay.

15 Q -- she went to the -- she went into the system
16 when she wasn't supposed to, I guess is the simple term,
17 correct?

18 A Okay.

19 Q If you turn back to the Employer's Exhibit A,
20 Page 4. Are you there?

21 A I'm there.

22 Q Okay. It lists what Ms. O'Keefe is charged with
23 and the first one would be performance on the job.

24 A Uh-huh.

25 Q Not following office regulations and policies. If

1 she, in fact, went in and looked up somebody's driver's
2 license and she wasn't supposed to, it would be a violation
3 of this section, correct?

4 A If that's what the policy said, yes.

5 Q Okay. But then for the first offense there's a
6 minimum and a maximum. The minimum is a two.

7 A Uh-huh.

8 Q Is that a written reprimand?

9 A No. I believe a two is a documented oral.

10 Q Okay. I always liked that, a written oral. I
11 think I understand what you mean. And so if she had no
12 preceding history or reason -- or not reason - no preceding
13 discipline or history of doing this. There's discretion
14 then to say -- you could have given her a two if the
15 supervisor doing this felt that was appropriate, correct?

16 A If they thought it was appropriate, yes.

17 Q Okay. The next one, "C-4 --

18 A Uh-huh.

19 Q -- conducting personal business during working
20 hours."

21 A That's correct.

22 Q Okay. If she -- well, people are allowed to make
23 phone calls on their breaks and then at lunch; is that
24 correct?

25 A Yes.

1 Q Okay. However, if they're doing something, I
2 gather, just for personal means during work, that would be a
3 violation of this section, correct?

4 A Yes.

5 Q And for that, though, this guide says it's only --
6 that the worst you get for that is the documented verbal; is
7 that accurate?

8 A A one, I believe, is a letter of instruction and
9 the max is a -- no, I'm wrong. Look at -- if you turn to
10 Page 3, the one is an oral warning.

11 HEARING OFFICER: Page 3 of --

12 THE WITNESS: Of the --

13 MR. BLANCK: That same document.

14 HEARING OFFICER: -- of Exhibit A?

15 BY MR. BLANCK:

16 Q I'm sorry, you're right.

17 A Yes.

18 Q The first is an oral. The second is the written.

19 A The written reprimand. Uh-huh.

20 Q Okay. So for that C-4 on Page 4, you could either
21 get a verbal or a written --

22 A Correct.

23 Q -- for the first offense?

24 A And then for the B, performance on the job, the
25 first offense would have been a minimum of a written

1 reprimand.

2 Q Okay. And just to your understanding, this was
3 Ms. O'Keefe's first offense. She had no previous discipline
4 in this regard, correct?

5 A Correct. As far as --

6 Q Okay. Then we go to G-1, and we get to this one
7 that's -- we've already talked about that, but -- so I'll
8 move on. But that lists in G what --

9 A Uh-huh. That she went in and so it's a five,
10 which is a termination on the first --

11 Q Right.

12 A -- offense.

13 Q Referring to the criminal statute potential,
14 right? But let's go down to H-4, just below that.
15 "Unauthorized or improper disclosure of confidential
16 information;" that one runs the full range. You get to do
17 verbal through termination.

18 A Correct.

19 Q Okay. So it doesn't mandate termination, it gives
20 discretion, correct?

21 A Yes.

22 Q And the last one, "Acting in an official
23 capacity," same thing. The full range up to --

24 HEARING OFFICER: That's H-7, right?

25 THE WITNESS: Yeah, without authorization.

1 MR. BLANCK: H-7.

2 THE WITNESS: Yes.

3 BY MR. BLANCK:

4 Q Okay. So would you agree with me saying that, you
5 know, for first time offenders with no prior record and
6 excellent performance ratings, that the purpose of using the
7 lesser -- going on progressive is you can tell them not to
8 do this and that works and fix the problem, you keep a good
9 a good employee and not have to deal with it again?

10 A Our goal is to try to -- try to keep the employees
11 employed, yes.

12 Q Okay. Thank you. And do you have any involvement
13 yourself as to -- in DMV who -- how or who is blocked access
14 what information?

15 A No.

16 Q Okay. But are you aware that there's an ability
17 based on people's various work jobs and duties that you can
18 block access to certain things?

19 A Yes, I am.

20 Q And if somebody purposely -- I'll use the word
21 hacks around the block, that's more serious than accessing
22 something that you're allowed access to, isn't it?

23 A I would think so, but --

24 Q Thank you.

25 MS. HOOVER: Calls for speculation.

1 HEARING OFFICER: It's overruled.

2 BY MR. BLANCK:

3 Q Oh, and then one other thing. Still looking on
4 the Employer's Exhibit A, Page 4, under H-4. There is -- H-
5 4 and G-1 has overlaps in what a person could do. By that I
6 mean G says "the use." Well, the use could be an improper
7 disclosure, correct?

8 A It could be.

9 Q Okay. And that's stated in H-4, correct?

10 A Yes.

11 Q Okay.

12 MR. BLANCK: If I could have just a minute.

13 HEARING OFFICER: Sure.

14 MR. BLANCK: No further questions. Thank you.

15 HEARING OFFICER: Redirect?

16 MS. HOOVER: Yes.

17 REDIRECT EXAMINATION

18 BY STATE:

19 Q Let's look at this exhibit that -- Exhibit 3 of
20 the Employee's.

21 A Okay.

22 Q Page 2, second paragraph. It says -- starts with
23 "The State and Personnel Commission has approved these
24 prohibitions and penalties." What's the effective date of
25 them by that sentence?

1 A There is no effective date.

2 Q Okay. So if your knowledge of how DHRM works
3 and -- shouldn't a date be in there --

4 A Yes.

5 Q -- if these are actual -- actually in effect?

6 Okay. Now, you were asked about a stalking incident. Were
7 you working at DMV when that occurred?

8 A No.

9 Q Okay. So you don't have firsthand knowledge of
10 that case?

11 A No.

12 Q And you don't know all the circumstances of that
13 case?

14 A No.

15 Q Okay. And in any case, that -- so that stalking
16 incident had occurred by -- before when? When did you start
17 at DMV?

18 A I started in February of 2010.

19 Q Of 2010. So it happened before?

20 A Yes. It was before I arrived at the DMV.

21 Q Okay. But since you've been there, the -- you
22 testified that the discipline has been consistent?

23 A Yes.

24 Q All right. Now, we were looking at -- I don't
25 know what page we were on. I think it was Page 4. And it

1 talks about NRS 205.481.

2 HEARING OFFICER: For what exhibit?

3 MS. HOOVER: Page 4 of Employee.

4 BY STATE:

5 Q It talks about misuse of information technology
6 and it talks about may be subject to prosecution under NRS
7 205.481. To your knowledge, has anybody of the five people
8 you talked about, the five cases, been charged with forgery?

9 A No, none of them.

10 Q To your knowledge, have they?

11 A To my knowledge, no.

12 Q Okay. So that's just -- is that -- why is that
13 there then?

14 A Because it's potential that it could lead to some
15 type of forgery or -- it's the potential.

16 Q Okay. All right. Now, can you turn to Employee's
17 Exhibit 15?

18 MR. BLANCK: Do you mean Exhibit A, Page 15?

19 MS. HOOVER: Yes, Employee's Exhibit A, Page 15.

20 HEARING OFFICER: I just -- you're on Employer's
21 Exhibits.

22 MR. BLANCK: You're --

23 MS. HOOVER: Employer's. I'm sorry.

24 HEARING OFFICER: That's okay.

25 MS. HOOVER: I don't know what I'm doing.

1 HEARING OFFICER: That's okay.

2 MS. HOOVER: Employer's Exhibit 15.

3 HEARING OFFICER: I'm assuming also that you are
4 referring to Employer's Exhibit A and Page 4 in the previous
5 line of questioning.

6 MS. HOOVER: That's true.

7 HEARING OFFICER: Yes.

8 MS. HOOVER: Did I say Employee?

9 HEARING OFFICER: Yeah.

10 MS. HOOVER: Sorry.

11 HEARING OFFICER: So now we're back -- we're on
12 Page 15?

13 MS. HOOVER: Page 15.

14 BY STATE:

15 Q Can you tell me what that is?

16 A The one that's stamped at the bottom with a page
17 on the right-hand side that says 15?

18 Q Yeah.

19 A I just want to make sure. It's the notice of
20 employee rights during an internal investigation.

21 Q Okay. And this is a notice -- is this the notice
22 that was given to Cara O'Keefe?

23 A Yes, it is.

24 Q And does it state that -- what the charge was
25 regarding?

1 A Yes.

2 Q And it talks about information of use?

3 A Yes.

4 Q And computer usage policy?

5 A And the computer usage. The computer usage was
6 first and then the information of use was second.

7 Q Okay. And that's the notice that's required by
8 statute and by regulation?

9 A Yes.

10 Q Okay. All right.

11 A And this is where they would also identify whether
12 they're going to have representation. So it's both. It's a
13 dual purpose.

14 Q Oh, it does both things?

15 A Uh-huh. Yes.

16 Q Okay. And can you point that out.

17 A It's at the, let's see, one, two, three --

18 Q Oh, okay.

19 A -- four, five -- yeah.

20 Q So she checked --

21 A That she waived her right to have a representative
22 present.

23 Q Okay. And sometimes do these notices go out --
24 these notices go out within a certain time of when you're
25 going to interview the employee?

1 A We have to do it two days before, 48 hours before.

2 Q Okay. And how does the interview of the employee
3 relate sometimes to what -- the rest of the investigation?
4 Where does it come in the whole investigation?

5 A Oh, the investigative process?

6 Q Yeah.

7 A Okay. So typically what we would do is we would
8 try to gather as much information as we can from anybody who
9 would have -- witnesses or people that have information that
10 could assist in this case. And then, typically, the person
11 who's being accused or is going to be under investigation,
12 that individual is called in towards the end, so that we
13 have a full set of information that we can ask questions
14 regarding the situation.

15 Q Okay. Now, isn't it true that for some offenses
16 the statutes and regulations, excuse me, provide for
17 immediate termination?

18 A Yes.

19 Q Okay. And do you remember the section of
20 regulations that's under?

21 A Hang on a second. I can tell you that if a person
22 is absent without leave for three consecutive days they're a
23 no call/no show, that could potentially be an immediate
24 termination. It has to be a pretty egregious act outside of
25 that.

1 Q Okay. So turn to Page 3 of Employer's Exhibit A,
2 please.

3 MR. BLANCK: What page was that?

4 MS. HOOVER: Three.

5 MR. BLANCK: Three?

6 BY STATE:

7 Q Now, in the middle of the page it says
8 "Violations," and then it says "NAC 284.646, Dismissals."

9 A Uh-huh.

10 Q And it says that you -- number two says "You may
11 immediately dismiss an employee for the following causes."
12 Isn't that correct?

13 A Yes.

14 Q And what is the subsection under there that she's
15 charged with?

16 A Unauthorized release or use of confidential
17 information.

18 Q Okay. So you just have to use the information in
19 any way, shape or form?

20 A That is correct.

21 Q And so you -- has DMV interpreted that as in the
22 prior disciplines we've been talking about, the five prior
23 disciplines that have resulted in termination, has that
24 involved getting into the DMV confidential database?

25 A Yes.

1 Q And does that involve -- in those cases, did
2 people necessarily hand out pages of things to people?

3 A No.

4 Q They accessed it?

5 A They accessed the information.

6 Q Okay. So even if you just look at the documents
7 when you're not permitted to, you could be disciplined for
8 that?

9 A Yes.

10 Q And you could be fired for that?

11 A Yes.

12 Q And is that what happened in this case?

13 A Yes.

14 Q And is that what happened in the other cases?

15 A Yes.

16 Q Okay.

17 MS. HOOVER: No further questions.

18 HEARING OFFICER: Recross?

19 MR. BLANCK: Yes.

20 RECROSS-EXAMINATION

21 BY MR. BLANCK:

22 Q On Page 15 of the Employer's Exhibit A, that's the
23 Notice of Employee Rights. Do you see on there -- we just
24 talked about information abuse and there's only one number
25 one. And that's talks about the use or manipulation and

1 citing to the NRS alteration and forgery and deletion of
2 data. Do you see that?

3 A The use? Yes.

4 Q Yeah.

5 A Uh-huh.

6 Q But then if you turn to Page 4, the agency didn't
7 list the items under B, C or H, did they?

8 A Page 4 --

9 Q Of the same exhibit.

10 A I'm sorry. At the bottom where it's stamped?

11 Q Yes, the --

12 A Okay.

13 Q -- with --

14 A All right.

15 Q -- I think 507.

16 A Okay. Okay. We --

17 Q I was saying they listed that one, the G-1, but
18 they didn't list the B, C or H allegations, correct, back on
19 Page 15?

20 A That's correct.

21 Q Okay. And then you're aware that Ms. O'Keefe left
22 the DMV in December of 2013 -- 2012? I'm sorry.

23 A Okay.

24 Q In 2012?

25 A I do know she left, yes. She --

1 Q Okay.

2 A -- she transferred out.

3 Q And were you aware that at that time or after
4 she -- just after she left in that month, her supervisors
5 became aware of this alleged misconduct. Is that your
6 understanding?

7 A It was -- it was around that time, yes.

8 Q Okay. And even though she was no longer there but
9 she still worked for the State of Nevada. You knew that,
10 correct?

11 A Yes.

12 Q Wasn't it possible for them to propose action
13 through the -- I might have the name wrong -- but the
14 Department of Personnel and Administration, to say look, we
15 have this employee. We think she violated our prohibitions
16 and penalties. She transferred. We'd like you to look into
17 this.

18 A We -- I've never, in the years that I've been in
19 state government, done that.

20 Q But it's not (inaudible) --

21 A And I'm not -- I'm not even aware -- because once
22 an employee transfers out of our department --

23 Q Correct.

24 A -- we lose a lot of authority over that employee.

25 Q Correct. But what I'm saying is you could report

1 it -- I'll call it the Department of Personnel -- you could
2 tell them saying, look, an employee here just transferred to
3 another state department and we have issues.

4 A We never have.

5 MS. HOOVER: I think she -- asked and answered.

6 BY MR. BLANCK:

7 Q Okay. I understand --

8 A Or I never have.

9 Q -- you never have.

10 A And I -- and I would never even --

11 Q You're not aware of any --

12 A -- I would never even think that they would --
13 they would -- they've never written, in my -- since the
14 years that I've been in state government, that I've ever
15 been aware of that they have ever written a specificity of
16 charges for another department.

17 Q Okay. Are you aware that Ms. O'Keefe desired to
18 return to the DMV at some point, correct? She came back.

19 A She returned to us, yes.

20 Q Yes. And isn't it -- or do you think or isn't it
21 incumbent on personnel to say if you return we're going to
22 investigate you for these allegations? You have pending
23 discipline with us when you left. Now you're returning.
24 Aren't you obligated to tell them that this is what's going
25 to happen on your return?

1 A When she returned --

2 Q Yeah.

3 A -- it's my understanding and -- that that's when
4 we opened the investigation, yes --

5 Q Okay.

6 A -- because then she comes back under our
7 jurisdiction.

8 Q I understand that. But you --

9 A Okay.

10 Q -- I'm saying if you knew she's coming back, isn't
11 it incumbent upon DMV to say, look, if you do return here
12 we're going to proceed with our investigation?

13 A She wasn't our employee. I don't -- I don't --

14 Q Okay. Again, I'm not (inaudible) --

15 A Okay. Maybe I'm not understanding. Okay.

16 Q She came back, I think she'll testify, in
17 September. Prior to returning, she had -- she's going to
18 testify she had conversations with her supervisor on coming
19 back. Once DMV knows she's coming back, isn't it incumbent
20 upon DMV to say, look, if you come back, the day you come
21 back I'm going to put you on leave and investigate you for
22 misconduct, if you know she's coming back?

23 A We would not do anything until she arrived and she
24 was our employee again.

25 Q So you wouldn't even -- if she had called and said

1 I'm coming back, you shouldn't even tell her saying, gee,
2 I'm looking forward to it and glad to have you back.

3 MS. HOOVER: Asked and answered.

4 HEARING OFFICER: Sustained.

5 THE WITNESS: No, I just --

6 MR. BLANCK: It's okay. It's all right.

7 HEARING OFFICER: Don't answer the question.

8 THE WITNESS: Oh, okay.

9 HEARING OFFICER: If you don't know, that's fine.

10 BY MR. BLANCK:

11 Q And then looking at Page 3 of the Employer's
12 Exhibit A, under Violations under 1-A. You're not aware, I
13 think you testified, of any rules or policies at Exhibit 3,
14 that prohibitions and penalties that have been adopted by
15 the DMV?

16 MS. HOOVER: Are you -- are you on our --

17 MR. BLANCK: Your exhibit, Page 3.

18 THE WITNESS: Our exhibit, Page 3. Okay.

19 BY MR. BLANCK:

20 Q Right. Under Violations, A-1(A).

21 A A-1(A).

22 Q And it says "Has adopted any rules or policies
23 which authorize dismissal." You're not aware of any
24 policies that have been adopted; is that what your testimony
25 was?

1 A I would have to say that the prohibitions and --
2 MS. HOOVER: I think (inaudible) --
3 HEARING OFFICER: Wait.
4 THE WITNESS: -- and penalties --
5 HEARING OFFICER: Wait. Hold on. What's the
6 objection?
7 THE WITNESS: Okay.
8 HEARING OFFICER: Ms. Hoover, is there an
9 objection?
10 MS. HOOVER: My objection is that I think he's
11 misstating the evidence.
12 MR. BLANCK: Let me --
13 MS. HOOVER: She was talking --
14 MR. BLANCK: -- let me rephrase it. If you look
15 at -- in the binders there's Exhibit 3 that says
16 "Prohibitions and Penalties: A Supervisor's Guide," to your
17 right.
18 THE WITNESS: Okay.
19 HEARING OFFICER: Employee's exhibit --
20 MR. BLANCK: Are you aware -- Employee's
21 Exhibit --
22 HEARING OFFICER: -- 3?
23 MR. BLANCK: -- 3.
24 THE WITNESS: Okay.
25 BY MR. BLANCK:

1 Q Are you aware of DMV ever adopting prohibitions
2 and penalties?

3 A Yes, they have.

4 Q They have? Okay. It's just that you don't know
5 if Exhibit 3 are them or not, correct?

6 A Right. There was -- yes.

7 Q Okay. And then under -- back to Page 3 --

8 A Uh-huh.

9 Q -- under 2-A, it says --

10 HEARING OFFICER: Employer's exhibit?

11 MR. BLANCK: Employer's Exhibit A, Page 3.

12 BY MR. BLANCK:

13 Q 2-B says "Unauthorized release or use of
14 confidential information," that can be covered by various
15 prohibitions and penalties, correct?

16 A It could.

17 Q Okay.

18 MR. BLANCK: Just one second, Your Honor.

19 HEARING OFFICER: Ms. Greiner is fine.

20 MR. BLANCK: Pardon?

21 HEARING OFFICER: You can just refer to me as Ms.
22 Greiner.

23 MR. BLANCK: Okay. I'm elevating you.

24 HEARING OFFICER: Thank you.

25 BY MR. BLANCK:

1 Q And I think -- just one last question. I think I
2 might have asked you, but promptly dealing with discipline
3 is an important factor in dealing with employees, correct?

4 A Yes.

5 Q Okay.

6 MR. BLANCK: No further questions.

7 HEARING OFFICER: Any redirect?

8 MS. HOOVER: Yes, I do.

9 REDIRECT EXAMINATION

10 BY STATE:

11 Q You've been in state service for 25 years?

12 A Well, actually it's 28 plus.

13 Q Twenty-eight plus. Twenty-five in HR?

14 A Twenty-five in HR, yes.

15 Q So you've read the regulations and statutes,
16 prohibitions and penalties for DMV and for the State, right?

17 A Yes, for other departments.

18 Q And you're fairly familiar with those regulations
19 and statutes; isn't that correct?

20 A Yes.

21 Q Okay. Are you aware of any written policy,
22 regulation or statute that permits an agency to go to the
23 Department of Personnel and say this person used to work for
24 us and we just found out they did something bad, and we want
25 to do something about it? So we want to affect their job at

1 another agency, and can you launch an investigation that
2 spans agencies to do this?

3 A I have never experienced that at all, ever. And I
4 have -- like in this case, I would not have even gone to
5 them.

6 Q Okay. But are you aware of any regulation,
7 statute or policy --

8 A No.

9 Q -- that says you can do that?

10 A No.

11 Q It's not in any written policy you know of?

12 A Not that I'm aware of.

13 Q Okay.

14 MS. HOOVER: All right. I don't think I have any
15 further questions.

16 HEARING OFFICER: Recross?

17 MR. BLANCK: Just one second, Ms. Greiner.

18 RE CROSS-EXAMINATION

19 BY MR. BLANCK:

20 Q On page -- let me get this right. Exhibit A,
21 Employer's, Page 3. Under the NAC, it talks about the
22 appointing authority and then the agency. Do you see that?

23 A On Page 3?

24 Q Yes, under Violations.

25 A Does it start with --

1 Q No. No.

2 A Oh, okay.

3 Q Back under violations on -- do you see that on
4 Page 3?

5 A On Page 3.

6 Q Oh, oh, oh. No. No.

7 A Am I on the wrong page?

8 Q Zero, zero, zero is there on the right.

9 A Oh, okay. I'm sorry. All right.

10 Q Yeah, they're --

11 A Okay.

12 Q Okay.

13 A I'm with you.

14 Q Okay. Under Violations, it talks about the
15 appointing authority and the agency. In this case, the DMV
16 is the agency, correct?

17 A Yes.

18 Q Okay. And the appointing authority, is that the
19 State of Nevada?

20 A No, that typically -- well, I interpret that as
21 being Troy Dillard as our appointing authority.

22 Q Who's Troy Dillard?

23 A He's the director for the Department of Motor
24 Vehicles.

25 Q Okay. But is the agency is the Department of

1 Motor Vehicles and the appointing authority you're saying
2 are one in the same?

3 A Appointing authority is a -- is interpreted many
4 different ways.

5 MS. HOOVER: I object.

6 MR. BLANCK: Okay.

7 MS. HOOVER: There's a statute -- there's a
8 regulation that's right on point. You can go to the legal
9 definition, and this asks -- this asks for a legal
10 conclusion.

11 MR. BLANCK: Well, she already just testified that
12 she's very familiar with all statutes, regs, and policies.
13 That's what you elicited from her, so...

14 HEARING OFFICER: Overruled.

15 BY MR. BLANCK:

16 Q So you're saying there's many ways to interpret
17 appointing authority?

18 A Yes. It depends -- yeah.

19 MR. BLANCK: Okay. No further questions. Thank
20 you.

21 HEARING OFFICER: Let her answer though.

22 MR. BLANCK: Oh.

23 HEARING OFFICER: What we (inaudible).

24 THE WITNESS: Well -- and what I -- what was going
25 through my head was that like on an evaluation form, and you

1 have it -- some of them here, the appointing authority can
2 be delegated down to different levels. And so even though
3 it may be Troy Dillard for the Department of Motor Vehicles,
4 you saw that Wayne Seidel signed it. So he became the
5 appointing authority for the purposes of an evaluation.

6 Does --

7 MR. BLANCK: I think that -- yes.

8 THE WITNESS: Okay.

9 MR. BLANCK: That's fine. Thank you. No further
10 questions.

11 MS. HOOVER: No further questions. No.

12 HEARING OFFICER: All right. Can we excuse this
13 witness?

14 MS. HOOVER: Yes.

15 HEARING OFFICER: (Inaudible).

16 MS. HOOVER: I have two more.

17 HEARING OFFICER: Two more?

18 MS. HOOVER: Karen is next and then (inaudible).

19 HEARING OFFICER: Okay. (Inaudible).

20 MR. BLANCK: Maybe (inaudible) but just off the
21 record.

22 HEARING OFFICER: Yeah.

23 MR. BLANCK: I have one witness that was -- I told
24 to be here at 1:30, which -- and I don't know how many --
25 I'm not trying to change your case or anything. I just want

1 to know if I should contact them to say --

2 MS. HOOVER: We're off the record, right?

3 HEARING OFFICER: Let's go off the record.

4 (off the record)

5 THE WITNESS: -- Stoll, first name K-A-R-E-N.

6 Last name S-T-O-L-L.

7 HEARING OFFICER: Go ahead.

8 DIRECT EXAMINATION

9 BY STATE:

10 Q Where do you work?

11 A The Department of Motor Vehicles, the Motor
12 Carrier Division.

13 Q All right. And what's your title?

14 A Revenue Officer III.

15 HEARING OFFICER: What officer?

16 THE WITNESS: Revenue Officer III.

17 HEARING OFFICER: Thank you.

18 BY STATE:

19 Q Does that title make you a supervisor?

20 A Yes, ma'am.

21 Q So who do you supervise?

22 A I supervise the revenue officers and an
23 administrative assistant.

24 Q All right. And how long have you worked there?

25 A For about six and a half years.

1 Q And have you held that position the whole time?

2 A Yes, ma'am.

3 Q Okay. And do you know Cara O'Keefe?

4 A Yes, I do.

5 Q In what capacity?

6 A I was her supervisor until December 5, 2012, when
7 she promoted out of my division.

8 Q Okay. And when did you learn -- did you ever
9 learn that maybe Ms. O'Keefe had accessed a database that
10 she should not have accessed?

11 A The first time I was made aware of it was the end
12 of December 2012, when I had two employees in my unit,
13 separately, come to me and express their concerns that she
14 may have used information in the proprietary DMV software
15 that we refer to as the DMV application now CARRS.

16 Q Okay.

17 A And --

18 Q CARRS is C-A-R-R-S?

19 A Yes, ma'am.

20 Q Do you happen to know what that stands for?

21 A I do not.

22 Q Okay. And so was this before or after she left --
23 did these employees come to you before or after she -- Cara
24 O'Keefe left DMV?

25 A After she left the DMV.

1 Q Okay. And then was there an occasion when she was
2 going to come back to DMV?

3 A Yes. We were made aware -- I was made aware that
4 she was coming back to the DMV in August -- around the
5 middle of August that she was going to be coming back to be
6 in the position that she had in the revenue unit. So that
7 would have been August of 2012.

8 Q Okay. And then what happened when she came back?

9 A Well, once I was advised she as coming back, then
10 I was instructed by my supervisor that we must revisit the
11 issue of the witnesses coming forward about
12 misrepresentation -- alleged misrepresentation of her
13 authority, working outside her job scope and using the
14 proprietary DMV information. So I went through the process
15 and procedure that the DMV has in place to, first of all,
16 look at the records that our information technology division
17 provided. We provided them with a date range and then they
18 pulled records of all queries to the software. And then as
19 the process went, I went to activity logs and I looked at
20 every account that was documented by Cara that she worked
21 on, whether it was a corporation or individual, and my
22 objective was to find that person -- those two individuals'
23 names on her logs so that I could show them that, yes, that
24 was a Motor Carrier customer. I was not able to find in
25 those records that individual or the lady in those records,

1 so at that point it was determined, because I was
2 unsuccessful in finding them as Motor Carrier customers,
3 that it had to be investigated. And so, at that point, the
4 Motor Carrier Division requested an investigation.

5 MS. HOOVER: I think there's a knock on the door.

6 HEARING OFFICER: Okay.

7 MS. HOOVER: Wayne, can you stay in the hall until
8 this --

9 MR. SEIDEL: Sure.

10 MS. HOOVER: -- we're done with this one? Thank
11 you.

12 BY STATE:

13 Q So you said that you -- that's when you determined
14 that you needed to --

15 A That the division must proceed to the next step,
16 which was investigation.

17 Q Okay. And then was Cara O'Keefe permitted to
18 return into the workplace?

19 A Her return was scheduled for September 16th. When
20 she returned to the DMV, we met her in the lobby -- I met
21 her in the lobby and we went to the Human Resource office
22 and had her do her paperwork to become a DMV employee again,
23 and we then gave her notice -- the proper notice that she
24 was going to be investigated for information abuse or
25 computer abuse. And we gave her the notification that she

1 would be on paid administrative leave while this
2 investigation took place.

3 Q So she was being paid during that time?

4 A Yes, ma'am.

5 Q And when she came back to work, she was put
6 immediately on admin leave?

7 A Yes, ma'am.

8 Q And she was paid?

9 A Yes, ma'am.

10 Q Okay. And when someone bumps back because they
11 failed probation, the agency from which they promoted
12 doesn't have a say in whether they come back; is that your
13 understanding of how works?

14 A I was -- I was instructed -- I was told that she
15 was returning -- she was reverting back to her revenue
16 officer position, as was her rights when she accepted the
17 promotion. I was not told that she did not meet probation.
18 I was -- I was not told the reason why. It was just that
19 she was coming back.

20 Q Okay. And --

21 A So I was told I had -- that there was no choice in
22 that. That's the provision for employees that promote out;
23 that they have that security to come back to that position.

24 Q Okay. And so she was -- so you had to make room
25 for her?

1 A Yes, ma'am.

2 Q Okay. All right. And then I think if you look at
3 Page 17 of Exhibit -- Employer's Exhibit A. And can you
4 explain what that is?

5 A If I'm looking at the correct document, this would
6 be the computer records. Okay. This is the report that was
7 provided to us by our information technology division when
8 we requested the queries to the proprietary DMV software
9 application. So it would show, in the far left column, the
10 user's name, first name, the employee ID number is in that
11 column. And then what it refers to there is the dates. And
12 so, for example, on the first line it would be November 8,
13 2012. The next sequence of numbers would be the time that's
14 on the computer. And I believe it goes clear down to
15 seconds. And then the IP address would represent -- it's my
16 understanding that would represent her -- it identifies her
17 work -- her specific computer. And then in the next column
18 over that would be the detail that showed the individual's
19 names. And then that particular column is the first name,
20 and I believe that the far right column that's been redacted
21 had the individual's last name. But for security reasons,
22 we did not want that part of a -- part of the record.

23 Q Okay. So you --

24 A I blacked it out to redact it when I was providing
25 the documentation to protect them.

1 Q Oh, okay. And how many times then did Ms. O'Keefe
2 access the record --

3 A Well, I could -- I --

4 Q -- of these two individuals? Can you tell from
5 this?

6 A I can count them. I believe it was like seven
7 times for the Daniel and three or four times depending on --
8 actually, the specificity of charges documents might say
9 three and this -- if you add it up it looks like four.

10 Q Okay.

11 A But...

12 Q Well, one of those was apparently the same date,
13 but slightly different times.

14 A We wanted to -- we would -- we wanted when we were
15 counting it, it looked to us to have been maybe the same
16 type of query and we didn't want -- we would rather err on
17 the lesser charge than the more. So I just said, well, it
18 might not be four. It might be three. So I just went with
19 three.

20 Q Okay. All right. And so -- now, is it your
21 understanding that the first name of the male was Daniel?

22 A Yes, ma'am.

23 Q And what was the first name of the female?

24 A It's my understanding from this report it's
25 Jacqueline.

1 Q And are -- to your knowledge, are those two people
2 a couple?

3 A To my knowledge they are a couple.

4 Q Okay. All right. And then -- now, we've talked
5 about what's on Page 48, Exhibit A of Employer's exhibits.

6 A Yes, ma'am.

7 Q Can you identify what that is?

8 A This was a memo that was put out by Director Bruce
9 Breslow when he was at the DMV. And it was -- basically, it
10 was a break precedent understanding for all employees that
11 basically said while we've had this policy and procedure in
12 place for many years, it's something we go over with you
13 when you're hired in your new employee training. You've
14 seen this similar type of memo before, but it was kind of a
15 revisit saying however or whatever you thought has been
16 going on in the past, from this day forward we want every
17 employee and every supervisor to go over this and just
18 revisit it and say this is how important this is to the
19 State of Nevada DMV employees, taxpayers, customers,
20 whatever that you want to call the people of Nevada, that we
21 have proprietary confidential information. So we had every
22 employee read it, reviewed it with them, had them sign it,
23 and then as a supervisor we were required to sign it as
24 well, to say that we did go through it with them.

25 Q And is your signature on this document?

1 A Yes, ma'am.

2 Q Did you go through this with Cara?

3 A Yes.

4 Q Okay. All right. Now, in -- you have a message
5 on your voicemail at work; isn't that true?

6 A Yes, ma'am.

7 Q Does that voicemail give any information to a
8 caller about driver's licenses?

9 A Yes, ma'am. And that's because I get -- we get
10 phone calls -- all of us get phone calls, but I specifically
11 get phone calls about driver's licenses. One reason is
12 because years ago, my phone number was the phone number
13 published in the directories across the United States. The
14 second reason is people will call and they want to know
15 about driver's license; Motor Carrier customers, DMV
16 customers. And I don't want them waiting for me to call
17 them back, because if I call them back they have a live
18 person on the phone. They want desperately for someone to
19 help them. And it's really, you know, it -- we're
20 instructed we don't wait on DMV driver's license customers.
21 So I find that that has reduced my phone calls tremendously
22 if I just leave that -- they're listening to the message.
23 Oh, I've got -- you know, I call that number for driver's
24 license. So if there's any reason they got transferred to
25 me in error, I want them to have that type of customer

1 service, where they can just get the number and call them
2 themselves.

3 Q Okay. So you put the number for driver's licenses
4 on your --

5 A Yes, ma'am.

6 Q -- voicemail? Okay. Now, what's your -- you're
7 the supervisor in Motor Carrier. And is that -- what do you
8 tell your revenue officers about how to handle calls about
9 driver's licenses?

10 A Well, Motor Carrier customers -- I mean Motor
11 Carrier employees usually don't have a lot of detailed
12 knowledge about dealing with driver's license customers,
13 unless they've promoted into our division from driver's
14 license. So we tell -- I tell my staff those are the kind
15 of calls you need to refer to driver's license. You don't
16 want to give them wrong information. You don't want to
17 spend time talking to them, because I need you collecting on
18 bad debt. You should not be waiting on customers that are
19 supposed to go to a different division. Their reviews,
20 their appraisals, everything they do they track. And so
21 every time they're waiting on a driver's license customer
22 they're not able to do their work as a revenue officer. And
23 so that impacts their number of accounts that they work and
24 their dollars that they collect. So most people are happy
25 to refer those calls on.

1 Q Are they allowed to access the confidential
2 database for driver's licenses to help the driver's license
3 customer?

4 A They're not -- they don't have a need to help
5 driver's license customers. They access that database to
6 confirm debt. For example, when a Motor Carrier customer
7 sets an account up for their motor carrier account, they
8 will sign their application, so we have their signature.
9 Many times, especially when we're working with corporate
10 accounts where they're working under the corporation name,
11 they try to deny that that is them that's affiliated with
12 that corporation. So Motor Carrier Division deals with
13 taxes -- fuel taxes and fuel tax law hold the -- defines the
14 responsible individual and individuals that are responsible
15 for corporate debt. So revenue officers may have need to go
16 in and compare signatures of a driver's license record that
17 we have against a signature on a Motor Carrier account
18 application to just make sure, oh, that's the same John
19 Smith.

20 Q Okay. So you use it to verify identity?

21 A To confirm debt and to verify identity.

22 Q Do they use it for DUI cases?

23 A We don't deal with DUI cases.

24 Q Okay. So I think there was some testimony earlier
25 or some questions about blocking off the driver's license

1 application. But, in fact, from what I'm understanding,
2 correct me if I'm wrong, you're saying that they actually
3 use that application to confirm identity?

4 A Correct.

5 Q Okay. Now, what's your understanding about
6 accessing DMV records for a friend?

7 A We are not supposed to do that.

8 Q Okay. Can you access the records if they "give
9 you permission"?

10 A I know of no exception in our Nevada laws,
11 policies or procedures that gives a taxpayer or a customer
12 the authority to give an employee of the State of Nevada
13 authority to break any policy, procedure or law.

14 Q Okay. All right. Now, we were looking at that
15 one exhibit, I think it was on Page 17. Oh, yeah, I wanted
16 to ask you a couple more questions about Page 17, Exhibit A.
17 Can you look at these date timestamps and tell me about the
18 time that these records were accessed?

19 A So if we're talking about like the time of day, so
20 like the first one I would say it was 8:30-8:33, and then
21 the next one on the -- the next -- the third line down, I
22 would say that would be around 11:00. The next one would
23 be --

24 Q 11:04?

25 A 11:04. Uh-huh.

1 Q Okay.

2 A The next one down would be about 6:38 a.m. And
3 then --

4 Q Now, to your understanding, what shift did Cara
5 O'Keefe work?

6 A Well, while she was working for me, she worked
7 depending on what her own, you know, needs were for her
8 situation, there were times when she worked 7:30 to 4:30.
9 During this period of time, I believe she was working 4/10s.
10 So that would be like 6:30 to 4:30, I think.

11 Q Okay.

12 A So that was during that period of time.

13 Q So we were on 6:38. If you go down to the fifth
14 one, can you give us the date and the time of that one?

15 A So to me that would be September 4, 2012, and that
16 would be at like 2:54 in the afternoon.

17 Q Because you're on military time?

18 A Yes, ma'am.

19 Q Okay. And then the next one would have been at --

20 A That'd be like 1:42 on August 15, 2012.

21 Q Okay. And then there's a whole (inaudible) of
22 them --

23 A Right.

24 Q -- in July; is that correct?

25 A Yes, ma'am. So like 10:26 on July 27th, 7:31. And

1 on July 23, 2012, it would be like 1:21 in the afternoon.

2 Q Okay.

3 A And July 27, 2012, 7:31 in the morning. July 27,
4 2012, 7:31.04. So that was a real -- just a real quick
5 query. And that -- to me, that was one that I just kind of
6 discounted because it, to me, looked like they were so close
7 together that --

8 Q So you counted this --

9 A -- just in and out really -- I mean, yeah, it was
10 just --

11 Q -- you counted it as one?

12 A I did.

13 Q Okay.

14 A I did. And then on July 23, 2012, it would be
15 like 2:44 in the afternoon. And on July 23, 2012, 1:21.

16 Q Okay. All right. So the record then reveals what
17 span of months was she looking at those records? How
18 many --

19 A From July 2012 -- July 23rd through November 8,
20 2012.

21 Q Okay. So a period of four --

22 A Four months.

23 Q -- four or five months? Okay. And you testified
24 that you looked up these particular customers.

25 A The methodology I used was I'm going to prove that

1 these were Motor Carrier customers. So the first thing I
2 did was I queried all of the Motor Carrier's proprietary
3 software that revenue officers use. There's commercial
4 license registration. There's the IFTA fuel tax software.
5 There's -- then we have a database that's like a centralized
6 receivables database. And so anything that I know could
7 have been a Motor Carrier-related software, I queried those
8 names. And then I also thought, well, maybe they are a
9 partner to an LLC or a corporate officer to a corporation.
10 So I went to the Nevada Secretary of State's website and I
11 queried by individual name and then I queried by, you know,
12 both Jacqueline and Daniel's name, because I was trying to
13 find a corporation that they may have been involved with
14 that was a Motor Carrier customer that maybe I had missed.
15 And I was unsuccessful at finding anything there. So then I
16 went and I -- to the actual activity log that revenue
17 officers keep where they log their phone calls and all of
18 the accounts that they have worked; that they've issued
19 letters to; that they have collected money on, on behalf of
20 the State. So I looked up through that same date range that
21 is on this. I looked at every single activity report for
22 Cara, every single line that I was thinking I could find
23 something, and I was not successful in finding an account
24 that had anything to do with Motor Carrier.

25 Q Okay. All right. Now, was Cara O'Keefe a good

1 employee?

2 A No.

3 Q But you gave her above -- exceeds standards
4 evaluation?

5 A Absolutely. My last review that I did was
6 December of 2011. And appraisal reviews are very
7 statistical driven. And up until that point, I knew -- I
8 knew nothing about using DMV software to look up information
9 for friends. And I also was made aware, after she left in
10 2008, of accounts that --

11 Q In 2008?

12 A Oh, I'm sorry. December 2012 --

13 Q Okay.

14 A -- when she left. December 5, 2012. I apologize.
15 From that point on, when customers or debtors would call
16 that maybe they had a title stop or a lien or an issue with
17 debt that they said I don't know why I've got a lien or I
18 don't know why I've got a title stop, because she wasn't
19 there. When she was there, she always handled her accounts.
20 She fabulously handled her accounts. But what I -- what I
21 wasn't aware of were some of the things that, you know, I
22 would go into the accounts and I didn't find notes about how
23 did you tie this individual to this corporation or, you
24 know, how come there was a title stop on this person when
25 they had nothing to do with this corporation? So from the

1 point that -- time that she left, I was -- I was spending, I
2 would say, I would -- I didn't get a huge amount of them,
3 but I would say two to three accounts a month, where I would
4 go in and need to spend time resolving the issue. So I
5 would have to say a good employee, in my definition, is
6 someone that does not work outside the scope of their job;
7 that does not use a computer during company time on the
8 taxpayer's dime; and that does not access computers owned by
9 the State of Nevada DMV in violation of the policies for
10 friends.

11 Q Okay. Are you aware of a prohibition and penalty
12 that would actually require employees to report wrongdoing
13 of other employees?

14 A In the section of the Prohibitions and
15 Penalties -- I think it's one or two on the grid on above
16 where it tells me, as a supervisor, that when I become aware
17 of something I can be fired for not investigating or not
18 following through.

19 MR. BLANCK: Objection. Lacks foundation. What
20 is it, something she read, something she looked at? Is
21 there a document?

22 MS. HOOVER: There's the Prohibitions and
23 Penalties.

24 THE WITNESS: Yeah, I'm sorry. (Inaudible) --

25 MS. HOOVER: I gave it to her to refresh her

1 memory and I will let you take a look at it.

2 MR. BLANCK: Okay.

3 MS. HOOVER: (Inaudible) testify.

4 THE WITNESS: There's -- yeah, in the -- oh.

5 MS. HOOVER: (Inaudible) --

6 MR. BLANCK: And these weren't put in the
7 specificity? These are not on the specificity of charges?

8 MS. HOOVER: No. This issue came up when you --
9 when you questioned the other employees about why they
10 bothered to report this.

11 HEARING OFFICER: Which document are you
12 (inaudible)?

13 THE WITNESS: It's the Department of Motor
14 Vehicles Prohibitions and Penalties. And it is --

15 HEARING OFFICER: It's not an exhibit.

16 THE WITNESS: Is it exhibit?

17 MR. BLANCK: No.

18 MS. HOOVER: The whole Prohibitions and Penalties
19 is not. We put sections of it in the grid. This is
20 sections of it.

21 HEARING OFFICER: Okay.

22 MS. HOOVER: But this is a document that is
23 available to employees --

24 HEARING OFFICER: And it's in the grid on -- in
25 Exhibit A?

1 MS. HOOVER: No, it's not.

2 MR. BLANCK: No, it's not on the grid.

3 HEARING OFFICER: It's not in the grid?

4 MS. HOOVER: No. This came up because Mr. Blanck
5 was concerned that these employees reported wrongdoing by
6 Cara O'Keefe to the supervisor, and he asked them if there
7 was any policy or procedure they knew of. I'm just showing
8 through this witness that there is a policy and procedure
9 that they should be reporting this sort of thing.

10 MR. BLANCK: I'd like to see it before she hands
11 it to her.

12 HEARING OFFICER: (Inaudible).

13 THE WITNESS: Yeah, I'm sorry. Here you go.
14 Sorry.

15 MS. HOOVER: Thank you. Do you want to see it
16 also before I ask questions?

17 HEARING OFFICER: No, that's okay.

18 MS. HOOVER: She's just using it refresh her
19 memory --

20 HEARING OFFICER: Okay.

21 MS. HOOVER: -- as to what the number is.

22 MR. BLANCK: Well, it doesn't say what she says,
23 but I guess we can go over that when she asks about it.

24 HEARING OFFICER: It does. Cross-examination.

25 MR. BLANCK: Thank you.

1 BY STATE:

2 Q Can you tell me what policy it is?

3 A The prohibitions and penalties that I was
4 referring to is Section B, Performance on the Job, and it's
5 number four. And if I'm allowed to read it --

6 Q Sure.

7 A "Withholding information regarding the job from
8 supervisors or other persons having the necessity for such
9 information."

10 Q And what's the penalty for that?

11 A For the first offense, it's a two to five range.

12 Q Okay.

13 A And that would be, and I'll refer to the exhibit
14 here in --

15 MR. BLANCK: Well, there's no question. She told
16 us it was a two to five. I know what a two to five is.

17 MS. HOOVER: Okay.

18 THE WITNESS: Okay.

19 BY STATE:

20 Q All right. Now, how do you interpret that?

21 A I interpret that as being if I'm made aware of
22 something that's happening on the job that I feel that a
23 supervisor should know about, that I need to tell them,
24 because it impacts the employer that I work for.

25 Q Okay. And would you consider -- how do you

1 consider accessing the confidential database?

2 A Well, --

3 Q Without a (inaudible)?

4 A -- I consider accessing the database for personal
5 use and then -- and then calling another law enforcement
6 authority to discuss that information important for the
7 supervisor to know, because it's against our policy and
8 procedure.

9 Q Okay.

10 MS. HOOVER: Okay. I don't think I have any
11 further questions --

12 HEARING OFFICER: Cross?

13 MS. HOOVER: -- at this time.

14 MR. BLANCK: Yes, thank you.

15 CROSS-EXAMINATION

16 BY MR. BLANCK:

17 Q Ms. Stoll, when did you first become Ms. O'Keefe's
18 supervisor?

19 A October 1, 2007.

20 Q Okay. So it's been for -- you were supervisor for
21 five years or more?

22 A Yes, sir.

23 Q Now, you were aware that December 5th was her last
24 day working at DMV when she transferred, correct?

25 A Yes.

1 Q Okay. And then you found out -- was it in August
2 that you found out that that she was coming back?

3 A Yes.

4 MS. HOOVER: August of what year?

5 MR. BLANCK: August of 2013.

6 HEARING OFFICER: '12.

7 MR. BLANCK: '12. I'm sorry. No, no.

8 THE WITNESS: No.

9 MS. HOOVER: '13.

10 MR. BLANCK: '13.

11 THE WITNESS: Oh, it was '13. You're right.

12 MR. BLANCK: '13.

13 THE WITNESS: Sorry.

14 HEARING OFFICER: 2013.

15 THE WITNESS: I'll just restate it for the record.

16 MR. BLANCK: Yes.

17 THE WITNESS: I was made aware of Cara coming back
18 to the DMV as a revenue officer on or around the middle of
19 August 2013.

20 BY MR. BLANCK:

21 Q Okay. And how were you made aware of that?

22 A I was made aware -- I was told directly by Alys
23 Dobel.

24 Q Okay.

25 A And she is the head of Human Resource for the

1 Department of Motor Vehicles.

2 Q And -- but Ms. O'Keefe did not return until
3 mid-September, correct?

4 A Correct.

5 Q And you had conversations with her in that
6 one-month period before she actually she actually came back,
7 didn't you, with Ms. O'Keefe?

8 A I did not.

9 Q She said talked to you on the telephone. You
10 never talked to her on the telephone?

11 A I do not recall talking to her on the telephone.

12 Q Okay. So it might have happened, but you may
13 not -- you just don't recall it?

14 A I really don't remember it.

15 Q Okay. But at no time prior to her returning did
16 you tell her that she would be facing an investigation when
17 she returned?

18 A I did not. You're correct --

19 Q Okay.

20 A -- I did not tell her.

21 Q Okay. So I think the way you testified to that
22 first you had her -- the day she came back you had her sign
23 in papers to make her a formal DMV employee, correct?

24 A That's correct.

25 Q And as soon as she did that then you told her

1 you're being put on leave and you're under investigation?

2 A That's correct.

3 Q Do you think it was appropriate at all to let her
4 know that if you come back as a DMV employee we're going to
5 start an investigation on you?

6 A I was told I was not to discuss anything with her
7 about that type of action.

8 Q Who told you that?

9 A Human Resources.

10 Q No, a person.

11 A I'm sure it was Alys Dobel.

12 Q Did you feel like you were setting her up to be --
13 for failure by not telling her anything?

14 A No, I did not.

15 Q Okay. So by saying sign in and then we're going
16 to go and try to fire you, she had -- you didn't feel that
17 you could disclose that to her?

18 MS. HOOVER: I think that mischaracterizes the
19 testimony. They didn't -- she didn't say she was going to
20 fire her. She said they were going to do an investigation.
21 They're two separate things.

22 MR. BLANCK: Potential termination.

23 HEARING OFFICER: Sustained.

24 BY MR. BLANCK:

25 Q She had potential -- facing potential termination,

1 wasn't she?

2 A Yes.

3 Q Okay. So timing wise, five -- you told me already
4 and I'm sorry. The year you started as her supervisor was
5 what year?

6 A October 1, 2007.

7 Q '07. Okay. You're aware of an employee -- a
8 woman employee who accessed confidential records of her
9 boyfriend and then ended up stalking his girlfriend and got
10 a TPO against her?

11 A No, I'm not.

12 Q So you're unaware that this employee -- this
13 female employee --

14 MS. HOOVER: Asked and answered. She (inaudible).

15 MR. BLANCK: -- was given a -- was given a two
16 weeks -- anyone, any employee was given a two-week
17 suspension who had received a TPO? Were you ever made aware
18 of that?

19 THE WITNESS: Highly confidential information,
20 what you're talking about, supervisors are not, you know,
21 privileged to know all the details. I am aware that she was
22 out of the office and on a suspension, but I did not know
23 the details of it.

24 BY MR. BLANCK:

25 Q Okay. Thank you. I think you mentioned that you

1 put on your phone a referral number for driver's license.
2 So it wasn't uncommon though for your employees in Motor
3 Carriers to get asked a lot of questions that were outside
4 the Motor -- the Motor Carrier scope of work?

5 A They get asked, but they don't answer.

6 Q Well, isn't it the policy of the DMV that they
7 want to be helpful to all their clients?

8 A And being helpful can mean referring it to the
9 right division.

10 Q Right. Let me ask the question again, if you'll
11 please listen. Doesn't being -- DMV have a policy that it
12 wants to be helpful to all its clients, yes or no?

13 A They have a slogan that says that. I'm not sure
14 it's written policy.

15 Q Okay. I think your testimony was two people came
16 to you separately. It was actually just one person that
17 brought the other one, correct?

18 A No.

19 Q Angie -- (inaudible) if I get her name right.

20 MS. HOOVER: Messmann.

21 BY MR. BLANCK:

22 Q Messmann, Angie with an issue, correct?

23 A Correct.

24 Q And then also -- you were in here. You heard the
25 testimony of -- I think it's Ms. Schober, saying Angie came

1 and got her and told her to give information to you.

2 A The first time I heard that was in this testimony.

3 Q Any reason to believe that Ms. Schober was lying?

4 A No.

5 Q Okay. Then looking at Page 17, Employer's Exhibit
6 A, that's the listing of contacts.

7 A Yes, sir.

8 Q Okay. If you look at that, what confidential
9 information did Ms. O'Keefe access?

10 A She accessed DMV database for people that were not
11 Motor Carrier customers.

12 Q Okay. I'm not asking. What did she actually look
13 at? What did she see?

14 A Their account.

15 Q What's on their account?

16 A Anything from driver's license information to
17 vehicles.

18 Q And that's because Motor Vehicle Carriers
19 sometimes have a need to access that information?

20 A Yes.

21 Q Okay. So when somebody just clicks on that
22 screen, it'll show up in this report, correct?

23 A Yes, sir.

24 Q So you don't even know if she was looking at the
25 screen when she clicked on it, right?

1 A It shows that she accessed that individual's
2 records.

3 Q Right. I understand. And if she clicked on a
4 screen it would show up on this report that she accessed the
5 record?

6 A Yes, sir.

7 Q Okay. What she did with that information, how
8 long she read it or anything, you have no idea?

9 A No one knows.

10 Q And you mentioned your supervisor told you to look
11 into these allegations you learned of in December. Who was
12 that supervisor?

13 A I reported directly to Dawn Lietz at that time.

14 Q So --

15 A At this time too.

16 Q -- it would have been Mr. Lietz that said you
17 needed to do something about this?

18 A And it would have been -- she's the one that gave
19 me the directive, yes.

20 Q Oh, okay. It's a she?

21 A It's a -- I'm sorry, it's Ms. Dawn. She. Yes,
22 Ms.

23 Q I'm sorry. So just to be clear, if you go to any
24 other of your employees and do this type of search, it's
25 possible that you could find screens that they accessed like

1 this because they may have done so incorrectly or by error?

2 A So they pulled up the wrong guy's name? Yes, sir.

3 Q Yes. Okay.

4 A Uh-huh.

5 Q If I could see the Prohibition and Penalties --

6 A Yes, sir.

7 Q -- the separate sheet there.

8 A There you go.

9 Q You mentioned that performance on the job, B-4,
10 "Withholding information regarding the job from supervisors
11 or other persons having the necessity for such information."

12 A Yes, sir.

13 Q So you -- that you -- I think it's your position
14 that the two employees that testified that gives them the
15 ability then to report Ms. O'Keefe's conduct to their
16 supervisor?

17 A Yes.

18 Q Okay. Does it also give the ability to do so four
19 months after the fact?

20 A I can't -- I really can't answer to that. I
21 don't -- I don't know why --

22 Q You don't know?

23 A I don't know.

24 Q Right. Well, if they knew in August, and Cara
25 O'Keefe still worked there, wouldn't that be more relevant

1 to tell you about it when she still worked there?

2 A I wish they had of --

3 Q Right.

4 A -- yes, sir.

5 Q So basically those employees that testified, they
6 really didn't comply with this then, did they, because they
7 only told you after you left and couldn't do anything about
8 it?

9 A Yes, sir.

10 Q Okay. And on the same basis, you could have
11 brought that to Ms. O'Keefe's attention immediately saying
12 what are you doing, and gotten a response from her closer to
13 the time it occurred, if you knew about it?

14 A I'm not sure I could have.

15 Q You're her boss. You can't ask her if she --
16 questions regarding --

17 A I wasn't her boss then, sir.

18 Q Who was her supervisor in August of 2012?

19 A Some person at the Division of Insurance, right?

20 Q No, no, no, no, no. Before she left. I'm sorry,
21 (inaudible) is correct.

22 A All right.

23 Q She left in December --

24 MS. O'KEEFE: 2012.

25 MR. BLANCK: -- 2012 to go to Insurance.

1 THE WITNESS: Okay.

2 BY MR. BLANCK:

3 Q August of 2012 is when she accessed these screens.
4 In August of '12, were you her supervisor?

5 A I was.

6 Q So you could have talked to her then, when you
7 were her supervisor, if you found out information saying,
8 you know, these employees told me that they overheard you on
9 a conversation; what's going on?

10 A If I would have known then I could have then.

11 Q Okay. And if I -- my understanding is now
12 whenever any employee gets on a DMV computer and pulls up
13 information that's -- you could -- that's confidential
14 information if it's on the motor -- let me rephrase that. I
15 don't know what the computer looks like, but once --

16 A Okay.

17 Q -- log in --

18 A All right.

19 Q -- into the system --

20 A Okay.

21 Q -- all that information is considered
22 confidential, correct?

23 A That's correct.

24 Q Okay. And I take it the computers, if you don't
25 log in you could use the computer just like a normal

1 computer or is then locked?

2 A No. You log in and then all the software
3 applications that you have access to then are available,
4 either through your network login or through another login
5 to those individual softwares.

6 Q And is all that considered confidential?

7 A Yes, sir.

8 Q Okay. So any use of that -- of Ms. O'Keefe's
9 computer is considered confidential, the information on
10 there?

11 A Yes.

12 Q So before Ms. O'Keefe left in December 5th, you
13 never had a discussion with her of the nature that you were
14 displeased with any of her job performance?

15 A That's correct.

16 Q Okay. And so, therefore, just looking through her
17 personnel file, and I won't pull them all up. But I'm
18 showing -- I think it's part of the specificity, but any
19 event, almost four years -- her last four-year evaluations
20 were exceeds standards. Does that sound about right?

21 A Sounds right. I think the first one that I --
22 that I gave her like in November of 2007, maybe, I think was
23 when she was still doing her probational period.

24 Q Uh-huh.

25 A And I think I had a meets standards, but all of

1 the rest of them were exceeds standards.

2 Q Okay. And at the -- Employee's Exhibit 3 is the
3 Supervisor's Prohibitions and Penalties Guide. No, no. The
4 binder.

5 A Oh, I'm so sorry.

6 Q That's all right. Did I say that right, the
7 Employee's binder?

8 A Section three?

9 Q Number three, yeah.

10 A All right.

11 Q Yeah. Ever seen this document before today?

12 A No. I -- and I went to the supervisor academy in
13 December of 2012, and I don't know where this document came
14 from. I don't recognize it.

15 Q Okay. But it is your testimony, I think, that we
16 have here, DMV has adopted prohibitions and penalties,
17 correct?

18 A Yes, sir.

19 Q And have they adopted or do they have rules or
20 regulations regarding how supervisors should deal with
21 employee discipline?

22 A Yes, sir.

23 Q Okay. And --

24 HEARING OFFICER: I'm sorry, DMV has adopted what?

25 MR. BLANCK: Policies or procedures dealing with

1 employee discipline.

2 BY MR. BLANCK:

3 Q And is it -- it's not one of the ones I have
4 written here, but is one of those policies, though, isn't it
5 a policy to take as prompt action as possible when dealing
6 with employee discipline?

7 A Yes. Uh-huh.

8 MR. BLANCK: One minute, Ms. Greiner. No further
9 questions.

10 HEARING OFFICER: Redirect?

11 MS. HOOVER: Yes.

12 REDIRECT EXAMINATION

13 BY STATE:

14 Q Now, your testimony was that you did not, to your
15 knowledge, talk to Ms. O'Keefe before she appeared at DMV?

16 A Correct. I recall receiving an e-mail from Cara,
17 and it was directed to Dawn Lietz and myself. And before I
18 responded back to it, Dawn had responded back sort of for
19 the division, you know, saying yeah, we were made aware that
20 you were coming back. And then I did not respond back to
21 it.

22 Q Okay.

23 A But I don't remember a phone call.

24 Q Okay.

25 A I'm so sorry, I don't.

1 Q So you couldn't have told her?

2 A I -- no.

3 Q I mean you couldn't verbally --

4 A Right.

5 Q -- because you don't remember talking to her?

6 Okay.

7 MR. BLANCK: Objection. She doesn't remember
8 talking to her; it doesn't mean she couldn't have told her.
9 She doesn't remember. She's misstating the fact.

10 HEARING OFFICER: That's not the way I interpreted
11 what she just said. But if you want to clarify that, that's
12 fine.

13 THE WITNESS: I would not have called her and
14 given her a heads-up. I -- that was not something that I
15 was, as a supervisor, instructed to do. I am not aware that
16 there was any other jobs that she was considering. The only
17 thing I knew was that she was coming back to the DMV. I did
18 not know, no one ever told me and I don't -- there was -- to
19 my knowledge we didn't know that she was considering other
20 jobs with the State of Nevada.

21 BY STATE:

22 Q Okay.

23 A I would have had no reason to contact her and say
24 if you're coming back to the DMV you might want to know that
25 we're going to be investigating you. I -- because when we

1 were notified that's when we did the procedure of seeing if
2 it really was a credible allegation. And we started the
3 process in the middle of August, and at that point I
4 wouldn't have contacted her to tell her anything.

5 BY STATE:

6 Q At that point you didn't know if there was going
7 to be an investigation?

8 A True. I didn't -- I didn't know that there -- I
9 didn't know that the allegations were, in fact, correct. I
10 sought -- you know, I said, hey, I've been told this. These
11 are the allegations. Where do we go from here, if anywhere?

12 Q So you would not have been able to tell her, at
13 that point, that there was going to be an investigation?

14 A Correct.

15 Q Okay.

16 A I didn't know that we were going to for sure.

17 Q Okay. And then when she showed up and was put on
18 admin leave, on paid --

19 A Yes.

20 Q -- admin leave --

21 A Yes.

22 Q -- she could have resigned at that point, couldn't
23 she?

24 A She could have.

25 Q And that would have ended the investigation?

1 A Right.

2 Q Okay. Now, I think opposing counsel has mentioned
3 just clicking on a screen to access records; it's a little
4 more complicated than that, isn't it?

5 A Correct. For example, you -- when you're logged
6 onto the network you have a variety of different software
7 applications. You select -- if you want to go to the DMV's
8 proprietary, you launch that software, then you log in
9 again, and then from that software there's a menu selection
10 where you choose to go to, and that's the name of the button
11 that you click on, you go to and you have a series of
12 selections. It can be -- you're going to do an account for
13 an adjustment or you're going to do something with your
14 drawer, your money drawer, or you're going to do an inquiry
15 on a vehicle or an individual or a corporation or -- there's
16 a whole variety of selections. So you have a hard time
17 making a mistake. And then once you have the dashboard that
18 says, okay, you selected individual. How do you want to
19 search? Do you want to search by name? Do you want to
20 search by driver's license? Do you want to -- how --
21 address? How do you want to search? So you go through
22 several steps strategically choosing how you want to search.

23 Q Okay. And you would have to input information --

24 A Yes, ma'am.

25 Q -- to access the record?

1 A Yes, ma'am.

2 Q So it's not like everybody's name in the State of
3 Nevada comes up and you just scroll down and pick one. You
4 have to -- you're saying you have to put in a driver's
5 license or --

6 A I could --

7 Q -- a name or something?

8 A -- I could -- say I want to look for Daniel
9 Cunningham, and I could have typed Daniel Cunningham and
10 they could have pulled up a number of Daniel Cunningham's.
11 So I could have clicked on the wrong one, but if it came up
12 and I saw, oh, that's not my guy, so then I would go back
13 and say, oh, well, which one's my guy. This is my guy. But
14 I probably wouldn't have got it wrong seven or eight times.

15 Q Okay.

16 A But I could have got it wrong once --

17 Q Okay.

18 A -- or maybe next month once. I mean, you know, it
19 can happen.

20 Q Okay. Now -- so if I understand it correctly,
21 your testimony was that you didn't know that she had
22 accessed the confidential database -- that Cara O'Keefe had
23 accessed that database for nonbusiness reason prior to the
24 time she left to take the job at Division of Insurance?

25 A I did not know. I was not aware.

1 Q Okay. And you had given her exceeds standards
2 evaluations?

3 A Yes, ma'am.

4 Q But were you aware at the time you gave those
5 evaluations that she accessed the confidential database?

6 A I was not aware of that.

7 Q Would that have changed your evaluation of her?

8 A It would have been addressed at the time that I --
9 that I found out about it and not waiting until the annual
10 review, but it would have gone in the section under
11 judgment. There is a section in your annual review that
12 speaks to, you know, do you use good judgment. And so I
13 would have -- I would have also made a comment in that
14 section and possibly gave her a lower grade in that
15 component of the annual review, which may or may not have
16 changed the overall, but it would have impacted it score
17 wise.

18 Q Okay. So you gave her exceeds standards, but
19 isn't it true it was your recommendation to terminate her?

20 A Yes, it was my recommendation to terminate.

21 Q And why?

22 A Because when we did the investigation and the
23 allegations, you know, we showed that she had accessed
24 proprietary information, and with the witnesses coming
25 forward saying that they had -- that they believed she had,

1 you know, they overheard her misrepresenting her authority
2 and that this person was not a Motor Carrier customer, acted
3 outside the scope of her job. When I look at the
4 prohibitions and penalties, it was my determination or my
5 interpretation -- I guess we don't like that word -- but it
6 was my conclusion, after looking at this, that as a
7 supervisor the use of the State of Nevada DMV information
8 and proprietary software being for personal use outside the
9 scope of her job, it's a no tolerance and the first
10 violation that we're aware of is termination or dismissal.

11 HEARING OFFICER: What are you referring to? It
12 looks like you're referring to a document.

13 THE WITNESS: Oh, on the Prohibitions and
14 Penalties grid that's part of -- let me give you that
15 document.

16 MS. HOOVER: It's Page 4 --

17 THE WITNESS: Page 4.

18 MS. HOOVER: -- of the Employer's Exhibit A.

19 HEARING OFFICER: Okay.

20 THE WITNESS: So as a supervisor, you know, when
21 you go through the process and the process is there's an
22 investigation, there's an interview and then there's an --
23 if that concludes that there needs to be disciplinary
24 action, then a hearing, by a hearing officer, is conducted
25 and they go through their procedure. As a supervisor, I'm

1 not part of it, you know, that's their independent --
2 they're DMV administrators, but they're independent -- they
3 don't -- I don't report to them. They don't supervise me.
4 They go through their questions and they look at all the
5 facts and they say we agree with the supervisor or we don't
6 agree with the supervisor. And then they have an
7 opportunity to make a recommendation. Then at that point,
8 you know, after I looked at the information I had, I
9 determined a five was dismissal. And then I make that
10 recommendation and then it goes all the way through the
11 process. But I recommended it because I believe that she
12 used access to the DMV software that was outside the scope
13 of her job, and that it -- that the disciplinary action for
14 that is dismissal.

15 BY STATE:

16 Q Now, when you were referring to the
17 predisciplinary hearing officer's report, did you look at
18 Exhibit B on the Employer's, excuse me, Employer's exhibit
19 packet?

20 MR. BLANCK: Which page?

21 MS. HOOVER: Exhibit B, Page 49.

22 THE WITNESS: Page 49 did you say?

23 MS. HOOVER: Yeah.

24 THE WITNESS: Okay.

25 MS. HOOVER: It's tab on B.

1 THE WITNESS: Oh, okay. Okay. Oh, okay.

2 BY STATE:

3 Q Is that what you were referring to?

4 A That was the hearing that I was talking about.

5 And basically they had my recommendation and then they go
6 through and they conduct their own independent hearing, yes.

7 Q And what was the result of that?

8 A The result of that was that she agreed with my
9 recommendation and sent her memo to the deputy -- I mean the
10 director, Troy Dillard. So it ultimately becomes his
11 decision to read through this and look at the facts, and
12 then he has the one last chance to say yes, I agree or no.

13 Q Okay. And so Terri Carter, is that the person who
14 did this report?

15 A Yes, ma'am.

16 Q And she recommended termination also?

17 A She did.

18 Q Okay. And then you were asked by opposing counsel
19 if there are policies and procedures for handling discipline
20 for supervisors at DMV.

21 A Yes.

22 Q Did this termination follow those policies and
23 procedures?

24 A Yes, it did.

25 MS. HOOVER: No further questions.

1 HEARING OFFICER: Recross?

2 MR. BLANCK: Yes.

3 RECROSS-EXAMINATION

4 BY MR. BLANCK:

5 Q If you look at the Employer's Exhibit A, Page 48.
6 Oh, sorry, Page 4. I'm sorry.

7 A Yes, sir.

8 Q And that's the prohibitions and penalties that you
9 felt were applicable; is that correct?

10 A Yes, sir.

11 Q Okay. Under G-1, you didn't apply -- you didn't
12 apply NRS 205.481 to that -- to the actions of Ms. O'Keefe,
13 did you?

14 A I read it as the use of. I have no documentation
15 and I don't believe there was manipulation, but I don't
16 know.

17 Q Right. And so you don't know -- you don't know
18 why then NRS 205.481 is listed in that section then?

19 A Because this document is used for a wide range of
20 violations of that. So I did not believe that it was
21 necessary to take it to it to the prosecution level, because
22 dismissal was the discipline.

23 Q Well, you didn't even look at the NRS, correct?

24 A Oh. Oh. I read -- the first one of these that I
25 did I had every NRS and NAC in there.

1 Q The 205.481, the criminal one.

2 A I don't know what it is off the top of my head,
3 but right here.

4 Q You're said you looked at it -- you looked at it,
5 though?

6 A Right. Right.

7 Q Okay. And so you're -- it's your testimony that
8 under these you can just pick and choose out of this
9 paragraph what you apply and what you don't apply; is that
10 accurate?

11 A When the word "or" is used.

12 Q And the fact that it overlaps with other
13 prohibitions and penalties, that doesn't cause you any
14 concern, does it?

15 A Well, the way that this is, I picked all of these;
16 that she violated all of these, because B -- it doesn't go
17 B, C, D, E. I mean I said B, C, I didn't do E, F. I did B,
18 C, G, and H. So -- and see how the numbers go 4, 7? I
19 picked the ones that were applicable to what she did.

20 Q Okay. But G says "Misuse of information
21 technology," and misuse and citing to the criminal statute
22 talks about altercation, fraud, and manipulating data. You
23 didn't think that's what that section applied to?

24 A I did not think that it is only that.

25 Q Okay. Thank you. Now, in early September, you

1 received a phone call from Ms. O'Keefe prior to her
2 returning, didn't you?

3 A Early September?

4 Q Of 2013 --

5 A I don't --

6 Q -- before she returned.

7 A -- I do not remember a phone call.

8 Q Okay. But not remembering -- I want to specify
9 and remember you're under oath.

10 A Yes, sir.

11 Q That it could have happened, but you don't
12 remember talking to her?

13 A I do not remember.

14 MR. BLANCK: No further questions.

15 HEARING OFFICER: Redirect?

16 MS. HOOVER: (Inaudible response).

17 HEARING OFFICER: Are the parties done with this
18 witness?

19 MS. HOOVER: Yes.

20 HEARING OFFICER: All right.

21 MS. HOOVER: She may be subject to (inaudible).

22 THE WITNESS: Okay. Thank you.

23 MS. HOOVER: (Inaudible).

24 HEARING OFFICER: Let's go off the record.

25 MR. BLANCK: Okay.

1 HEARING OFFICER: We're going to -- I think we
2 should take a break after --

3 (off the record)

4 HEARING OFFICER: Can you sign in over there, the
5 sheet by that chair.

6 MR. SEIDEL: Sit right here?

7 HEARING OFFICER: Yes, please. And I'm going to
8 swear you in, so raise your right hand.

9 (WHEREUPON, the witness is sworn.)

10 WAYNE SEIDEL

11 HAVING BEEN CALLED AND SWORN, TESTIFIED AS FOLLOWS:

12 THE WITNESS: I swear.

13 HEARING OFFICER: Okay. I need you to state and
14 spell your first and last name.

15 THE WITNESS: My name is Wayne Seidel, W-A-Y-N-E
16 and then S-E-I-D-E-L.

17 HEARING OFFICER: Thank you.

18 DIRECT EXAMINATION

19 BY STATE:

20 Q Where do you work?

21 A I work for the DMV. I'm the Motor Carrier
22 administrator.

23 Q Okay. And what does the title administrator mean?

24 A I oversee the Motor Carrier Division, which is a
25 division of 51 employees, and we oversee the operations of

1 IRP and IFTA, the Motor Carrier industry for licensing, as
2 well as collecting fuel tax for the State of Nevada. And we
3 also have a revenue section and an audit section that checks
4 on accounts, IRP/IFTA and our fuel suppliers on their
5 calculations on giving us the fair amount of tax.

6 Q Are you -- I'm just going to put this in there.
7 Are you over the whole shooting match in Motor Carrier?

8 A Yes, I am the administrator for the Motor Carrier
9 Division.

10 Q Okay. I just --

11 HEARING OFFICER: What was your question? I'm
12 sorry.

13 MS. HOOVER: Is he over the whole shooting match
14 at Motor Carriers. He's the top guy --

15 HEARING OFFICER: Okay.

16 MS. HOOVER: -- in the Motor Carrier Division.

17 BY STATE:

18 Q Okay. And how long have you worked there?

19 A Since January of 2011.

20 Q Okay. And do you know Cara O'Keefe?

21 A Yes, I do.

22 Q In what capacity?

23 A Cara was a -- she was a revenue officer within the
24 revenue section, reporting to Karen Stoll.

25 Q Okay. And then if you turn to Page 1 in the

1 Employer's exhibits, it's the most --

2 A This one?

3 Q -- (inaudible) binder.

4 MR. BLANCK: You mean Exhibit A, Page 1?

5 MS. HOOVER: Exhibit A, Page 1. I'm sorry. There
6 are big numbers on the bottom, zero, zero, zero (inaudible).

7 THE WITNESS: It's this one?

8 MS. HOOVER: Yes.

9 THE WITNESS: Okay.

10 MR. BLANCK: (Inaudible) their exhibit.

11 BY STATE:

12 Q Is that your signature?

13 A That is correct.

14 Q Okay. And then did -- are you -- are you acting
15 as the appointing authority in this case?

16 A I am the appointing authority for Motor Carrier
17 under the direction of the directors.

18 Q Okay. And did you approve the termination of Cara
19 O'Keefe?

20 A That is correct. I did approve it.

21 Q And why did you approve it?

22 A Based on the information that was provided to me
23 and what I reviewed, the issues -- the information I saw was
24 that Ms. O'Keefe had accessed accounts for Daniel Cunningham
25 and Jacqueline Cunningham, on numerous occasions. And from

1 my perspective, it was a -- in -- with that information she
2 was working specifically -- also, she had contacted the
3 sheriff's department on a couple occasions using information
4 from those accounts relative to Daniel's -- the contact at
5 the sheriff's office was for driver's license discussions,
6 and those -- anything related to driver's license that I saw
7 within this SOC are outside Ms. O'Keefe's responsibilities
8 as a Motor Carrier revenue officer. Driver's license is in
9 a different section of the DMV, not under Motor Carrier.

10 Q And to your knowledge, have others at DMV been
11 terminated for the same thing?

12 A We've had -- I wouldn't say there's an exact case,
13 but we did have an SOC and --

14 Q And we're not using names --

15 A Okay.

16 Q -- of anybody.

17 A Okay. No, I did have an employee within Motor
18 Carrier that -- should I say what we were processing? It
19 was basically sending out a confidential file outside the
20 DMV to her boyfriend's in-home computer. And it was a
21 confidential file with taxpayer information and was outside
22 the responsibilities of that employee. It was not needed to
23 be sent anywhere outside of the DMV. And we did process an
24 SOC recommending termination on that one also.

25 Q Okay. And did that employee eventually sign a

1 settlement agreement and was allowed to resign in lieu of
2 termination?

3 A To my understanding, that is what happened.

4 Q Okay. All right. So do you tolerate misuse of
5 that database -- that confidential database?

6 A My understanding and I've read the policy, there's
7 zero tolerance for accessing and using personal information
8 relative to the DMV. It's very clear. That policy was set
9 under Director Breslow, who hired me in January of 2011. It
10 was set by Director Breslow, and it's been consistent with
11 Director Dillard that that access -- use and access of DMV
12 information for nonbusiness or personal use is not
13 tolerated. Strictly forbidden is what it says in the
14 policy.

15 Q Okay. And if you look at Page 48, Exhibit A of
16 the one that you were just looking at. When you said
17 Director Breslow issued a policy, is this what you're
18 referring to?

19 A Yes, this is the policy.

20 Q Okay.

21 MS. HOOVER: All right. No further questions.

22 HEARING OFFICER: Cross?

23 MR. BLANCK: Yes.

24 CROSS-EXAMINATION

25 BY MR. BLANCK:

1 Q Mr. Seidel, thank you for being here. When you
2 reviewed the -- as the last official to approve the
3 termination, you relied on the staff information and staff
4 reports. You don't have independent knowledge of what she
5 did, correct?

6 A Correct.

7 Q Okay. And also the prohibitions and penalties
8 that were selected, they were selected before it ever came
9 to you for review and approval, correct?

10 A Correct. They are set by the State.

11 Q Okay. No, no. But the ones they felt applied to
12 Ms. O'Keefe was done by your employees, not by you?

13 A Correct.

14 Q Okay. You're familiar with the progressive
15 discipline policy at DMV?

16 A Yes, I've been trained.

17 Q Okay. And isn't it true that not all employees
18 are terminated for simply accessing the system
19 inappropriately?

20 A To my knowledge, I do not know that. They've been
21 within Motor Carrier. I can't speak for all of DMV, but
22 for --

23 Q Okay.

24 A -- Motor Carrier they have, yeah.

25 Q Do you remember -- well, not to get into specifics

1 about personnel action and so forth. They would rise up to
2 your level to sign off for discipline -- for terminations
3 only? If it was lesser discipline, would they come to you
4 as well?

5 A That is correct.

6 Q So were you aware, in '09 or '10, of another
7 employee that improperly accessed information and had a TPO
8 issued against her?

9 MS. HOOVER: I have to object. He testified he
10 was there in 2011, is when he started.

11 THE WITNESS: Yes, correct. January --

12 HEARING OFFICER: But he might have been aware of
13 it.

14 THE WITNESS: Oh.

15 MS. HOOVER: Oh.

16 MR. BLANCK: Just --

17 HEARING OFFICER: Overruled.

18 BY MR. BLANCK:

19 Q Yeah, if you were aware that a Motor Carrier
20 employee accessed confidential information, misused it, was
21 stalking and had a TPO issued against her and was only given
22 a suspension?

23 A I'm not familiar with that case. My understanding
24 is part of this policy when it came out was based on prior
25 stuff that had to be fixed.

1 Q Okay. And then looking at Page 48 that you have
2 there. If you could turn to that. That's the letter --

3 A Yes.

4 Q -- from Mr. Breslow. You mentioned a
5 zero-tolerance policy?

6 A Yes.

7 Q Okay. If you look at the second paragraph, it's
8 in bold and underlined. That's not a zero-tolerance
9 statement. It just says "A first offense can result in
10 termination." It's not will, so there is discretion there,
11 correct?

12 A You're correct.

13 Q Okay. And then also the second to last paragraph,
14 Mr. Breslow put in "Appropriate disciplinary action will be
15 taken." So there's still some, I guess, leeway as to what's
16 appropriate; is that accurate?

17 A There's always that scale.

18 Q Okay. And the case that you said you were
19 familiar with, where the person was allowed to resign, that
20 employee in Motor Carrier actually took -- sent information
21 to somebody. They didn't just look at it. They sent it out
22 of the office for someone else's use and review?

23 A That is correct.

24 Q Thank you.

25 MR. BLANCK: No further questions.

1 HEARING OFFICER: Redirect?

2 MS. HOOVER: No, I don't think so.

3 HEARING OFFICER: Okay. All right. Thank you.

4 (Inaudible).

5 MS. HOOVER: How --

6 (off the record)

7 HEARING OFFICER: So we're on the record. I don't
8 know if, State, you are done?

9 MS. HOOVER: I am. I (inaudible).

10 HEARING OFFICER: (Inaudible).

11 MS. HOOVER: Yeah, subject to rebuttal.

12 HEARING OFFICER: Okay. (Inaudible). Mr. Blanck?

13 HEARING OFFICER:

14 MR. BLANCK: Yes, I'd like to start my case
15 with -- my first witness is Tammy Holt-Still.

16 HEARING OFFICER: Okay. I'm going to swear you
17 in. Please raise your right hand.

18 (WHEREUPON, the witness is sworn.)

19 TAMMY HOLT-STILL

20 HAVING BEEN CALLED AND SWORN, TESTIFIED AS FOLLOWS:

21 THE WITNESS: I do.

22 HEARING OFFICER: Okay. Would you state and spell
23 your name, first and last?

24 THE WITNESS: My name is Tammy Holt-Still. And
25 that's T-A-M-M-Y H-O-L-T dash S-T-I-L-L.

DIRECT EXAMINATION1
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BY MR. BLANCK:

Q Ms. Holt-Still, were you an employee with the DMV?

A Yes, I was.

Q And how long did you work with the DMV?

A I worked for the DMV for 23 years, up 5, retired
with 27.Q Okay. And what were the -- what was your last
date of employment?

A August, two years ago.

Q '11 --

A Yeah.

Q -- or '12?

A '12.

Q Okay. August of 2012. Do you know Cara O'Keefe?

A I do.

Q Did you meet her when you were working at the DMV?

A That is correct.

Q Okay. And do you know another DMV employee named
Jennifer Irving?

A Yes, I do.

Q And did you --

MS. HOOVER: I have to object to putting other
employee's names in the record.

HEARING OFFICER: Mr. Blanck?

1 MR. BLANCK: There's no prohibition about who she
2 knows who works at DMV.

3 HEARING OFFICER: Well --

4 MR. BLANCK: That's not a personnel record.

5 HEARING OFFICER: -- are we getting into
6 confidential information?

7 MR. BLANCK: No, we're going to get into a
8 conversation she had or heard with Ms. Irving. That's not
9 part of her personnel file. So overheard conversations at
10 work are not protected.

11 HEARING OFFICER: Well, I guess if she's not
12 currently a DMV employee, I think it is permissible.

13 MS. HOOVER: Okay.

14 BY MR. BLANCK:

15 Q Did you know, when you were working at DMV, an
16 employee named Jennifer?

17 A Yes, I do.

18 Q And did you have a -- overhear a conversation
19 Ms. Irving was having regarding discipline she received?

20 A Yes. She was --

21 MS. HOOVER: Regarding what? I'm sorry.

22 MR. BLANCK: Discipline she had received.

23 BY MR. BLANCK:

24 Q Yes?

25 A Yes.

1 Q What did you hear and to whom was she talking
2 (inaudible)?

3 A She was talking to Nicole Baker in the breakroom
4 while I was on the computer in the breakroom. And she was
5 discussing the fact that she was getting a two-week
6 disciplinary action because she got on the computer and had
7 gotten an address of a woman that her children's father was
8 living with.

9 Q And what did she say she did with that
10 information?

11 A She happened to drive by there several times to
12 locate the father of the children.

13 Q And did she reference any type of legal action
14 involving her going out to that house (inaudible)?

15 A I don't know anything about any type of legal
16 action. I just know that she accessed DMV information to
17 get the address.

18 Q Okay. You're not familiar if she got a TPO
19 against her or not (inaudible)?

20 A I had overheard something, but I did not hear it
21 in that conversation.

22 Q And did you hear in the conversation was she --
23 did she say she was being terminated or what did she say?

24 A No. She was getting a disciplinary action and it
25 sounded like two weeks from the way that I understood it.

1 Q Thank you.

2 MR. BLANCK: No further questions.

3 HEARING OFFICER: Cross?

4 CROSS-EXAMINATION

5 BY STATE:

6 Q When did this occur?

7 A This happened about a year and a half to two years
8 before I left the State service.

9 Q So about 2010?

10 A It was just after her -- the children's father had
11 been released from jail. I can't give you the exact time.
12 I didn't, you know, that was so long ago, I'm not sure of
13 the exact date. I remember the conversation, but I don't
14 remember the exact date, no.

15 Q She didn't tell you about her discipline?

16 A No, she did not. She was talking to Nicole Baker
17 and I was sitting right there.

18 Q So this was an overheard conversation?

19 A That is correct.

20 Q So it's hearsay?

21 MR. BLANCK: Objection.

22 MS. HOOVER: (Inaudible).

23 THE WITNESS: I was sitting only two feet away.

24 HEARING OFFICER: Hold on, don't answer it.

25 There's an objection from (inaudible).

1 MR. BLANCK: Objection. First of all, it
2 wasn't -- it wasn't hearsay. She heard what she heard. Her
3 testimony about what was said is hearsay, but admissible
4 under the relaxed rules of evidence. She didn't hear it
5 from somebody else. She heard it from Jennifer Irving.
6 That's not hearsay.

7 HEARING OFFICER: Well, regardless, (inaudible).

8 MS. HOOVER: Her testimony was that she overheard
9 the conversation while she was in the breakroom, a
10 conversation between Jennifer Irving and Nicole Baker.
11 That's what she said.

12 MR. BLANCK: Right. That's not hearsay.

13 MS. HOOVER: So she overheard the conversation.
14 It's not -- it's not a --

15 MR. BLANCK: Correct. You said it was hearsay.
16 It isn't. What she heard was not hearsay.

17 THE WITNESS: It wasn't somebody else telling me
18 about it.

19 HEARING OFFICER: Wait a minute. Hold on. Hold
20 on. I mean, Ms. Hoover can categorize it however she wants.
21 Regardless, I'm going to overrule the objection. She can
22 testify --

23 MR. BLANCK: Thank you.

24 HEARING OFFICER: -- to what she heard. I'm just
25 trying to get to --

1 THE WITNESS: If you would like me to clarify the
2 way that the breakroom is set up, there's a couch and less
3 than two feet away are two tables and there were two
4 computers on these tables. So I was about two feet away
5 from the whole conversation.

6 MR. BLANCK: Thank you, (inaudible).

7 BY STATE:

8 Q Did you review the SOC for this person that said
9 she was getting two weeks?

10 A Excuse me?

11 Q Did you look at the specificity of charges against
12 this individual?

13 A I didn't look into anything.

14 Q All you did was overhear a conversation about what
15 someone said her discipline was going to be?

16 A She said to Nicole that she thought it was going
17 to be two weeks.

18 Q And you think that was somewhere around in the
19 area of 2010, a couple years before you left State
20 employment?

21 A It was before I left State employment, yes.

22 Q And isn't it true that you left under a cloud?

23 MR. BLANCK: Objection. Irrelevant.

24 HEARING OFFICER: (Inaudible).

25 MS. HOOVER: Goes to motive for why she's

1 testifying in this hearing.

2 THE WITNESS: It -- that has been expunged.

3 HEARING OFFICER: Wait. Don't answer that
4 (inaudible).

5 MR. BLANCK: Her motive for testifying is
6 irrelevant.

7 HEARING OFFICER: Well, then if you want to make
8 an offer of proof, but I'm not sure I see the connection
9 between a motive for testifying in --

10 MS. HOOVER: Well --

11 HEARING OFFICER: -- this situation of -- it's not
12 my --

13 MS. HOOVER: -- she's come here to testify about
14 something she overheard about someone else's discipline.
15 She's represented that she left as a result of her
16 retirement, which is not exactly accurate as to why she left
17 DMV.

18 THE WITNESS: If you'd like me to state it as a
19 forced retirement that's fine too --

20 MS. HOOVER: I don't.

21 THE WITNESS: -- but it doesn't matter.

22 MR. BLANCK: That's okay.

23 HEARING OFFICER: Stop. Wait until there's a
24 specific question. But as far as motive, I still don't see
25 the objection -- connection.

1 MS. HOOVER: Well, I think -- I think
2 Ms. Holt-Still is --

3 HEARING OFFICER: I don't see the relevance
4 against -- sorry, the connection. If you want to go to her
5 credibility, again, I don't see that connection there.

6 MS. HOOVER: Yeah, I think -- I think there's some
7 issues with credibility and I think the reason is because of
8 circumstances under which Ms. Holt-Still left the Department
9 of Motor Vehicles. She has represented under oath that she
10 retired in 2012, yet there is documentation that indicates
11 something else.

12 MR. BLANCK: Well, she's the one saying the
13 personnel records are protected here. And now we're going
14 to go into Ms. Holt-Still's personnel record?

15 MS. HOOVER: Well --

16 HEARING OFFICER: You call her as a witness then,
17 yeah, she's open to cross (inaudible).

18 MR. BLANCK: Her personnel -- her personnel record
19 is at issue?

20 MS. HOOVER: She's open to cross --

21 HEARING OFFICER: She's open to --

22 MR. BLANCK: Also --

23 HEARING OFFICER: -- cross-examination.

24 MR. BLANCK: -- she's gone for almost two years
25 now. It's like I've never heard of a case that any court

1 says two years allows you to carry a grudge for two years.
2 She's not trying to get her job back. She has no motive
3 whatsoever. She's talking -- she's overheard a conversation
4 that other people are now saying they overheard
5 conversations of August of 2012, which is two years from
6 now, and she's going back further. And I'm like it's
7 people's recollection of what they heard. I don't see the
8 problem.

9 HEARING OFFICER: Ms. Hoover, you want to respond
10 to that?

11 MS. HOOVER: First of all, there's so much wrong
12 with that, I don't know where to start. She testified that
13 it was two years before she retired from the State of
14 Nevada. And the time frame is important, for one thing.
15 For another thing, I think it's important to correct some of
16 the testimony because I don't think that what she's
17 testified to is accurate. I think -- and I think it goes to
18 the credibility of the witness. She's saying she retired in
19 August of 2012, yet I have a signed document that doesn't
20 state that; that states something different and she
21 resigned. And so that's what I want to ask her about.

22 HEARING OFFICER: I guess the question becomes if
23 there is a credibility issue then there is something
24 different as you're suggesting, how does that affect whether
25 or not I believe that she overheard a conversation?

1 MS. HOOVER: Because of the reason that she was
2 forced to leave DMV.

3 HEARING OFFICER: But how does that tie into this
4 case against her? I'm not sure I --

5 MS. HOOVER: I guess what I can tell you is it's
6 one of the cases that's been referred to earlier in this
7 hearing, without names being mentioned.

8 HEARING OFFICER: Mr. Blanck? I'm assuming you're
9 referring to other cases of discipline that were referenced
10 that were --

11 MR. BLANCK: No, they --

12 HEARING OFFICER: -- that you're comparing this --
13 the ultimate discipline.

14 MR. BLANCK: -- they said since 2000 -- they said
15 in the past, I don't know how many years, everyone's been
16 terminated or forced out. I mean I think that's what I
17 remember people saying without names; that everyone else
18 who's done a violation. I brought her to testify that, yes,
19 she overheard a conversation. This is what she did and she
20 suffered a two-week suspension. So that contradicts their
21 previous testimony that everybody was terminated. That's
22 the sole reason; they overheard a conversation. She wants
23 to insinuate that she's somehow lying, you know, about a
24 conversation she overheard, or if it wasn't accurate and she
25 wants to call in the other people, fine.

1 MS. HOOVER: We have no way of knowing whether
2 that conversation is accurate. I have no way of finding out
3 from this witness if that -- if that overheard conversation
4 has any relevance or bearing or is accurate. I don't know.

5 HEARING OFFICER: But I guess if we're getting
6 into this witness, as you suggested before, that there was -
7 - there's been prior discipline that was or was not similar
8 to the discipline in this case, then certainly I think it is
9 relevant. And I think that when you bring in a witness and,
10 yeah, you have to expect that they're going to be
11 cross-examined, and so I'm going to allow the question.

12 MR. BLANCK: Thank you. I have no further
13 questions. The question -- you mean -- I already asked --
14 she already asked and answered all the questions I had.
15 Well, maybe -- I can ask one follow-up question at the end.

16 MS. HOOVER: I haven't finished, but go ahead.

17 MR. BLANCK: Oh, I know.

18 MS. HOOVER: But go ahead. Just go ahead, ask
19 your question and then I'll finish up.

20 REDIRECT EXAMINATION

21 BY MR. BLANCK:

22 Q After you overheard this conversation, you
23 continued to see Ms. Irving working at DMV?

24 A Yes.

25 Q Okay.

1 MR. BLANCK: No further questions.

2 RE-CROSS-EXAMINATION

3 BY STATE:

4 Q But you don't know when this conversation took
5 place?

6 A No, it was a long time ago. But I do remember the
7 conversation.

8 Q You don't know if it was before April of 2011 or
9 after?

10 A I don't remember.

11 Q Okay. So it could have been before April of 2011?

12 A I do not remember the date. A lot has happened
13 since then and it's not something that was something I
14 needed to mark down on a calendar and remember.

15 Q Okay. And you were talking about retiring in
16 August of 2012. That's not exactly accurate, is it?

17 A That's supposed to be expunged.

18 Q Well --

19 A You want to bring it -- I would be more than happy
20 to bring back all the court -- all of our paper documents.

21 Q Well --

22 A It was a -- it was a retirement, and any personal
23 action regarding the reason why I left State service with
24 DMV was to be expunged.

25 Q Right. But not the settlement agreement you

1 signed. That wasn't expunged.

2 A I've -- I don't remember the -- I know that there
3 was paperwork, but I don't remember the settlement
4 agreement. But it -- I was -- I left under a cloud, like
5 you said, but it is a retirement. It was a settlement for
6 me to leave the State.

7 Q Okay. So if the settlement agreement says it was
8 a resignation that's not what you say happened? If the
9 document that you signed said it was resignation that's not
10 what you're saying happened?

11 MR. BLANCK: Objection. I think we're semantics.
12 If you resign and retire, what's the difference? You left
13 employment.

14 HEARING OFFICER: Yeah, I think we're getting into
15 too much of a semantic debate. I would agree. Sustained.

16 MS. HOOVER: Okay. No further questions then.

17 MR. BLANCK: No further questions.

18 HEARING OFFICER: All right. You're free to go.
19 Thank you. (Inaudible). I'd rather start back up at 1:45.

20 (off the record)

21 HEARING OFFICER: We're back on the record. I
22 think Mr. Blanck has another witness --

23 MR. BLANCK: Yes, I call --

24 HEARING OFFICER: -- sitting right here.

25 MR. BLANCK: -- Lisa Fredley.

1 HEARING OFFICER: And did you sign in?

2 MS. FREDLEY: I did.

3 HEARING OFFICER: Okay.

4 MS. FREDLEY: Where do you want me?

5 MR. BLANCK: Right there, yeah.

6 HEARING OFFICER: Oh, right -- yeah, (inaudible)
7 the microphone. I'm going to swear you in. Please raise
8 your right hand.

9 (WHEREUPON, the witness is sworn.)

10 LISA FREDLEY

11 HAVING BEEN CALLED AND SWORN, TESTIFIED AS FOLLOWS:

12 THE WITNESS: Yes.

13 HEARING OFFICER: Okay. And state your -- start
14 with stating your name and spelling your first and last.

15 THE WITNESS: Lisa Fredley, L-I-S-A F-R-E-D-L-E-Y.

16 HEARING OFFICER: Lisa? I'm sorry.

17 THE WITNESS: L-I-S-A.

18 HEARING OFFICER: Yeah, I got that part.

19 THE WITNESS: And then F-R-E-D-L-E-Y.

20 HEARING OFFICER: Thank you. Go ahead.

21 DIRECT EXAMINATION

22 BY MR. BLANCK:

23 Q Lisa, are you currently employed with the DMV?

24 A No, I'm currently with the Department of
25 Employment Training and Rehabilitation, but I was with DMV.

1 Q How long were you with DMV?

2 A Eight years.

3 Q What was the time span of those eight years?

4 A I just hit my eight years and have only been with
5 DETR for a few months.

6 Q Okay. So the past -- almost the past eight years?

7 A Yes. Yes.

8 Q Okay.

9 A The majority of it.

10 Q Your last job with DMV was what?

11 A The administrative assistant for the licensing
12 section.

13 Q And during your work with DMV, did you know Cara
14 O'Keefe?

15 A Yes.

16 Q And you worked in the same building location?

17 A Yes.

18 Q Also, when you were working for DMV, did you know
19 Jennifer Irving?

20 A Yes.

21 Q And at some point, either late '09 or early 2010,
22 do you remember having a conversation with Ms. Irving
23 regarding her discipline?

24 A Yes.

25 Q What was the nature of that discussion? What was

1 said by whom?

2 A She had come into my cubicle and bragged about how
3 she was suspended for the things that she was suspended for,
4 and that --

5 Q Did she tell you what they were?

6 A Yes.

7 Q What was that?

8 A That she had looked up her ex-husband's current
9 girlfriend's address, and not only called her a couple
10 hundred times from the work phone, but she also went by this
11 woman's house many, many times and this woman ended up
12 getting a restraining order against her.

13 Q She told you that?

14 A Yes.

15 Q And she said she was being disciplined by the DMV?

16 A Yes.

17 Q What did she say her discipline was?

18 A For the -- for her -- one of the reasons was
19 because she used the phone, you know, to stalk this woman
20 and that she looked up the private information and actually
21 went to her residence.

22 Q And what was the penalty imposed on her? Did she
23 tell you?

24 A She was suspended for, I don't know if it was two
25 or three weeks, but it wasn't consecutive. They actually

1 let her split it up so she would not lose her benefits.

2 Q So she wasn't terminated?

3 A No.

4 Q Does she still work for the DMV? Do you know?

5 A Yes.

6 Q And you said you worked -- when you were at DMV
7 you worked in licensing?

8 A Yes.

9 Q And is that in the same -- structurally in the
10 same area or near Motor Carriers?

11 A Yes.

12 Q Okay.

13 A Motor Carrier has different teams. One is
14 revenue, one is licensing, and one is fuel user. I was on
15 licensing and so was Jennifer.

16 Q Oh, for Motor Carriers?

17 A Yes.

18 Q Okay. And were you, on a regular basis, asked
19 questions by your customers about topics that didn't
20 necessarily relate to your job duties? They asked general
21 DMV questions?

22 A Yes.

23 Q And what were you told or how did you respond when
24 they would do that?

25 A We were -- well, I personally was instructed by my

1 supervisor that we helped them as much as we can. If we
2 don't know the answer or it's definitely not in our, you
3 know, something that we can't assist them with, then we
4 transfer them down to the phone or to the, you know, if we
5 were on a good basis with somebody downstairs or whatever
6 department then we could transfer them directly to that
7 person.

8 Q Okay.

9 MR. BLANCK: Just one second. No further
10 questions.

11 HEARING OFFICER: Cross?

12 CROSS-EXAMINATION

13 BY STATE:

14 Q Okay. Now, isn't it true you're good friends with
15 Cara O'Keefe?

16 A Yes.

17 Q Okay. And you see her outside of work?

18 A When I -- when -- yes.

19 Q Okay. Now, the information you have about this
20 person you were referring to talking to her -- talking to
21 you about her discipline is directly from her?

22 A Yes.

23 Q Have you seen the specificity of charges charging
24 her with any violations?

25 A Not the paperwork, no.

1 Q And you had no hand in that decision?

2 A No.

3 Q You just --

4 A I had a -- I did write a statement on what I did
5 witness.

6 Q Okay. So you were a witness against her?

7 A In some of the charges, yes. Yes.

8 Q And what did you tell people?

9 A I didn't tell people anything. I told my
10 immediate supervisor of what I had witnessed.

11 Q Okay. And what did you witness?

12 A That her multiple phone calls; that she was --
13 that I did witness her in the system looking up names of
14 people.

15 Q Okay. And so you reported this?

16 A Yes.

17 Q As part of your duties as a DMV employee?

18 A Yes.

19 Q You went to them by -- of your own initiative?

20 A Yes.

21 Q Because you felt that was wrong?

22 A Yes.

23 Q And was a violation of the rules, as you
24 understood them?

25 A Definitely, yes.

1 Q Okay. And this happened in 2009 or 2010?

2 A Roughly, yes.

3 Q So before 2011, in any case?

4 A Yes.

5 Q Okay. And so when you were supposed to help
6 people as much as you can, that doesn't involve -- you're
7 not supposed to violate policies and procedures to do that?

8 A Correct. Yes.

9 Q Okay.

10 MS. HOOVER: No further questions.

11 HEARING OFFICER: I just want to -- you said it
12 happened in -- you think in 2010?

13 THE WITNESS: Roughly. I mean I don't know the
14 exact date.

15 HEARING OFFICER: Before -- you're sure before
16 2011?

17 THE WITNESS: I am pretty sure, just because I
18 know she's been suspended multiple times so I don't know
19 which --

20 HEARING OFFICER: She --

21 THE WITNESS: -- the exact --

22 HEARING OFFICER: Sorry. (Inaudible) she meaning?

23 THE WITNESS: Jennifer. I don't know exact dates
24 of all of her suspensions, so -- but I know that was her
25 first suspension.

1 HEARING OFFICER: Okay. Thanks.

2 THE WITNESS: And I want to say it was definitely
3 before 2011.

4 HEARING OFFICER: Thanks.

5 MR. BLANCK: I just have one.

6 REDIRECT EXAMINATION

7 BY MR. BLANCK:

8 Q When you reported this to your supervisor, you
9 didn't wait four months, did you?

10 A No.

11 MR. BLANCK: No further questions.

12 MS. HOOVER: No further questions.

13 HEARING OFFICER: All right. I think you're done.

14 THE WITNESS: Thank you.

15 HEARING OFFICER: Mr. Blanck?

16 MR. BLANCK: Yes, I have one more witness,
17 Ms. Cara O'Keefe.

18 HEARING OFFICER: I think you've already been
19 sworn in, so you're still under oath.

20 (WHEREUPON, the witness was previously sworn.)

21 CARA O'KEEFE

22 HAVING BEEN RECALLED AND PREVIOUSLY SWORN, TESTIFIED AS

23 FOLLOWS:

24 THE WITNESS: You don't want me to sign again, do
25 you?

1 HEARING OFFICER: No.

2 THE WITNESS: Okay.

3 HEARING OFFICER: Go ahead (inaudible).

4 MR. BLANCK: Okay.

5 DIRECT EXAMINATION

6 BY MR. BLANCK:

7 Q Cara, how long did you work for the DMV?

8 A Seven years.

9 Q And did you have one job at that -- during that
10 time frame?

11 A With the DMV, yes.

12 Q And what was that job title?

13 A Revenue Officer.

14 Q And we've thrown around the words Motor Carrier
15 Division or what division or section?

16 A I worked in the Motor Carrier Division.

17 Q And who was your last supervisor?

18 A At DMV?

19 Q Yes.

20 A Was Karen Stoll.

21 Q And how long was she your supervisor?

22 A Approximately three or four years.

23 Q Okay. And at some point in December of 2012, did
24 you take another position with the State?

25 A I did.

1 Q And what date and what position?

2 A The -- my last day at the DMV -- I don't know if
3 it was my last day at the DMV or my first day at insurance,
4 but December 5th, and it was management analyst with the
5 Division of Insurance.

6 Q Okay. Now, prior to leaving the DMV, were you
7 ever told of any alleged misconduct on your part?

8 A I was never informed of any, no.

9 Q Okay. If you can look at -- in the binders, the
10 Employee's Exhibit No. 2.

11 A Yes.

12 Q Is this -- and there's a fairly big stack of
13 documents. I know you've looked through this before. Is
14 this your personnel file?

15 A It -- yes, it looks like my personnel file.

16 Q Okay. And your last evaluation from Ms. Stoll,
17 was that in December of 2011? Do you remember?

18 A That looks -- that sounds correct, yes.

19 Q That was exceeds standards?

20 A Yes.

21 Q Did Ms. Stoll ever tell you that she had concerns
22 with your work performance, product or quality?

23 A No.

24 Q Okay. Did you -- did your division produce any
25 revenue for the State and things of that nature?

1 A Yes, we did.

2 Q And how did that work?

3 A Well, the -- we would collect if the customer was
4 delinquent on their -- whether it be their taxes or their
5 registration licensing. The account would come to us; at
6 that point we would assess fines, penalties, fees, and
7 collect those monies. And that's the revenue that we
8 brought in for the State.

9 Q And were employees attributed to bringing in a
10 certain amount of revenue? Would it be attributed to
11 specific (inaudible)?

12 A Yes, they would -- yeah, and I don't know if it
13 shows it in this one, but sometimes they would actually
14 write up the percentage.

15 Q What do you remember your percentages being? Were
16 they average, above average?

17 A I was told above average and the last number I
18 actually was told was 47 percent of the revenue --

19 Q Okay.

20 A -- I was responsible for.

21 Q Then -- so in December you left and went to a
22 different position and for whatever reason that didn't work
23 out, and you were allowed to return to the -- one option was
24 to return to the DMV?

25 A Correct.

1 Q Before returning to the DMV, had you also either
2 applied or looked into other positions to go to?

3 A I did.

4 Q And what were those?

5 A The other positions were with Medicaid, I believe
6 it was. That was the one that I actually was looking at. I
7 chose not to do that and go back to the revenue officer
8 position at DMV, because my husband received a promotion,
9 was making more money. I, at the time, had enjoyed my time
10 at the DMV and the people that I was working with. And it's
11 close to home so we just made the decision that that's what
12 I would do, is go back to that one.

13 Q Now, prior -- do you remember -- well, your date
14 of return, do you remember when that was to the DMV? Was --

15 A The date that I was to return was September 16,
16 2013.

17 Q Okay. Prior to that, did you talk with Ms. Stoll
18 about your return?

19 A I did.

20 Q And let's go step by step. What was the first
21 contact you had with her regarding your return?

22 A The first contact was via e-mail. I did send an
23 e-mail stating that I'm sure you probably heard by now that
24 I was going to be returning. And I did get a response back
25 from Dawn Lietz with a copy to Karen, basically saying, yes,

1 we know you're coming back and, you know, basically we'll --
2 nothing elaborate, just we'll work with you when you get
3 here.

4 Q Okay.

5 A The second e-mail I, again, can't really recall
6 too many details, just that, you know, I was excited to
7 return. I actually made a phone call to Karen.

8 Q And roughly when was this phone call?

9 A This was about -- this was the week prior to my
10 return.

11 Q Okay.

12 A I called her because I knew that I had worked
13 previously 4/10s and I did not know if she wanted me in at
14 8:00 in the morning, if she wanted me there earlier to do
15 4/10s again, because I, you know, I didn't know what other
16 schedule changes had been made amongst the other employees.

17 Q And what did she tell you?

18 A She told me to come in at 8:00 and that my desk
19 was cleaned up and ready for me to go.

20 Q Did she give you any indication that you were
21 going to be put under investigation?

22 A None.

23 Q Did she mention anything to you about any prior
24 problems before you left?

25 A None.

1 Q Now, if she had told you that the day of your
2 return we're going to place you on leave and investigate
3 you, what would you have done?

4 A I would have had an opportunity to go back and
5 take the job at Medicaid.

6 Q But instead, I think on the day of your return, I
7 think there was testimony you showed up for work and what
8 happened on that day?

9 A They brought me into the personnel office, had me
10 sign a slew of paperwork and when I stood up to return
11 upstairs, Karen, Dawn Lietz, and at the time, Annette, the
12 personnel officer that was, I guess, in charge of the case,
13 had called me into an office. And that was when I was
14 informed I was on paid leave pending an investigation for a
15 computer violation.

16 Q They give you any more detail or description?

17 A No, I asked. I asked -- I said I didn't
18 understand the violation. What -- I didn't -- hadn't done
19 anything. I didn't know what it was about. And I was told
20 that I would be given more information.

21 Q Okay. Eventually, I guess they contacted you for
22 an interview?

23 A I was scheduled for my first interview with Doreen
24 Rigsby.

25 Q And did that occur?

1 A Yes. I went in and she had maybe three or four
2 questions for me. I can't remember all of them. They
3 basically amounted to have you ever taken a personal phone
4 call, have you ever gotten a personal e-mail. I can't
5 remember what some of the -- but they were along those
6 lines. I answered the questions and she shut the recorder
7 off and said, "I'm sorry. That's really all I have. I
8 don't know anything about the job description or anything,
9 so I really don't -- I'm going to submit my report upstairs
10 and we'll see what happens."

11 Q Okay. No one gave you anything in writing,
12 prohibitions and penalties --

13 A No.

14 Q -- or specific details of what you had done
15 allegedly wrong?

16 A No. The only thing I got in writing was the form
17 that I signed saying that I waived the right for
18 representation.

19 Q Okay. So after that interview, you still weren't
20 brought back to work?

21 A I was not brought back to work. I called in
22 daily. I was told multiple times by Karen, she had no idea
23 what was going on. I believe it was the week before
24 Thanksgiving, I finally called and said this, you know, I
25 wanted to know what was going on. I was going to come in

1 and get copies of my personnel record so that I could see
2 where this was at. I was unable to get anything. Nobody
3 was there. I believe they told me that Annette was in a
4 meeting and that I had to come back. That was when I got a
5 call the next day for -- that I needed to -- no, I
6 apologize. That was when I got the specificity of charges.
7 I had a second interview prior to that.

8 Q When was the second interview roughly? Do you
9 remember?

10 A I believe it would have been October. It was
11 close to Halloween.

12 Q Okay. And who was the person interviewing?

13 A Again it was Doreen -- Doreen Rigsby.

14 Q Did she give you anything in writing prior to the
15 interview?

16 A The only thing I got was a copy of the paperwork
17 saying that I waived the right to representation.

18 Q Okay. And how -- in that second interview, what
19 did she go over with you?

20 A She let me know -- she apologized for having to do
21 it again, but they -- at that point, she sent the report
22 upstairs. It was not detailed enough and that the
23 supervisors upstairs wrote a list of questions that she
24 needed to get answered, so she proceeded to ask me those
25 questions. Again, I don't remember all the details in

1 the --

2 Q What was the nature of those questions?

3 A Basically, the same thing as far as have I ever
4 done favors for anybody. I did not -- oh, she did ask me if
5 I ever called and talked to the sheriff's department, to
6 which I responded yes. As a revenue officer, we did. And I
7 said yes, I had. She said, "Did you ever --" I believe the
8 word was "misrepresent yourself," and I said I don't recall
9 ever misrepresenting myself. She proceeded to ask questions
10 and then about three-quarters of the way through the
11 interview she said, "Do you know anybody by the name of
12 Daniel and Jackie Cunningham?" And that was when I said
13 okay, now I -- now I knew a little bit more about the
14 situation they were referring to. So I let her know that I
15 did know them, and that he had got a DUI and he didn't know
16 how to fill the paperwork out and had asked for my
17 assistance. He's basically been in the area a long time,
18 knew a lot of people and didn't want to talk to anybody
19 else, because he trusted me to help him.

20 Q And was that the first time you were aware that it
21 was related to the Cunningham's?

22 A That was the first time I was -- yes.

23 Q And so you were here for prior testimony and
24 documents saying that in discipline you're supposed to be
25 informed of the charges. You still hadn't received any

1 (inaudible) --

2 A I was still not given details at that time, only
3 that I knew it involved them.

4 Q Okay. And then after that interview --

5 A After that interview --

6 Q -- what happened?

7 A -- was the week before Thanksgiving when I tried
8 to get copies of my personnel record. I -- the day that I
9 went in and called and left them a message, I didn't hear
10 anything. The next morning, I got a call -- or I called in,
11 in the morning. A couple hours later, I want to say it was
12 somewhere around noon or 1:00, Karen contacted me and asked
13 me to come in. I did. And that was when Karen and Wayne
14 called me into the office and handed me the specificity of
15 charges. It was not until I received the specificity of
16 charges that I knew the whole story about what was going on.

17 Q Okay. If you turn to the Employer's Exhibit, the
18 specificity, on Page 2, Exhibit A.

19 A Is it under A, B or C?

20 Q It's A.

21 A A?

22 Q A, and that multiple zero is two on the right
23 there.

24 A Okay.

25 Q In the second paragraph, when you received this,

1 it says you transferred out in December for a promotion on
2 December 5th. And it says "The administrator decided it was
3 not necessary to investigate." Anyone ever explain to you
4 why they made that decision?

5 A Yeah, I was just told it was because I wasn't at
6 DMV.

7 Q Okay. But you still worked for the State of
8 Nevada, correct?

9 A Correct.

10 Q What is your understanding of their ability --
11 DMV's ability to bring forward these allegations even though
12 you weren't there anymore at DMV?

13 A I have actually --

14 MS. HOOVER: Objection. Calls for a legal
15 conclusion.

16 MR. BLANCK: It's not a legal conclusion. It was
17 her understanding of what the State could do.

18 HEARING OFFICER: Overruled.

19 MR. BLANCK: Go ahead.

20 HEARING OFFICER: Go ahead.

21 THE WITNESS: I had been informed that as long as
22 it's within the State it doesn't matter what agency it's at;
23 that they do have the authority to proceed if there's
24 violations.

25 BY MR. BLANCK:

1 Q And what was your response when you realized they
2 were -- this is now September and later in October
3 (inaudible) that they were -- regarding allegations of
4 things you did over a year prior?

5 A Like I had told them during the interviews and the
6 specificity of charges when it was handed to me, I wished
7 they had come forward sooner, because I would have recalled
8 the situation -- more details of the situation. I can, you
9 know, at that -- I was -- at no point in time was I afforded
10 the opportunity to defend myself. I was never able to say
11 this is what I did; this is why I did it; here's the proof.
12 I couldn't even -- and now a year later, I can't even go
13 back to the sheriff's office and say can you pull that
14 recording of when I called, because they're claiming I said
15 this and I didn't. So I was afforded no opportunity to
16 defend myself.

17 Q And the numerous references now to you accessing
18 confidential information, when you log onto your screen --
19 your computer, everything in there is considered
20 confidential?

21 A Everything in it is considered confidential.

22 Q Okay. So it's not like you went some place
23 special and tried to crack into somewhere?

24 A No.

25 Q Okay. Now, you've seen the chart. I'm not sure

1 which exhibit, but it says around seven times or so that you
2 accessed -- or your computer screen went to Daniel
3 Cunningham and maybe three for Jacqueline.

4 A Uh-huh.

5 Q And you did this when you were at your -- at your
6 station?

7 A Yes.

8 Q During this time frame, up to -- before the time
9 you left, for the past -- I guess you left in December of
10 '12, had you -- what was your understanding or what do you
11 see occurring in DMV for people trying to assist others and
12 looking at the screens?

13 A Bruce Breslow made a big deal about helping
14 anybody that you could help. He actually had pins made and
15 everybody wore them that said "Yes, I can help you with
16 that." We had other phone calls, as was previously stated
17 by other people, we get calls. People just start pushing
18 buttons. They don't want to stay on hold, you know, so we
19 get calls that don't relate to specifically Motor Carrier.
20 We also get calls from motor carriers that are not
21 necessarily Motor Carrier business, but over the years they
22 build a rapport with us, they trust us and so they're going
23 to call and ask a question. If I had the answer, I would
24 give them the answer. If I didn't have the answer, I would
25 either, depending on what the situation was, I would either

1 tell them, well, I would need to call you back so I can go
2 find out the answer or they're -- you know, that person is
3 not available. Let me get you their number so you can call
4 them. So it depended on the particular situation at that
5 time.

6 Q Okay. And then specifically with the Cunningham
7 screens you looked at, is it accurate to say -- what did you
8 do, did you just look at the screens? Did you print them
9 out? Did you hand them to somebody?

10 A I only viewed them. I did not give any
11 information to him. I never printed any information and I
12 never gave anyone any other information.

13 HEARING OFFICER: Him? Who are you talking about,
14 "him"?

15 THE WITNESS: Daniel.

16 HEARING OFFICER: Thanks.

17 THE WITNESS: Daniel Cunningham.

18 BY MR. BLANCK:

19 Q Okay. So you didn't give any information to the
20 sheriff's office?

21 A No.

22 Q And no other individual, correct?

23 A Correct.

24 Q You didn't even send any information to Daniel
25 Cunningham, did you?

1 A Correct.

2 Q Nor his wife?

3 A Correct.

4 Q So the -- I guess the sum total of your violation
5 of confidentiality is you pulled these up on your screen?

6 A Correct.

7 Q Now, on the specificity again on -- still on
8 Page 2, in the fourth paragraph. It says here "This was a
9 result of the investigation validated by your own
10 admission." Now, the only investigation I think you
11 referenced was those two conversations with the
12 investigator?

13 A Correct.

14 Q Okay. And when you were accessing, it says here
15 that "You accessed confidential DMV database with
16 information for reasons outside of your scope of duty."
17 When you look at your scope of duties, I mean how do you --
18 you were trying to help someone, but it wasn't specifically
19 a Motor Carrier function?

20 A Correct. I viewed myself as a DMV employee, not a
21 Motor Carrier, specifically, employee. And I did what I
22 could do to help anybody that called if it was a DMV-related
23 question.

24 Q You're aware of other employees doing the same
25 thing (inaudible)?

1 A Absolutely.

2 Q And that was in -- within the last year before you
3 were --

4 A Yes.

5 Q -- left?

6 A Yes.

7 Q And down at the bottom of that first -- of that
8 same page, there's references of you talking to the sheriff,
9 and you said "force of habit." When you called the sheriff,
10 how many -- how many times did you call the sheriff's
11 office?

12 A I called them twice.

13 Q The first time what happened?

14 A The first time it was answering the phone a
15 hundred times a day, "This is Cara in Motor Carrier."
16 That's how I introduced myself. I did not go back and
17 correct myself. I didn't feel the need to go there with
18 this person.

19 Q What did you talk about?

20 A I simply asked -- I was -- dealt with the process
21 because I was told that the sheriff's office -- something to
22 the effect of they had to send the citation to the DMV and
23 then the DMV had to do something and send it back. And at
24 that point, I called to ask them how long we should wait,
25 what the point in the process was, because DMV was not

1 showing record that we had ever received anything.

2 Q Okay. And this specifically wasn't your job
3 function though, correct?

4 A Correct. And that is why I contacted the
5 sheriff's office once on my lunch and once on my break.

6 Q Okay. And the second time, how did you introduce
7 yourself to the sheriff?

8 A The second time I simply said, "This is Cara. I
9 called you two days ago. You said you'd call me back. I
10 hadn't heard from you." And she, at that point, still
11 didn't give me any information.

12 Q Okay. Did you give them any information that was
13 confidential?

14 A No, I did not.

15 Q Then on the next page, which is Page 3, the
16 specificity. In that first paragraph of the third line up,
17 it says "Information in the DMV cannot be distributed to
18 nonauthorized persons." Did you ever distribute any
19 information to a nonauthorized person?

20 A No.

21 Q Then they refer to the Exhibit F, which is on
22 Page 48 of that exhibit. Could you turn there?

23 MS. HOOVER: What page are we on?

24 MR. BLANCK: Page 48, the Breslow --

25 THE WITNESS: Yes.

1 BY MR. BLANCK:

2 Q And you signed this in April of 2011, correct?

3 A Yes.

4 Q And this was the -- well, I guess about a year --
5 almost -- over a year and a half before you actually left --

6 A Yes.

7 Q -- the DMV? How did you interpret this? You've
8 heard terms here saying that zero tolerance and so forth and
9 so on. How did you interpret what was highlighted, "the
10 first offense can result in termination"?

11 A Well, my understanding of this was, as far as
12 abuse of the system, would be things such as looking up
13 information to use for criminal acts, such as stalking or
14 harassing, doing things such as Tweeting or Facebook or
15 something to that effect, social networking on the system
16 while you should be working during business hours. Those
17 types of abuse. Giving information to people you shouldn't
18 be giving it to, whether it be another customer calling to
19 find out about an ex or even another employee. That was my
20 understanding and that if you did that, that if it's severe
21 enough, they could terminate you.

22 Q Okay. And they refer there, in that second
23 paragraph, or Breslow did to penalty, I think it's G-1. Do
24 you see that?

25 A Correct.

1 Q And knowing what you know now, the penalty for
2 G-1, which is on Page 4, I think says level five is
3 termination.

4 A Correct.

5 Q Okay. When you looked at those two together, how
6 did you interpret what Mr. Breslow was saying if you
7 violated what the first offense meant?

8 A Say that one more time.

9 Q Sure. If you violated this provision, was it
10 automatic termination or --

11 A No. That would be judged upon the situation at
12 the time.

13 Q Okay. And when you look at this and it says in
14 the first paragraph "People accessing records for
15 nonbusiness or personal reasons." Did you consider
16 enquiring about Daniel Cunningham's license to be
17 nonbusiness related?

18 A No, I considered it to be DMV business.

19 Q Okay. And it says personal reasons. What do you
20 feel -- did you get something personal out of this?

21 A I gained absolutely nothing by helping him.

22 Q I mean, you knew him and he was -- he was a friend
23 of yours though, right?

24 A He was -- yes, he's a friend of the family's.

25 Q Okay. And the next sentence does say "Other than

1 for DMV business." It doesn't say just your department or
2 your job duties, right?

3 A Correct.

4 Q And did you ever misrepresent your authority to
5 the sheriff's office?

6 A No, I did not.

7 Q And did you ever represent to anyone, sheriff's
8 office or otherwise, that you were working in a division
9 that issued driver's licenses?

10 A Never.

11 Q And about DUI information, did you ever try to
12 obtain any clearance to obtain DUI information?

13 A No.

14 Q And then you've been here for the testimony where
15 they say that they've terminated other people for similar
16 violations. Are you aware of other employees who have not
17 been terminated?

18 A Yes.

19 Q And I think you heard the testimony, I think it
20 was Mr. Seidel, stating that an employee who had sent
21 information, you know, to another individual was terminated.
22 Did you send any information to anyone?

23 A No.

24 Q Okay. Now, if you look at the Employee's binder,
25 Exhibit No. 3. It's the Supervisor's Guide to Prohibitions

1 and Penalties.

2 A Yes.

3 Q Did you obtain a copy of this yourself?

4 A I did.

5 Q And did you get this from who?

6 A It was on the computer. Access to -- we have
7 access to policies, procedures to being able to print them
8 out; put them in folders.

9 Q Okay. If you look at -- back to the Employer's
10 exhibit, I think it's Exhibit A. If I get it right. I'm
11 sorry, it'll be Exhibit B, Page 60.

12 A You said 6-0, 60?

13 Q Yes, 6-0. Under Exhibit B.

14 A Okay.

15 Q Is that -- what is that, an e-mail from
16 Mr. Cunningham? What does it give you?

17 A Yes. During the investigations, they asked for
18 proof that I was given permission, so I contacted Daniel and
19 asked him to please send me something that indicated he
20 asked for my assistance.

21 Q Okay. And then going back to their Exhibit A,
22 Page 4. It's a list of prohibitions and penalties. Do you
23 see that?

24 A Yes.

25 Q You're on Page 4?

1 A Yes.

2 Q Okay. And obviously you had no prior offenses, so
3 this is your first offense, correct?

4 A Correct.

5 Q So under B, you know, "for disregard and
6 deliberate failure to comply enforced statewide department
7 or regulations," what's your understanding of -- between the
8 minimum and the maximum? How does that work?

9 A Well, my understanding is -- and we even do it
10 with our Motor Carriers, is always take the lowest end
11 first.

12 Q And you're familiar with progressive discipline?

13 A Yes.

14 Q And have you seen that applied to other employees?

15 A Yes.

16 Q Okay. Under C-4, "Conducting personal business,"
17 just one and two -- well, let me -- number five is
18 termination, correct?

19 A Correct.

20 Q Okay. So the next one under C-4, that's not a
21 terminable offense, is it?

22 A No.

23 Q Okay. Then going down through (inaudible) G,
24 "misuse of information technology." Now, you've already
25 testified that you tied this to the statute and potential

1 criminal wrongdoing and manipulation. How do you -- when
2 you look at that, do you feel -- how do you feel, if at all,
3 does that apply to your situation?

4 A I do not.

5 Q And why is that?

6 A Because it was not for personal reasons. I gained
7 absolutely nothing by helping this person. The nonbusiness
8 part is it was a DMV-related issue.

9 Q Okay. And did you manipulate or alter data?

10 A Did not.

11 Q And did you commit any of the acts that were
12 listed in the criminal statute?

13 A No.

14 Q Underneath that it goes to H, "unauthorized or
15 improper disclosure of confidential information," and one to
16 five that's the whole spread of business, correct?

17 A Correct.

18 Q Did you disclose any unauthorized information to
19 anybody?

20 A Never.

21 Q Okay. And then next under that is seven, "acting
22 in an official capacity without authorization." You
23 mentioned your slip of the tongue where you said who you
24 were when you were calling. Did you, at that first phone
25 call, get any information or give any information?

1 A No.

2 Q And when you called back, you didn't state you
3 were DMV, did you?

4 A No.

5 Q On the next page, Page 5, there's the evaluation
6 summary. Is that accurate of how your evaluations went?

7 A Yes.

8 Q Okay. And to your knowledge, was your supervisor,
9 Ms. Stoll, aware that you had received a broad variety of
10 questions from your Motor Carrier people regarding DMV
11 issues?

12 A Yes, we talked about it at our weekly meetings.

13 Q And these were questions that weren't related to
14 Motor Carriers, but they had -- regarding DMV?

15 A Some of them were, yes.

16 Q And I think there's been some testimony that you
17 looked up the wife's -- or you pulled up the wife's screen
18 on your computer, correct?

19 A Correct.

20 Q And it showed the same address as Daniel?

21 A Correct.

22 Q And what was your reason for looking at those
23 addresses?

24 A Daniel had told me that he had not received any
25 notifications from the DMV. And I was advised of a glitch

1 in the registration system, where if spouses had, for
2 whatever the reason, different addresses on their -- on the
3 system, whether it be because they separated because
4 somebody didn't update their address, that there was a
5 possibility that it could have gone to a different address,
6 if she had a different address under her name. That was why
7 I pulled her information up to look at it.

8 Q Okay. And, again, you're just looking at a
9 screen, correct?

10 A Correct.

11 Q And it's possible that -- or is it possible when
12 you're pulling these screen up you can accidentally pull up
13 various people's screens if you put in the incorrect
14 information?

15 A Incorrect information or if there's three people
16 with the same name and there's no identifying factors such
17 as a middle initial or a social security number. Absolutely
18 you can pull the wrong people up.

19 A So you've seen many screens where it ends up being
20 people that you had no interaction or need to know
21 information?

22 A Hundreds of them, yes.

23 Q Do you feel what you did deserves termination?

24 A No, I do not.

25 Q And if you were allowed to return, having gone

1 through this process, you know, what would you do
2 differently?

3 A I certainly wouldn't help anybody outside of Motor
4 Carrier ever again.

5 Q And what would you do with people's questions?

6 A I will forward them on to someone else, and if
7 they're upset, sorry.

8 Q If you turn to Exhibit 3 of the Employee's binder
9 onto Page 6, the top left corner.

10 A Yes.

11 Q In the bold paragraph there, what does it -- what
12 does it say about prompt action?

13 A It says "You as a supervisor are charged with the
14 responsibility for promptly taking corrective disciplinary
15 action when it is appropriate."

16 Q Okay. Do you consider the action taken against
17 you to be prompt in any way?

18 A Absolutely not.

19 Q And if you turn to the next page, Page 7, what's
20 it say in that number one heading, in bold?

21 A Number one or the one above it?

22 Q Number one.

23 A Okay. "Get all the facts and act promptly."

24 Q Okay. That's fine. Do you feel they acted
25 promptly?

1 A No.

2 Q And you look down in that paragraph, what does it
3 say, about the fourth sentence up, where it starts with "The
4 longer"? Could you read that, please.

5 A "The longer the corrective action is delayed the
6 more unjustified and unfair it will seem to the employee and
7 to coworkers."

8 Q Thank you. Then if you look at Page 8 in the same
9 exhibit, it says "Types of corrective disciplinary action."

10 A Yes.

11 Q What's the first sentence? Could you read that,
12 please?

13 A "It is expected that all corrective disciplinary
14 actions have been preceded by ongoing communication between
15 the supervisor and the employee in an effort to correct the
16 situation."

17 Q Okay. That's good. Thank you. Did that occur in
18 your situation?

19 A No.

20 Q Then turning to Page 9, the same exhibit, at the
21 bottom. There's a -- it's in bold and caps, "SPECIAL NOTE."

22 A Yes.

23 Q Number one, what does it say?

24 A "Provide a notice in writing of the allegations
25 against them before they are questioned."

1 Q Before -- especially regarding the allegations.

2 A Regarding the allegations.

3 Q Did that happen in your case?

4 A No, it did not.

5 Q And that's what your testimony was regarding the
6 interviews by the investigative (inaudible) times?

7 A Correct.

8 Q And let me see here. And just to be sure, you
9 had -- said you sent at least two e-mails and one phone call
10 with Ms. -- with your supervisor, Ms. Stoll, prior to your
11 return?

12 A Correct.

13 Q And how did you feel when you were told
14 immediately that you were being put on investigative on the
15 first day back?

16 A I was shocked. Shocked. Shocked and very
17 confused, because I had no clue what it was about.

18 Q And then, again, how did you feel when you found
19 out it was for things that had occurred over a year prior?

20 A I was a little upset by it.

21 MR. BLANCK: No further questions.

22 HEARING OFFICER: Cross?

23 MS. HOOVER: Okay.

24 CROSS-EXAMINATION

25 BY STATE:

1 Q Now, you testified, Ms. O'Keefe that you got this
2 off the DMV website? Where did you get this?

3 A It was -- it's in the -- they have a drive. I
4 don't know if it's a C drive, a D drive -- I don't
5 remember -- where they keep lists of manuals, policies and
6 procedures; those types of information.

7 Q And you pulled this off?

8 A This was in there, yes.

9 Q When?

10 HEARING OFFICER: This -- Exhibit 3?

11 MS. HOOVER: Exhibit 3 of the -- of Employee's
12 exhibits. This guide that I don't know anything about.

13 THE WITNESS: I don't remember. It's been years.
14 I have -- we have binders with policies and procedures in
15 them and they change, we print them and --

16 BY STATE:

17 Q So you pulled this off before you left DMV
18 employment?

19 A Yes.

20 Q And it was years ago, is your testimony?

21 A It was probably -- yes. Yes.

22 Q And why did you pull this off if you've never been
23 in trouble?

24 A Just for the information on it. It was -- I had
25 put a binder together. I actually, at no point in time

1 until now, ever went back and reviewed what it was.

2 Q Okay. So you don't know if this is --

3 A I don't know if it's current.

4 Q -- if it's current?

5 A Correct.

6 Q Okay. So you pulled this off when you were still
7 working there, which would have been back before December of
8 2012?

9 A Correct.

10 Q But probably long before that?

11 A Yeah, I -- yeah.

12 Q And how long did you work there?

13 A I was there seven years.

14 Q So you would have been there in 2005?

15 A 2006.

16 Q 2006?

17 A Yeah.

18 Q Okay. And -- okay. Now, you also testified that
19 you turned down a job with Medicaid?

20 A Yes, I turned down --

21 Q They offered you a job?

22 A It was an interview. They offered to interview me
23 for the job.

24 Q Okay. So you did interview for that job?

25 A I have not --

1 Q You turned down the interview?

2 A I had not interviewed.

3 Q Okay. So you hadn't been offered that job?

4 A Had not been offered the job.

5 Q Okay. Now, you also testified that you were
6 totally in the dark about what you were being investigated
7 for.

8 A Correct.

9 Q And would it surprise you to learn that the
10 investigator asked you in September, the very first time
11 that she interviewed you, if you knew who Daniel was?

12 A I don't recall them asking in the first interview.

13 Q Could they have asked you that?

14 A I never got a copy of anything, so I guess, yeah,
15 they could've.

16 Q And could they have asked you if you ever
17 represented yourself as a DMV employee to the sheriff's --

18 A That was in the second interview.

19 Q Could they have asked you that in the first
20 interview?

21 A No, she did not.

22 Q Okay. So if I --

23 MS. HOOVER: Then I'm going to have to bring a
24 rebuttal witness in and we're going to have to -- she's on
25 call. She'll come in.

1 BY STATE:

2 Q All right. And then in the second interview they
3 asked -- isn't it true that they asked you about Daniel and
4 Jacqueline?

5 A In the second interview they did.

6 Q And they also asked you about contacting the
7 sheriff's office?

8 A In the second interview they did.

9 Q Okay. And it would totally shock you to find out
10 they asked you that in the first interview?

11 A No, I said it shocked me when I found out I was
12 being investigated for a computer violation.

13 Q Okay. Then let's turn to the notice you got.
14 Let's turn to Page 13 in Employer's Exhibit A. Not 13,
15 sorry. I think I need Page 11. Is that your signature on
16 that page?

17 A Yes.

18 Q Does it say information of use? "This is to
19 advise you that you're the subject of an internal
20 administrative investigation relevant to the following
21 allegations: information of use."

22 A Yes, it does say that.

23 Q "The use or manipulation or production of data or
24 information outside the scope of your job responsibilities."

25 A Yes, it does say that.

1 Q And that -- and so you don't consider that notice
2 of the allegation against you?

3 A Well, that's on the first one as well, the use or
4 manipulation.

5 Q This is on 9-16.

6 A I understand that.

7 Q That was your first --

8 A Oh, that -- I see what you're saying.

9 Q That was your first notice of the --

10 A That -- yes, that was the very first one that they
11 handed me that day. Yes.

12 Q Okay.

13 HEARING OFFICER: That's -- you're still on
14 Exhibit A, Page 11?

15 MS. HOOVER: I am.

16 HEARING OFFICER: Okay. Thanks.

17 BY STATE:

18 Q And then before the second interview you got one
19 also; isn't that correct?

20 A Correct.

21 Q And I thought I tabbed it earlier. I think it's
22 Page 13 -- 15. The same -- okay. Page 15 of the same
23 exhibit, Exhibit A. And it says "information of use."

24 A Yes.

25 Q And it's notifying you that that's what they're

1 looking into?

2 A Correct.

3 Q Okay. And then isn't it true that you did an
4 entire predisciplinary hearing with Terri Carter?

5 A I -- yes, I did a -- yes, I did.

6 Q And isn't it true at that time you were able to
7 give your side of the story?

8 A Yes, I did.

9 Q And so when you said that you've never had a
10 chance to talk to anybody, you actually did talk to Terri
11 Carter about this before they terminated you?

12 A Before this -- yes, before the termination, but
13 not until after the first two interviews.

14 Q Right. But before the termination --

15 A Correct.

16 Q -- you had a chance to talk to her?

17 A Correct.

18 Q Okay. Then let's look at that. That's under
19 Exhibit B in the Employer's book, and it starts with
20 Page 49.

21 A Uh-huh.

22 Q And if you go to Page 51, she discusses what you
23 discussed.

24 A Uh-huh.

25 Q Now, isn't it true that she says that you stated

1 you did not give information that was not authorized by the
2 family friend?

3 A I'm sorry, say that one more time.

4 Q If you look at Item B-23 on Page 51.

5 A Correct.

6 Q "Ms. O'Keefe stated she did not give information
7 that was not authorized by the family friend."

8 A Correct.

9 Q Okay. And then it said you said that you accessed
10 the records during your break and lunch periods. Isn't that
11 what you told her?

12 A No. I called the sheriff's department during my
13 lunch and break.

14 Q So this is what Terri Carter wrote down. She's
15 wrong?

16 A Yeah. I called the sheriff's office on my break
17 and my lunch.

18 Q Okay. But you couldn't recall your work hours?

19 A Called the sheriff's office?

20 Q Well, it says you couldn't recall your work hours
21 on (inaudible).

22 A Correct. I knew I was 4/10s, but I couldn't
23 remember if it was 6:00 to 3:00 or 7:00 to 4:00, but I did
24 work 4/10s.

25 Q But you couldn't remember when you called the

1 sheriff's department and you couldn't remember when your
2 breaks were?

3 A Well, no. I know I didn't say I couldn't remember
4 when my breaks were, and those were all roughly between
5 10:00-10:30 time frame and 3:00-3:30 time frame. Everybody
6 generally takes them close to the same time.

7 Q Okay.

8 A But my lunch hour fluctuated. Sometimes it was
9 11:00, sometimes it was 1:00.

10 Q Okay. So this report by Terri Carter, according
11 to you, is incorrect; that she --

12 A Some of the information is, yes.

13 Q Okay. Now, it says that you looked up data in the
14 database to validate the information your family friend gave
15 to you.

16 A Correct.

17 Q Okay. And you said that this person was a close
18 family friend?

19 A A family friend, yes.

20 Q Okay. Now, you said that right after you signed
21 the paperwork to become a DMV employee --

22 A Uh-huh.

23 Q -- they put you on paid leave.

24 A Correct.

25 Q And told you they were conducting an

1 investigation.

2 A Correct.

3 Q That was pretty prompt after you signed that
4 paperwork?

5 A Yeah.

6 Q So that was pretty prompt action to start the
7 investigation, once you were a DMV employee?

8 A It was prompt as far as my resigning the paperwork
9 and coming back. It wasn't prompt in conjunction with the
10 violation.

11 Q Right. But as soon as you became an employee
12 again, they began this investigation?

13 MR. BLANCK: Objection. Argumentative. Asked and
14 answered.

15 MS. HOOVER: Well, there was a "but" to her
16 answer, so I'm just trying to clarify the first part of the
17 answer.

18 MR. BLANCK: She already asked and answered.
19 You're trying to put words in her mouth, which isn't going
20 to work.

21 HEARING OFFICER: I'll sustain the objection
22 (inaudible).

23 BY STATE:

24 Q Okay. Now, you testified also that someone told
25 you that the State had the authority to investigate anybody

1 at any agency, even if the violation occurred at DMV and
2 that -- and you were now working in a different division.
3 You said someone told you that.

4 A I've been -- yes, I was given that --

5 Q Who told you that?

6 A By prior supervisors.

7 Q And who were they?

8 A Do you want me to give their names? Kelli
9 Quintero.

10 HEARING OFFICER: I'm sorry, I missed the first
11 part. What did Kelli Quintero tell you?

12 THE WITNESS: I was advised that if it's within
13 the State that they can still -- regardless of the agency
14 that it's in, the State can still -- I guess -- I don't know
15 what the word I want to use -- prosecute or --

16 HEARING OFFICER: Discipline?

17 THE WITNESS: I'm sorry?

18 HEARING OFFICER: Discipline? Is that
19 (inaudible)?

20 THE WITNESS: Yes, there you go. Discipline.

21 BY STATE:

22 Q So if you're working at the Division of Industry,
23 DMV has the right to come over and fire you from their job.
24 Is that -- that's what she told you?

25 MR. BLANCK: Objection. Lacks foundation. It's

1 an improper hypothetical.

2 HEARING OFFICER: She just said that that's what
3 she was told.

4 MS. HOOVER: That's what she --

5 HEARING OFFICER: And she's going --

6 MR. BLANCK: Well --

7 HEARING OFFICER: -- I guess (inaudible) --

8 MR. BLANCK: -- I guess you can answer if she --
9 did she ever tell you that?

10 THE WITNESS: No, she -- that's not what she told
11 me.

12 BY STATE:

13 Q But she told you that an agency where employees
14 not employed can work through the State to get that employee
15 fired?

16 A What she said was if you work for the State of
17 Nevada, it doesn't matter what agency, they can still follow
18 through with discipline.

19 Q So any agency can follow through with discipline?

20 A The State of Nevada can follow through with the
21 discipline at any agency.

22 Q Did she say that -- okay. But did she say that an
23 agency where you do not work --

24 A No, she did not use those words.

25 Q Okay. Could you have misunderstood what she was

1 saying?

2 A I guess if you want to interpret it -- yeah, I
3 guess you could say there's a possibility.

4 Q Okay. Now, you also said that you had told
5 someone that it was not showing on the record that DMV had
6 received anything. Who did you tell that to?

7 A I'm lost. I'm sorry, I don't --

8 MR. BLANCK: Objection. Ambiguous. I'm not sure
9 what the question is.

10 MS. HOOVER: She was talking about talking to the
11 sheriff's department and you said, "And sending a citation
12 to DMV," you talked about that and you said "I told them,"
13 and I don't know who them was, "that it was not showing
14 anything on the record that they had received anything."
15 Who were you talking to?

16 THE WITNESS: No, no, no. I didn't -- I didn't
17 tell them that. The records on DMV was showing that we had
18 not received anything from the sheriff's office.

19 BY STATE:

20 Q And that led to you calling the sheriff's office?

21 A So I called -- contacted the sheriff's office, who
22 told me to find out where it was at in the process; that I
23 would need to contact records.

24 Q But you -- but how did the sheriff's department
25 know the record wasn't there?

1 A They never told me that. They didn't know that it
2 wasn't there.

3 Q But you told them it wasn't there?

4 A No, I did not tell them it wasn't there. I called
5 them and I asked them what the process was.

6 Q Okay. Then who did you tell them that it was
7 not -- it was not showing the record -- in the record that
8 they had received anything?

9 A I didn't tell anyone that.

10 Q So your -- per your testimony --

11 A Daniel told me he got the citation and when I
12 looked at it, it was not showing that we had received it at
13 the DMV.

14 Q Oh, okay. And so did you tell Daniel it wasn't
15 showing up?

16 A No, I did not.

17 Q You just went and called the sheriff's department
18 on your own?

19 A Yes, I did.

20 Q Based on the information that was in the database?

21 A Yes.

22 Q So you actually made use of that information by
23 seeing that there was nothing in the database that had been
24 received and then you called the sheriff's department?

25 A I guess the knowledge that it had not been

1 received is what -- the reason I called the sheriff's office
2 to find out the process.

3 Q So you actually used the information in the
4 database as the basis for making the call to the sheriff's
5 office?

6 MR. BLANCK: Objection. It's the same question
7 she just answered. Asked and answered.

8 HEARING OFFICER: I think (inaudible) I think the
9 whole point of that was clarification, and I appreciate
10 that. So overruled.

11 THE WITNESS: I'm sorry, I --

12 HEARING OFFICER: Do you understand the question
13 or do you want her to ask again?

14 THE WITNESS: No, no, no. I didn't hear what you
15 were saying, if I was supposed to stop or not. So, yes, I
16 had knowledge of the information and that's why I called the
17 sheriff's office.

18 BY STATE:

19 Q Okay. All right. Now, did Jacqueline ever ask
20 you to look anything up on her behalf?

21 A No.

22 Q And you did that because Daniel wanted you to look
23 something up?

24 A He didn't ask me to look something up. He told me
25 he wasn't getting mail and I was advised by -- I don't even

1 know the team that it's called -- downstairs that here was a
2 glitch in the system that caused spouses to have -- if they
3 had different addresses that sometimes their mail would be
4 sent to the other address for the other spouse.

5 Q And did Daniel and Jacqueline have different
6 addresses?

7 A No, they had the same address.

8 Q Okay.

9 A And I did not provide that information to Daniel
10 either.

11 Q So you checked this for your own knowledge then?

12 A Because I knew of the glitch, yes.

13 Q Okay. Now, you said that you considered this a
14 business reason for getting into the database.

15 A Yes, DMV business.

16 Q Okay. But it wasn't Motor Carrier business?

17 A No, it was not Motor Carrier.

18 Q Okay. And then personal reasons that you did this
19 you said there weren't any personal reasons --

20 A Uh-huh. .

21 Q -- but isn't it true that you told the
22 predisciplinary hearing officer you did this only because he
23 was your good friend?

24 A Well, I did assist him because he was a friend,
25 yes.

1 Q Okay. And you don't consider friendship a
2 personal reason for accessing a database?

3 A I -- no, because I did the same thing for our
4 truckers. They call and they ask information and we get
5 answers for that.

6 Q But they're Motor Carrier customers, the truckers?

7 A They don't always call about Motor Carrier issues,
8 but yes.

9 Q Okay. And -- but if someone you didn't know
10 called up and wanted you to access the database, would you
11 do it?

12 A I would not access it unless they gave me
13 permission and that information to assist them in completing
14 paperwork.

15 Q Okay. And you would -- even if you were in Motor
16 Carrier, you would -- you would look up someone's driver's
17 license just if they asked you to?

18 A If it was something that I knew I could answer and
19 assist them with, yes.

20 Q Even though they're not Motor Carrier (inaudible)?

21 A Correct.

22 Q Now, you said you didn't misrepresent your
23 authority. When you called the sheriff's department, what
24 did you tell them?

25 A I simply asked them what their process was for

1 issuing DUIs, as far as how long they held on to it before
2 it was mailed to Carson -- or to the DMV. They actually
3 provided me with no information. She said, "I will have to
4 call you back." And I said okay, and left it at that.

5 Q And you told them you were with DMV?

6 A I -- the first time I called, I introduced myself
7 as Motor Carrier, yes.

8 Q Okay. And you looked at the wife's information
9 because you were trying to find out if an address change had
10 been placed on her account?

11 A Correct.

12 Q And on the husband's account?

13 A I did check his address as well, yes.

14 Q Okay. Okay. And you were still checking Daniel's
15 account as late as November?

16 A Yes.

17 Q Why were you still checking the account in
18 November?

19 A I couldn't tell you why I checked each time,
20 because he would call and ask a question; I would look
21 something up. I can tell you that the last time I checked
22 was simply to see if the process had completed itself; if we
23 had gotten the record from the sheriff's department. And at
24 that point we had, so that was the last time I had looked at
25 it. I had already assisted him in completing whatever

1 paperwork he needed, and when I saw that the process had
2 completed itself that was the last time that I looked at his
3 record.

4 Q Okay. And did he call you up and ask you to check
5 it or did you just check it?

6 A The last time I just checked it.

7 Q Okay.

8 MS. HOOVER: Can we take just a quick break?

9 HEARING OFFICER: Sure.

10 (off the record)

11 MS. HOOVER: No further questions right now.

12 HEARING OFFICER: Redirect?

13 MR. BLANCK: No. Well, maybe. Strike that. The
14 proverbial, you know, one more question.

15 REDIRECT EXAMINATION

16 BY MR. BLANCK:

17 Q Cara, are you aware of any harm that your acts
18 caused to the DMV?

19 A No.

20 Q And because of what you did, has anyone ever told
21 you or stated that masses of people are going to be -- have
22 lost confidence in the DMV?

23 A No.

24 MR. BLANCK: No further questions.

25 MS. HOOVER: No further questions.

1 HEARING OFFICER: I have one. You may have
2 already answered this. I just (inaudible) clarify it.
3 Employer's Exhibit -- it's under B, the predisciplinary
4 hearing, Page 51. It says Item B-23, second sentence. It
5 says "Family friend provided her with driver's license
6 number and that is what she gave the sheriff's office." I
7 was just confused. Did you give that to the -- to the
8 (inaudible)?

9 THE WITNESS: I gave the driver's license number
10 to them so they could look it up.

11 HEARING OFFICER: The first time?

12 THE WITNESS: The first time.

13 HEARING OFFICER: But not the second time?

14 THE WITNESS: Correct.

15 HEARING OFFICER: Okay. So what she wrote in this
16 report is correct?

17 THE WITNESS: As far -- yes, he provided me with
18 the driver's license number and I did tell the sheriff's
19 office this is the license number that got the citation.

20 HEARING OFFICER: Okay. And then Item C-4;
21 "O'Keefe stated this was a DMV-related issue and she
22 accessed the records during her break and lunch period." So
23 -- and then here you're just -- you -- I'm just trying to
24 gather because you had testified that it was (inaudible) --

25 THE WITNESS: Well, I knew I called the sheriff's

1 office on my lunch and break.

2 HEARING OFFICER: Yes.

3 THE WITNESS: I do -- I do not recall when I
4 looked up his records. I don't recall the time frames.

5 HEARING OFFICER: Okay. So do you know it's
6 possible that (inaudible) --

7 THE WITNESS: It's possible. Absolutely.

8 HEARING OFFICER: -- it's also possible that it
9 wasn't?

10 THE WITNESS: I'm sorry.

11 HEARING OFFICER: It's also possible that it
12 wasn't during your break?

13 THE WITNESS: That I looked up the records?

14 HEARING OFFICER: Yeah.

15 THE WITNESS: It is possible.

16 HEARING OFFICER: Okay. Does that lead to any
17 further questions, Counsel?

18 MS. HOOVER: Yeah, it does for me.

19 HEARING OFFICER: Okay. Go ahead.

20 RE-CROSS-EXAMINATION

21 BY STATE:

22 Q If you could look at Page 17 on Exhibit A. Now,
23 these are the dates and times that you are alleged to have
24 accessed the records. Would you have been on break at 8:34
25 in the morning?

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARA O'KEEFE, an Individual,)
) Court of Appeals Case No. 68460
) District Court Case No. 14 OC 00103 1 B
 Appellant,)
 vs.)
)
 STATE OF NEVADA, *ex rel.*, its)
 DEPARTMENT OF MOTOR)
 VEHICLES,)
)
 Respondent.)
 _____)

RESPONDENT'S APPENDIX
VOLUME III

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1 A No.

2 Q 8:33 in the morning?

3 A No.

4 Q 11:04?

5 A I possibly could have been at lunch in that time
6 frame.

7 Q 6:38?

8 A No.

9 Q 1454?

10 A That's 3:00-ish. Possible I was on break.

11 Q 1342, 1:42?

12 A Possible I was on lunch.

13 Q 10:26?

14 A Possibly I was on break.

15 Q 7:31?

16 A No.

17 Q 1:21?

18 A It's possible I was on lunch.

19 Q 7:31?

20 A No.

21 Q 7:31?

22 A No.

23 Q And 1444?

24 A 13, 14. It was possible I was on break.

25 Q And 1321?

1 A Possibly on lunch.

2 Q Now, it doesn't matter if you're on break because
3 you're not allowed to access the DMV database if you're on
4 break for your own personal reasons, are you?

5 A For personal reasons, no.

6 Q And isn't it true that if you wanted to look at a
7 computer on your break there's one in the breakroom that you
8 could go look up the Internet or do what you wanted?

9 A Correct.

10 Q Okay. And then you testified earlier, just now,
11 to me, the first phone call you just asked about procedure.
12 But then you just testified to the hearing officer that you
13 provided the license number and information about the
14 citation.

15 A Well, I didn't provide it. I just said this is
16 the license number that got the citation. He got a DUI and
17 I need to know what the process -- how you guys work the
18 process so that we can figure out -- I didn't tell them all
19 of that. I don't remember what I told them. It was almost
20 two years prior, but --

21 Q (Inaudible) what were you trying to --

22 A What's that?

23 Q What were you trying to figure out?

24 A I was trying to figure out what the process was;
25 how long it takes for the citation to come to the DMV and

1 whatever else information they could provide about it.

2 Q But why did you need to know when the citation
3 would get there?

4 A Because he was attempting to fill out some
5 paperwork for a restricted license and there was some -- I
6 was given information -- somebody told me that it was -- it
7 had to be a certain time frame from the citation. That's
8 why I called them, because I didn't understand the process.
9 So there was a certain time frame that you can apply for a
10 restricted license, but I wasn't given clear information.
11 That's why I called the sheriff's office.

12 Q And he could have looked this up on his own on the
13 Internet?

14 A Possibly. I don't know if he had access to
15 Internet.

16 Q Okay.

17 MS. HOOVER: Nothing further.

18 HEARING OFFICER: Redirect?

19 MR. BLANCK: No further questions.

20 HEARING OFFICER: All right. Thank you. We're
21 done with this witness?

22 MR. BLANCK: Yes. This witness and --

23 HEARING OFFICER: Then do you have any other
24 witnesses?

25 MR. BLANCK: I have no further witnesses.

1 HEARING OFFICER: Okay.

2 MR. BLANCK: We move for admission of Exhibits 2
3 and 3 of the Employee. 2 is her personnel file, which she
4 has verified as her complete personnel file, and 3 she's
5 verified that that's what she took from the DMV records.

6 HEARING OFFICER: And 1 is a duplicate
7 (inaudible)?

8 MR. BLANCK: The -- 1 is a duplicate, yes.

9 HEARING OFFICER: Okay. Ms. Hoover, any
10 objection?

11 MS. HOOVER: Well, to the extent that that -- that
12 she said she got it off some website somewhere when she was
13 working, I -- my problem is that the Prohibitions and
14 Penalties have been revised in 2007, so I don't even know if
15 this is valid or has any meaning. And I will put a rebuttal
16 witness on about the P and P's that are in effect and what
17 date is on those.

18 HEARING OFFICER: Well, perhaps it's better to
19 wait. I'd rather reserve ruling until after I hear.

20 MR. BLANCK: Well --

21 MS. HOOVER: Because I have no idea if this is --
22 what it is. I mean the people that run HR don't -- haven't
23 seen it.

24 HEARING OFFICER: My inclination is to admit it
25 and it goes to the weight (inaudible).

1 MS. HOOVER: I wouldn't have a problem with that.
2 It's just I don't --

3 MR. BLANCK: That's all I --

4 MS. HOOVER: -- think that it is --

5 HEARING OFFICER: Okay. All right then.

6 MR. BLANCK: -- that's what I want it for is --
7 and I understand, this doesn't have Prohibitions and
8 Penalties in it, so I'm not -- we haven't -- I mean whatever
9 they produced that these other prohibitions and penalties --
10 I mean we've gone along with this is what they put in the
11 specificity.

12 HEARING OFFICER: Okay.

13 MR. BLANCK: This was procedure.

14 HEARING OFFICER: Okay.

15 MS. HOOVER: But this isn't even dated.

16 HEARING OFFICER: Well -- and, again, I'm going to
17 go through and sift through all the documents. So I'll go
18 ahead and admit 2 -- Employee's Exhibits 2 and 3. So we
19 have the Employer's Exhibits A, B, and C and then Employee's
20 Exhibits 2 and 3 admitted into the record.

21 (Petitioner's Exhibits 2 and 3 were received in
22 evidence.)

23 MR. BLANCK: Thank you.

24 HEARING OFFICER: And then you're done with your
25 case?

1 MR. BLANCK: Yes.

2 HEARING OFFICER: And then I guess you have a
3 (inaudible)?

4 MS. HOOVER: We have a couple rebuttal witnesses.
5 One was going to have to (inaudible).

6 HEARING OFFICER: Okay.

7 MS. HOOVER: And then let me go out in the hall
8 for a second.

9 (off the record)

10 HEARING OFFICER: You've been previously sworn in.
11 (WHEREUPON, the witness was previously sworn.)

12 ALYS DOBEL

13 HAVING BEEN RECALLED AND PREVIOUSLY SWORN, TESTIFIED AS
14 FOLLOWS:

15 THE WITNESS: Okay.

16 HEARING OFFICER: So why don't you just go ahead
17 and state your name and then Ms. Hoover is going to question
18 you again.

19 THE WITNESS: Do I need to sign in again?

20 HEARING OFFICER: No.

21 THE WITNESS: Okay.

22 HEARING OFFICER: (Inaudible). All right. Are
23 you ready?

24 MR. BLANCK: State you name.

25 THE WITNESS: Okay. For the record, my name is

1 Alys Dobel.

2 MS. HOOVER: Thank you.

3 REDIRECT EXAMINATION

4 BY STATE:

5 Q There's been some talk about a Motor Carrier
6 employee that accessed some records and did some -- a
7 stalking incident. Can you tell me what year that was?

8 A Yes. The records show that it happened in 2007.

9 Q Okay. Now, has this employee been disciplined
10 since then?

11 A Yes.

12 Q And was she disciplined in 2011?

13 A Yes.

14 Q Since the Bruce Breslow memo was signed by
15 everyone?

16 A It was around the same time. Oh, I can't
17 remember.

18 Q Was it for misuse of technology?

19 A No. It was not for misuse of technology.

20 Q Was it information -- okay.

21 A No.

22 Q All right. And then do you know when DMV's
23 current Prohibitions and Penalties went into effect?

24 A Yes. They were revised in 2007. I believe it was
25 February.

1 Q Okay. All right. And they haven't been revised
2 since then, to your knowledge?

3 A No, they have not.

4 Q And if you look at Exhibit 3 in the Employee's
5 binder, which is the Prohibitions and Penalties, the date on
6 the front of that page is June 27, 2003?

7 A Yes.

8 Q So -- and you haven't -- you're not familiar with
9 this document?

10 A No.

11 Q Okay. All right. And this is -- this says
12 Supervisor's Guide to Prohibitions and Penalties. And at
13 least we know for sure the P and P's were revised in 2007?

14 A That's correct.

15 Q Okay. Thank you.

16 MS. HOOVER: That's all.

17 HEARING OFFICER: Sorry. You said that the
18 Prohibitions and Policies were revised?

19 MS. HOOVER: And Penalties.

20 THE WITNESS: Penalties.

21 HEARING OFFICER: Penalties. Okay. Let me just
22 (inaudible) the same name (inaudible).

23 MS. HOOVER: Yeah --

24 THE WITNESS: No.

25 MS. HOOVER: -- this is the guide to it.

1 HEARING OFFICER: Okay. Thank you. (Inaudible).

2 MR. BLANCK: That's okay.

3 REXCROSS-EXAMINATION

4 BY MR. BLANCK:

5 Q Ms. Dobel, I can't remember, when did you start
6 working for HR for the DMV?

7 A February of 2010.

8 Q So you weren't there in 2007, right?

9 A No, I was not.

10 Q So if this employee -- we had testimony this
11 employee with this TPO was in 2009 or 2010. You weren't
12 there at that time either?

13 A No.

14 Q Okay.

15 MR. BLANCK: Also -- well, maybe if I get some
16 leeway I could recall on rebuttal my only witness to go
17 outside the scope of rebuttal. Some things have come up.
18 If I could just ask of those now and we can get all wrapped
19 up or I get --

20 MS. HOOVER: Okay.

21 HEARING OFFICER: (Inaudible) --

22 MR. BLANCK: Okay.

23 HEARING OFFICER: -- and I think for the sake --

24 MR. BLANCK: Sure.

25 HEARING OFFICER: -- of brevity.

1 BY MR. BLANCK:

2 Q You became aware that Ms. O'Keefe was returning to
3 the DMV in August of 2013?

4 A I know she was returning. I don't remember the
5 exact date.

6 Q Okay. And isn't it true that you never told
7 Ms. Scholl [sic] not to talk to her about the potential
8 investigation before she returned, did you?

9 A Who's -- oh.

10 MS. HOOVER: Could you rephrase that? I'm
11 confused as to --

12 MR. BLANCK: Did you --

13 MS. HOOVER: I didn't hear the whole question.

14 MR. BLANCK: No, let me -- you never told
15 Ms. Scholl [sic] not to talk to Cara about the investigation
16 that was going to take place within that -- prior to her
17 returning?

18 THE WITNESS: I don't remember if I talked to her
19 specifically about that. Yeah, I --

20 BY MR. BLANCK:

21 Q You may have had no conversation about her return?

22 A I'm sure we had some conversation about her
23 return, because it typically comes in through my office.
24 But --

25 Q Right. Did you specifically tell her not to tell

1 her -- not to tell Ms. O'Keefe that if she returned she
2 would be under investigation for these allegations that
3 occurred the year before?

4 A I don't recall.

5 Q Okay.

6 MR. BLANCK: No further questions.

7 MS. HOOVER: Just one.

8 REDIRECT EXAMINATION

9 BY STATE:

10 Q You reviewed the Motor Carrier case over the lunch
11 hour --

12 A Yes.

13 Q -- isn't that true? So the information that
14 you're representing to the hearing officer is based on your
15 review of that record --

16 A Yes.

17 Q -- to clear up the record? Okay. Thank you.

18 HEARING OFFICER: All right. Recross (inaudible)?

19 MR. BLANCK: No further questions.

20 HEARING OFFICER: Okay.

21 THE WITNESS: Okay.

22 HEARING OFFICER: All right. Both the parties
23 done with this witness?

24 MS. HOOVER: Yes.

25 HEARING OFFICER: Okay. Thank you.

1 MR. BLANCK: Yes.

2 THE WITNESS: Okay. Thank you.

3 HEARING OFFICER: Jeff, do you want --

4 MR. BLANCK: Yes.

5 HEARING OFFICER: -- this Exhibit 1, the copies?

6 MR. BLANCK: Yeah, I'll take them back. I could

7 use my stack (inaudible) printed on the other side

8 (inaudible).

9 MS. HOOVER: She's on her way. We called her 20
10 minutes ago. DMV is --

11 HEARING OFFICER: Down the street?

12 MS. HOOVER: Yeah, so she should be here

13 (inaudible) --

14 HEARING OFFICER: Okay.

15 MR. BLANCK: Who is -- who's the next witness?

16 MS. HOOVER: That's (inaudible).

17 MR. BLANCK: No, no. Who is it?

18 (off the record)

19 MR. BLANCK: Pardon?

20 HEARING OFFICER: I've never delayed a decision so
21 people could get a transcript. You're (inaudible) --

22 MR. BLANCK: Yeah.

23 HEARING OFFICER: -- and then do closing?

24 MR. BLANCK: And then do closing, yeah.

25 HEARING OFFICER: Yeah, that was -- I've never

1 done that before in these cases.

2 MS. HOOVER: Yeah.

3 HEARING OFFICER: I don't even get a transcript
4 before I make my decision.

5 MR. BLANCK: Okay. And what time frame are we
6 looking at for a decision? That's...

7 HEARING OFFICER: Thirty days.

8 MR. BLANCK: Thirty days?

9 HEARING OFFICER: Thirty days. Yeah. (Inaudible)
10 --

11 MR. BLANCK: Can I just talk -- I'll just confer
12 with my client.

13 HEARING OFFICER: Okay.

14 MR. BLANCK: Yeah. So you said you were going to
15 do closing today, correct?

16 MS. HOOVER: Yeah.

17 MR. BLANCK: Okay.

18 MS. HOOVER: Yeah, I am. Have you ever waited
19 until -- waited until a later date for closing?

20 HEARING OFFICER: We've done written policies on
21 occasion. And usually that's been when there's been a two-
22 day hearing and -- but...

23 MS. HOOVER: So I don't know what we want to do.
24 (off the record)

25 MS. HOOVER: She -- Doreen is here.

1 MS. RIGSBY: Hi. Where would you like me to sit?

2 HEARING OFFICER: Good afternoon. There's a seat
3 over there and there's a sign-in sheet. If you could sign
4 in and then I'll swear you in.

5 MS. RIGSBY: Okay.

6 MR. BLANCK: Actually, you can sit (inaudible).

7 MS. HOOVER: Yes, facing it.

8 MS. RIGSBY: Oh, okay. In front of the mic, huh?

9 MS. HOOVER: Ready?

10 MS. RIGSBY: Yes.

11 HEARING OFFICER: Go ahead and raise your right
12 hand, please.

13 (WHEREUPON, the witness is sworn.)

14 DOREEN RIGSBY

15 HAVING BEEN CALLED AND SWORN, TESTIFIED AS FOLLOWS:

16 THE WITNESS: Yes.

17 HEARING OFFICER: Okay. State your name and spell
18 it as well, your first and last.

19 THE WITNESS: It's Doreen Rigsby. First is
20 D-O-R-E-E-N, last is R-I-G "S," as in "Sam," "B," as in
21 "boy," and "Y," as in "yellow."

22 HEARING OFFICER: Ms. Hoover.

23 DIRECT EXAMINATION

24 BY STATE:

25 Q Where do you work?

1 A I work for the Department of Motor Vehicles.

2 Q In what division?

3 A Central Services.

4 Q Okay. And were you the investigator on the Cara
5 O'Keefe disciplinary case?

6 A Yes.

7 Q And did you interview Cara O'Keefe?

8 A Yes.

9 Q Did you interview her twice?

10 A Yes.

11 Q In the first interview, did you ask her if she
12 represented herself as a DMV employee with Carson City
13 Sheriff's Office?

14 A I did ask her, yes.

15 Q Did you ask her if she knew Jacqueline and Daniel?

16 A Yes.

17 Q Did you ask her the same things in the second
18 interview?

19 A Yes.

20 MS. HOOVER: No further questions.

21 HEARING OFFICER: Cross?

22 MR. BLANCK: Sure.

23 CROSS-EXAMINATION

24 BY MR. BLANCK:

25 Q First interview was pretty short, wasn't it?

1 A Yes.

2 Q And they sent you back to do more, correct?

3 A They -- we all kind of weren't too sure if we
4 asked everything, so they did ask me to do another one.

5 Q Okay. So as you sit here, you say you're sure you
6 asked her those two questions. Is that because you reviewed
7 your notes? How do -- how can you remember so clearly that
8 you asked her that specifically?

9 A Basically, each question was around the gentleman
10 in question.

11 Q Okay. So as you sit here today, it's just your
12 recollection that you asked her about Daniel Cunningham in
13 that first interview?

14 A No, I do have notes.

15 Q Okay. And you looked at those notes before
16 testifying today, correct?

17 A Yes.

18 Q Okay. But Ms. O'Keefe, she didn't take any notes
19 during your interview, did she?

20 A I don't believe so.

21 Q But then you came back for a second interview that
22 lasted much longer than the first, correct?

23 A Yes.

24 Q Okay.

25 MR. BLANCK: No further questions.

1 MS. HOOVER: Nothing further.

2 HEARING OFFICER: Redirect?

3 MS. HOOVER: Nothing further.

4 HEARING OFFICER: No? Okay. All right then.

5 That's it. Thank you.

6 THE WITNESS: Okay. Thank you.

7 HEARING OFFICER: Thanks for coming. That's
8 (inaudible).

9 THE WITNESS: Thanks.

10 MS. HOOVER: Thank you, Doreen.

11 MS. RIGSBY: Yeah.

12 HEARING OFFICER: Any further witnesses --
13 rebuttal witnesses from either party?

14 MR. BLANCK: Not from the --

15 MS. HOOVER: No.

16 MR. BLANCK: -- employee, no.

17 HEARING OFFICER: All right. Are the parties
18 ready to have closing arguments?

19 MR. BLANCK: Yeah. Could like -- are we on the
20 record? Could I have a short break?

21 HEARING OFFICER: Sure.

22 (off the record)

23 HEARING OFFICER: Are you ready, Ms. Hoover?

24 MS. HOOVER: I am.

25 HEARING OFFICER: (Inaudible) again?

1 MS. HOOVER: Sure. Okay. We've listened to a lot
2 of testimony today, and now it's the hearing officer's job
3 to decide whether substantial evidence supports just cause
4 for Cara O'Keefe's termination.

5 Now, substantial evidence is evidence that a
6 reasonable mind might accept as adequate to support a
7 conclusion under State Employment Security Department v.
8 Hilton Hotel, 102 Nev. 606, from 1968 -- 1986. "Substantial
9 evidence does not include the idea of this court weighing
10 the evidence to determine if a burden of proof was met or
11 whether a view was supported by a preponderance of the
12 evidence. Such tests are not applicable to administrative
13 finds and decisions."

14 Basically, the test is whether there's substantial
15 evidence to sustain the decision. And it's not equated with
16 preponderance. There may be cases wherein two conflicting
17 views may be each supported by substantial evidence, but if
18 the State has provided its own substantial evidence then the
19 discipline must be upheld. The substantial, reliable, and
20 probative evidence presented today has shown that Cara
21 O'Keefe accessed the confidential DMV database for a friend,
22 represented to the sheriff's office that she was working on
23 DUI issues for DMV, all in violation of regulations,
24 policies and procedures.

25 As a revenue officer for the Motor Carrier

1 Division, she was not permitted to access the confidential
2 database unless it was for an official job-related duty, and
3 that her job-related duty was in Motor Carrier. You've
4 heard testimony from Karen Stoll that Motor Carrier
5 employees don't have duties regarding driver's license. In
6 fact, her own voicemail directs people to call Field
7 Services if they have a driver's license issue. And that is
8 what Cara O'Keefe should've done.

9 Instead, she accessed the records roughly 13 times
10 if you count them up. I think they don't -- some of them
11 were combined in the SOC, but on numerous occasions before
12 the -- between the months of July and October, she accessed
13 the records. And by her own testimony, the information she
14 gleaned from those records was the reason she called the
15 sheriff's office, to see if those documents had been
16 forwarded and to ask about the process. So she did use the
17 information in the database to call the sheriff's
18 department. If that record hadn't -- had been there she
19 wouldn't have had a reason to call the sheriff's department.

20 The computer printouts are clear in the exhibit
21 that she accessed the database while working at 7:30 in the
22 morning, 6:30 in the morning; all different times of the
23 days in that four-month period. Sometimes when she was on a
24 break, but other times not when she was on her break. And
25 it really doesn't matter if she was on her break or not,

1 because she was using State equipment in a State building
2 and accessing the confidential database in violation of
3 policies and procedures for something that had nothing to do
4 with her job in Motor Carrier.

5 Her job as a revenue officer for Motor Carrier did
6 not permit her to dig into that database for a friend. And
7 if the man gave her permission to look at the record, she is
8 still forbidden to do that. We've had testimony from Karen
9 Stoll that permission by Nevada residents does not give a
10 DMV employee permission to violate the policies and
11 procedures of the DMV confidential database. She also had
12 no permission at all from the wife to look at the wife's
13 record. She didn't work for Central Services or Field
14 Services, and she had no authority to access that database
15 just to see if something was there. She's not permitted to
16 do that.

17 And you've heard testimony from Ann Yukish-Lee
18 that Central Records is the ones that handle the DUI
19 revocation issues and they don't call sheriff's offices.
20 They sometimes call the court, but they don't really deal
21 with the sheriff's offices. You've heard testimony today
22 that a total of five people have been fired or allowed to
23 resign since Bruce Breslow's directive was issued for this
24 same offense. All of the fired employees signed it,
25 including Cara O'Keefe. The directive states in bold

1 letters that the first offense can result in termination.
2 And the P and P's are clear, it's a five. It's means that
3 you get termination for the first offense.

4 The substantial, reliable and probative evidence
5 today shows that O'Keefe signed the directive and then she
6 proceeded to violate the directive through her actions. She
7 is being treated consistently with the way other employees
8 who signed that directive and violated that directive were
9 treated. Since 2011, DMV has been very consistent with how
10 they have handled that.

11 Now, the U.S. Supreme Court, in Engquist v. Oregon
12 Department of Agriculture, ruled that discipline doesn't
13 have to be exact, but it does basically have to be
14 consistent. They ruled that we've never found the equal
15 protection clause and located in the specific circumstances
16 whereas here government employers were alleged to have made
17 an individualized subjective personnel decision in a
18 seemingly arbitrary or irrational manner. And the highest
19 court in the land recognizes that not every decision can be
20 exact, but it does have to be consistent. And that's what
21 we have here. This was consistent. She accessed the
22 database. She had no reason to access the database. She
23 did it for a friend. And even though she got good
24 evaluations, she was forbidden to do this. And as a long-
25 time employee, she should have known that.

1 We've had other decisions by hearing officers that
2 said each case has to be treated in accordance with its own
3 factual content. No two cases are exactly alike. And the
4 results in a somewhat similar case must not dictate the
5 result in any other case. That was in the Twitty case. But
6 basically the court -- even the court here, Judge
7 (inaudible) adopted the Engquist language in one of his
8 orders in the case of State of Nevada v. Sturm. In that
9 case, the judge also ruled that no provision in any C 284
10 requires or even permits dismissal of a discipline near a
11 matter for an undo lapse of time.

12 I know that Ms. O'Keefe is upset that the
13 investigation did not begin until the fall of 2013, but
14 that's when she returned to DMV. DMV learned of her illegal
15 access into the database. The supervisors learned of it
16 only after she left DMV, and they could not do anything
17 about it. She worked for the Division of Insurance.

18 There has been absolutely no policy, procedure,
19 statute or regulation that says that any state agency that
20 once hired an employee can reach into some other agency to
21 impose discipline on that employee. I don't know of
22 anything in the regulations. There's been no evidence of
23 anything in the regulations. And, in fact, Alys Dobel,
24 who's been with the state for 28 odd years has never heard
25 of such a thing.

1 And so the substantial, reliable, probative
2 evidence reveals that O'Keefe misused the information
3 technology and that is an offense that required termination
4 for the first time you do it. She misrepresented her
5 authority. She talked to the sheriff's department and said
6 she was with DMV and she had a driver's license issue. She
7 doesn't have a driver's license issue as a DMV employee,
8 checking on DUIs. That is outside the scope of her job in
9 Motor Carrier and she had no business making that phone
10 call.

11 She conducted personal business on working hours,
12 because she was accessing the database at 6:30 in the
13 morning, 7:30 in the morning right when she got to work.
14 Nobody is on break at that time, even if that's what she
15 wanted to argue. But she's not allowed to get into that
16 database, period.

17 The State had just cause to terminate her
18 employment and the substantial, reliable, and probative
19 evidence reveals that the State had just cause. So the
20 State requests that you uphold her termination.

21 HEARING OFFICER: Thank you. Mr. Blanck.

22 MR. BLANCK: First, the (inaudible) applies here.
23 Undue delay. Why? Well, you had laches, which is an undue
24 delay and prejudice to the individual. And, obviously,
25 Ms. O'Keefe was prejudiced because she couldn't call the

1 sheriff's office. She didn't know what was going on a year
2 later after the alleged incidents. And what the DMV has
3 failed to show you or give any regulation, there's no
4 tolling for them. Oh, she left so we're just going to hold
5 this in abeyance. If she ever comes back -- what if she
6 came back 10 years later? They're saying they can still
7 bring this up and then investigate and terminate her?

8 No. They let the evidence get stale. They didn't
9 do anything. It took two interviews from the -- from the
10 investigator, unrefuted because they couldn't figure out
11 what they wanted to do. What's Ms. O'Keefe supposed to do?
12 She doesn't know what she's supposed to do either. She has
13 no clue that this is going on. And also they blindsided her
14 and there's no provision to allow for that either.

15 Ms. Scholl [sic] testified, "I was precluded by Ms. Dobel
16 from telling her anything that was going to happen."

17 Ms. Dobel said, "I don't remember saying that." I think
18 that'd be something she'd remember saying based on a
19 potential termination.

20 So they could have informed her at any given point
21 in August of '13, saying, oh, you're coming back. Well,
22 guess what, we're going to, you know, restart an
23 investigation, which she could have objected to at that time
24 saying wait a second, why the delay. What's, you know,
25 what's the delay for? And the delay -- the first delay is

1 you heard it from the two employees. "I overheard telephone
2 calls and I didn't report it until December 28th." Four
3 months. Well, they cite Prohibitions and Penalties that say
4 they were obligated to report this. And I'm like, well, if
5 they had that obligation, how come they're not fired for
6 waiting four months to bring it forward when they can no
7 longer do anything about it? You don't hear anything about
8 that.

9 Well, they waited four months so that's the way it
10 goes and, you know, we have no timeline, we have no time
11 frame. I'm like yes, you do. Everything we've brought up
12 says promptly deal with discipline. They didn't.

13 Now, you know, substantial evidence and what's in
14 the record; the issue here is what did Ms. O'Keefe do wrong
15 that justifies termination? I mean that's the whole thing
16 and that's the whole contention. And you look at
17 specificity of charges and there's been split testimony as
18 to did she do what they say or not, you know, employees came
19 forth and made allegations and then should she have done
20 this or shouldn't she. And they chose which prohibitions
21 and penalties to use on Page 4 of their Exhibit A. Okay.

22 Now, if you look at the first one, disregard and
23 deliberate failure to comply with enforced statewide
24 department of office regulations and policies. Let's say
25 that's true. First offense is two to a five. Well, guess

1 what; you heard Ms. Dobel testify, "We use progressive
2 discipline." Who do you have but Ms. Cara O'Keefe, a
3 seven-year excellent employee, high performance, bringing in
4 revenue? Nothing's wrong when she leaves on December 5th.
5 But Ms. Scholl [sic] tries to, you know, justify her
6 decision by saying, "Well, later I had found errors that she
7 had done." So what? It has nothing to do with her
8 performance or her evaluations, and it's just a way to cover
9 herself for saying, "Well, I'm going to discipline you now
10 and then termination you."

11 Well, using progressive discipline, you know, you
12 get a written reprimand or even a suspension on that first
13 offense saying, well, she did this wrong. Well, they don't
14 want to look at that. You don't hear them talking about
15 that. All's they say is accessing confidential information.
16 And it makes it sound like, you know that, you know, she's
17 supposed to run off to Russia and hide because the NSA is
18 looking for her because of these disclosures. It's
19 ridiculous. Confidential information means she goes in and
20 logs onto her computer. Everything that comes up is
21 confidential. What did she do? She looked at it, right?

22 Did she send it to anybody? Did she manipulate
23 it? Did she tell anybody what she saw? No, she didn't.
24 Now, they made this general statement, "Five employees have
25 been terminated for doing the same thing." We don't know

1 that. That wasn't the testimony. And there was no
2 incidents given as to when or by -- not even by name, but by
3 incidence of what they did. We heard Mr. Seidel testify,
4 oh, yeah, we just got rid of one employee or let them
5 resign, same thing, for sending out information they had
6 taken improperly off of the system. Well, guess what;
7 Ms. O'Keefe didn't send out any information to anyone.

8 So that's not the same. And they're saying
9 everybody gets terminated, and we brought up Jennifer
10 Irving; it's like no termination. And they're saying, well,
11 that's too long ago. Whether you believe it's '09, '10 or
12 in '07, the testimony unrefuted is these same prohibitions
13 and penalties were in effect in some form at that time.
14 Accessing confidential information and misusing it can lead
15 to termination potentially. Well, great. A woman who goes
16 out and misuses it and makes hundreds of phone calls, stalks
17 the victim she finds -- a two-week suspension.

18 Well, Ms. O'Keefe didn't do anything close to that.
19 Now they're saying we're tightening it up. We want to be
20 tough. And I'm like, okay, you know, no one says you have
21 to do the same thing. But if you look first thing with
22 Page 4, we'll get to -- and then I get to the "tightening
23 up." On Page 4 of their Prohibitions and Penalties
24 listings, conducting personal business during working hours,
25 one or two. All right. Write her up. You call this

1 personal? You give her a written reprimand. That's all you
2 get. That's the max.

3 Now, G, all right. What they want to do with G is
4 pick and choose the language that applies. And I'm like
5 that's absurd, because you've got to give the whole -- the
6 whole regulation meaning -- just like any statute, you can't
7 just pick and choose certain words. That actually would
8 negate everything else. What they want to use G for is
9 simply saying the use of information outside the scope of
10 your duty is termination. Well, how do you explain that
11 with H-4 that says it's one to five for unauthorized or
12 improper disclosure of confidential information? The two
13 conflict. And the only reason they conflict is if you use
14 DMV's interpretation.

15 The interpretation of G, misuse of information;
16 what does that mean? It's given by that criminal statute.
17 What do they mean by "misuse"? They mean by altering data,
18 fraud, changing documents, manipulating things. That's
19 what's immediately -- immediate grounds for termination. I
20 agree.. No argument. You commit something that potentially
21 is a crime. You should be fired. Now, they don't have to
22 wait here for it to actually be prosecuted. It just says
23 maybe subject to prosecution. But that whole context, that
24 whole frame, for immediate termination, has to be in that
25 context. You interpret that differently, there is no

1 substantial evidence that she did any of these things wrong
2 that could lead to any criminal violations.

3 So without that, you look at H-4 and it's like it can
4 run the range if it's really serious. What she did wasn't
5 serious. She looked at screens. I'm like, you know, it's
6 almost like give me a break. She looks at screens every
7 day. Now she looked at them and she made some phone calls
8 for a friend. They're saying you shouldn't do this and
9 we're like, okay, you want to discipline her. Fine. She
10 has no previous history of doing this. They already
11 mentioned Jennifer Irving had multiple suspensions until her
12 last one for something else; she's still working there.

13 Not Ms. O'Keefe. I mean this somehow, you know,
14 was totally unacceptable and grounds for termination
15 immediately, not by what they say. And number seven is the
16 same thing. "Acting in an official capacity without
17 authorization." She says, geez, I told them I was with DMV
18 but the next time I didn't. I'm like, great, you know, what
19 if she does that at home, you know, makes a mistake. It's
20 like people make mistakes. That doesn't mean they have this
21 number five, maximum termination, because she wasn't trying
22 to deceive anybody. She didn't get any information that
23 wasn't available anyway, and that's undisputed.

24 So you look at these Prohibitions and Penalties
25 and alls they're hanging there hat on is G and then saying

1 it should be the max because this was just so awful.
2 Well -- and then we told her so. And when did you tell her
3 so? Well, if you go back to Page 48 in their Exhibit A,
4 which is that letter from Bruce Breslow. They drafted it.
5 I think the same concept of drafting contracts. If there's
6 ambiguity it goes against the person that drafted it, not
7 the recipient. Is there ambiguities in here? Yeah. What
8 are the ambiguities? Well, you look at it and it just says,
9 number one, it's to all DMV employees, not just Motor
10 Carriers. So he's dealing with the entire DMV. Great.

11 In that first paragraph, you know, he talks about
12 here's some issues we've had, you know, people accessing
13 records for nonpersonal reasons and we don't want you to do
14 this, you know. Now, you heard Ms. O'Keefe testify saying,
15 well, personal to her meant for my benefit, not for some --
16 not for a potential client benefit or somebody asking DMV
17 questions. And you heard her testify that she was told,
18 look, help everybody. We want the DMV to be helpful. And
19 that's understandable because there's been ranting and
20 ravings about problems with DMV. And they're saying no, be
21 helpful. Ms. O'Keefe testified that even Mr. Breslow said
22 that. I want you to help everybody. Don't be an obstacle.

23 So the second paragraph there, and it goes to G-1,
24 the one with -- and they even cite the criminal statute.
25 And they say see, Ms. O'Keefe, we told you right there. You

1 violate that, that can get you prosecuted. And guess what;
2 even he doesn't get it right. He says the first offense can
3 result in termination, not shall, all right, not has to. In
4 their own Prohibitions and Penalties, if you violate that
5 provision there is no discretion. Number five, termination.
6 So all of a sudden he's like, no, I don't -- I'm not doing
7 that. Okay. Not termination, not mandatory, you know, not
8 this, you know, zero tolerance that we heard talked about.

9 Going down in the next paragraph, the information
10 contained, you know, the system is confidential covered by
11 the Privacy Act. And I'm like, I understand that. So who
12 received private information that wasn't supposed to? Not
13 the sheriff, okay. Maybe Ms. O'Keefe. And I'm like, but
14 she has access. If she clicks the wrong screen she's going
15 to see private information of numerous people like she does
16 her job every day. All right. So she looks at a screen,
17 she moves on, she moves off. She doesn't tell anybody. She
18 doesn't use the information for any, you know -- you know,
19 to give it to someone, to -- anything for her benefit or
20 anybody's benefit. She's trying to find out a process.

21 And he closes in his letter by saying,
22 "Appropriate disciplinary action will be taken if violations
23 occur." Appropriate, not termination. And that's the whole
24 problem with this letter. Yes, she signed it, she read it a
25 year and a half before she left. And now they're saying,

1 well, you're supposed to remember it. You signed this, you
2 know, we went over this with you. Okay. Her testimony is,
3 "I got all these people that are answering questions outside
4 the scope of Motor Carriers. We help people." Maybe she
5 went too far, and I'm saying fine. She went too far; you
6 want to give her a written reprimand, okay.

7 There was no damage to DMV. There was no loss, no
8 fraud, no data was changed. No one got any monetary
9 benefit. I mean where is this terrible conclusion that has
10 occurred because she did this? And alls they say is, well,
11 this is what we do for everybody. They're terminated. And
12 it's not true. Everyone doesn't get terminated and not for
13 doing the same thing, and they have no evidence that anyone
14 did what she did that got terminated.

15 Now, they write in their prehearing brief that the
16 Dredge decision covers this and you have to defer to the
17 agency. And that's totally absurd. The Knapp decision came
18 out afterwards and says no, no, no, you're here to review
19 the agency's decision. Dredge applies for security issues
20 at prisons. We're not dealing with that. You get to look
21 at this and say, okay, what's this big picture? What are we
22 looking at here? Does Ms. O'Keefe deserve to be terminated
23 based on the facts presented, you know? And it's like if
24 she had prior histories of discipline, they warned her, they
25 had done things, we wouldn't even be here. If she had any

1 previous history of saying, hey, we told you once before not
2 to do this. You did it again. You're out. Never happens.
3 No progressive discipline.

4 And yet they're saying terminate her because she's
5 so terrible. And the process they used I think there is no
6 tolling and the laches defense, which is a common law
7 defense saying you can't just wait. Now, if they're saying
8 they couldn't do anything because she left on December 5th,
9 case closed. Who says they have the right to reopen it?
10 They didn't present any testimony to that. They just did
11 it. They get to hold it in abeyance for how many years?
12 Forever? What's too long? No one's -- you have no -- you
13 have no guidelines for that. They just said we did it and
14 we did it to her detriment, because we didn't tell her. And
15 she told you. She goes I was applying for another job. I
16 could have gotten an interview. Alls Ms. Scholl [sic] had
17 to do was say, hey, guess what, you come back, we're going
18 to have to investigate these allegations of misconduct.
19 That could lead to termination. She denies saying anything.

20 Well, Ms. O'Keefe said, "I talked to her a couple
21 times." Why? I don't even know when to come back. How did
22 she find out what time to show up? So Ms. Scholl's [sic]
23 testimony doesn't carry a lot of weight that she never
24 talked to her and she said, "I don't remember," not that I
25 didn't. Big difference. So what do you tell her?

1 And then her testimony, Ms. Scholl [sic], is well,
2 she was a bad employee. Well, she's exemplary in her evals,
3 but after that I felt that she was a bad employee. Did you
4 tell her that? You're coming back saying I think you're a
5 terrible employee, but come on back. No. Ms. O'Keefe said,
6 "Your desk is there ready and waiting."

7 A setup if I've ever heard one, defines the laches
8 defense and just justifying a termination with things that
9 don't even fit in their prohibitions and penalties and a
10 misinterpretation of their own rules and regulations. They
11 are governed by the specificity of charges. I mean they
12 can't add, they can't take away from it, you know, it's in
13 there. That's what's in there. And, you know, it states --
14 it's interesting. In their first page, it goes two
15 employees came forth separately. You heard the testimony.
16 One employee came forth and then she went and got the second
17 one. So you can add a little bit. No, that's not true.
18 That's not what they did. That's not how it came forth.
19 That's not how what the information -- or the testimony was
20 on how this occurred.

21 And in the specificity it says, you know, it
22 refers to -- it's great on the second page, "The
23 administrator decided it was not necessary to investigate
24 the allegations." You know what that means? It's not
25 serious. They didn't say, you know, the sole reason we're

1 not investigating is because she's not here anymore. Well,
2 they still knew she was a State employee. Why couldn't
3 they, you know, they could have done the investigation.
4 Made the findings saying guess what, she's not eligible for
5 rehire. Then they don't have to take her back if she
6 doesn't pass probation from the other job. But they don't
7 do that.

8 Instead, they try to say, look, you know, look at
9 what you did and now we're hiding behind confidentiality and
10 saying, well, we think there's other people that did this.
11 But then Mr. Seidel said, well, it wasn't exactly the same.
12 The other people were worse. And they still have an
13 employee there that did something exceedingly worse, so
14 there is no consistency. And because there's no consistency
15 they don't have to rely on what they want to say they want
16 to do to Ms. O'Keefe.

17 And, you know, giving her the two interviews --
18 there's some differing testimony. Well, the investigator
19 says, "I come the first time and then got done and it's like
20 they didn't like it." Well, Ms. O'Keefe testifies and even
21 if you take that she was told "manipulation or production of
22 data outside the scope of your duty." That's in their -- I
23 don't know the exact exhibit. It's in the record there, but
24 we talked about that. By who, when, dates, times? Give
25 them to me so I can respond to those allegations. That's

1 what due process requires. I don't just say what did you do
2 wrong? I'm charging you with violating our rules and
3 regulations.

4 Okay. Okay. How do you respond to that? I don't
5 know. Tell me when you think I did it. Who did I do? What
6 did I do? When did I do it? That didn't happen in the
7 first interview. They needed a second one to just kind of
8 ferret out everything, but they were required to tell her
9 ahead of time in writing guess what, here's what we say you
10 did on what date and we're going to terminate you for this.
11 How can she prepare? That's the whole thing. There's no --
12 there's no equity. There's no due process. There's laches.
13 She can't prepare for her defense. She gets blindsided.
14 And why? Because she got, you know, she was a great
15 employee for seven years. She misunderstood a -- or
16 misinterpreted a few regulations that could get her hand
17 slapped and get written up? Yes.

18 Instead, now we're hearing it's like -- I don't
19 know if they keep hearing this, but confidential database.
20 The whole database is confidential. It's not like she went
21 and broke through some firewall to access information. And
22 that's what we hear when people access confidential
23 information. Everything she's got is confidential. What'd
24 she do with it? Her eyes looked at the screen. And I'm
25 like for that you're going to terminate her? And I'm like,

1 well, she's was doing things wrong (inaudible). Okay.

2 That's not right.

3 However, give her the warning -- she told you. If
4 you tell me this, I'm not going to help anybody. I'm not
5 going to follow -- I'm just going to do the very basics of
6 what I'm supposed to do and that'll be it. We won't have
7 any problems. And they can do that, because the whole point
8 of progressive discipline is corrective action.

9 So that's what I think should be done here, is
10 less than termination, you know, I think it's a written
11 reprimand. If they want to suspend her for two weeks, I'm
12 like, you know, I think that's still severe, but to
13 terminate her, end her career over this, to me, is absurd
14 and not supported by substantial evidence, nor is it
15 supported by your ability to review their decision in
16 Knapp v. State, which is 892 P.2d 575.

17 HEARING OFFICER: Say that again.

18 MR. BLANCK: 892 p.2d 575. That was in 1995.
19 That came out after Dredge. And there have been numerous
20 decisions -- none in Nevada, which is not surprising --
21 dealing with delays, but McClelland v. Department of Public
22 Safety out of the Court of Special Appeals in Maryland,
23 166 Md.App. 1 in 2005. Basically, the court there ruled
24 there saying you're right, untimely action can be removed or
25 kicked out. Not all of it sometimes, but some can if you --

1 if you miss your time frames, you miss your deadlines, you
2 don't do things promptly. You can't do them.

3 HEARING OFFICER: What's the case again?

4 MR. BLANCK: McClelland v. Department of Public
5 Safety, 166 Md.App., A-P-P, 1 -- number 1, 2005. It's a
6 little -- it was hard finding anything directly on point,
7 but it does talk about not -- action that was learned
8 earlier and not timely taken, pursuant to Maryland codes.
9 Thing we have here is saying what's the code as to how soon
10 they have to act. Well, guess what, DMV and the State
11 haven't adopted any regulations and code. So now they want
12 unfettered discretion to say we determine when we can and
13 when we can't.

14 You shouldn't let them do it. She doesn't deserve
15 to be terminated. She should be reinstated with back pay.
16 If they want to impose other discipline, so be it, and she
17 can get on with her life, and the DMV won't be any worse
18 off. You heard the unrefuted testimony for that. Thank
19 you.

20 HEARING OFFICER: Thank you. Ms. Hoover, are you
21 going to have a few things you want to say?

22 MS. HOOVER: I have rebuttal and I'm permitted to
23 do that under the hearing officer rules.

24 HEARING OFFICER: That's fine.

25 MS. HOOVER: First of all, this argument about

1 laches; they had no ability to investigate her when she was
2 an employee of another agency. She was not a DMV employee
3 when this came to light. DMV views this as an extremely
4 serious violation. That is why Bruce Breslow put his memo
5 out in 2001, so that all of the divisions of DMV would be on
6 the same page. Yes, it went to all the divisions, and it
7 went to all the divisions so that every single employee
8 looked at this, went over it with their supervisor and was
9 told you can be fired for this. Don't do it.

10 These records are held in trust for the people of
11 Nevada. You're not allowed to look at them. You're not
12 even allowed to look up your own record. That is misuse of
13 technology. And so she comes -- she notifies them she's
14 coming back to work. The testimony of Karen Stoll is she
15 spent hours and hours trying to see if this person could
16 possibly be a Motor Carrier employee. She was trying to
17 clear Cara, because she knew what the penalty was. And
18 not -- and -- so nothing could happen until Karen was able
19 to determine this is in no way, shape or form a Motor
20 Carrier customer.

21 And she testified as to all the databases she
22 looked at, even to the logs, I think, that Cara filled out
23 during the day of her daily activities so that she could
24 figure out if there was any legitimate reason to look at
25 this. And they could not begin the investigation until that

1 time. A supervisor in Motor Carrier does not have time to
2 spend looking up this kind of records for someone who no
3 longer works for them. If she wasn't working there, there
4 was nothing they could do. The reversion provisions in the
5 statute say that you have a year to make permanent status.

6 Ms. O'Keefe did not make permanent status. She
7 came back. She was notified in August. So she was only
8 gone for seven months. She left in December. She --
9 they -- she was notified -- DMV was notified in August of
10 the following year that she'd be returning. She came back
11 in September. So not even a year had gone by, and then when
12 she became an employee -- and DMV didn't have any say in the
13 matter. When someone is reverted off of a probationary
14 position and they revert to their old job, the other agency
15 has to take them back, even if they have to basically throw
16 someone out of the job that they took to fill. So if
17 O'Keefe were to come back, the person who took her job would
18 get put on the layoff list if there were no other openings.

19 So it's not -- it's not a situation where DMV had
20 a choice about taking her back. But DMV views this as a
21 very serious violation. That's why the memo came out. So
22 that from that point forward all the discipline would be
23 consistent. And that's what they've done. They have
24 managed to terminate people who have gone into the database
25 for any reason. Some people go into it for friends. Some

1 people like to look up old boyfriends. You're not allowed
2 to do that. They don't let you do that. And so the
3 investigation couldn't even be considered an investigation
4 because they didn't look at the allegations from these two
5 employees until Karen basically looked through all those
6 databases, all those records to determine is there anything
7 there. Then they could begin the investigation.

8 Now, he says that there's different P and P's and
9 he cites this unauthorized or improper disclosure of
10 confidential information. DMV has other information that's
11 confidential that isn't in the DMV database. They have
12 personnel information that's confidential. That could be
13 covered under here. There's all kinds of information that
14 an organization would have that would be considered
15 confidential under the statutes. And depending on what they
16 release, it could be a one to five.

17 All this talk about the forgery statute under
18 NRS 205.481, it doesn't mean that everybody who gets into a
19 record is going to forge some document, but it does notify
20 people that if you do that you could get criminally charged
21 with that. But she did use the data in deciding to call the
22 sheriff's office, and noticing that these records weren't
23 the same, checking to see if addresses were the same, trying
24 to make sure of all this stuff. Her sole responsibility to
25 help people under that "Ask me, I can help you with that"

1 slogan means that she's supposed to refer them to the
2 correct part of DMV that can help them out. It doesn't mean
3 that she's supposed to go nosing around in people's personal
4 records.

5 She had no permission from anybody to look up the
6 wife's record. She looked up the husband's record she says
7 because she had permission. But it doesn't matter. I can
8 give you permission. I could give Karen permission to look
9 up my record tomorrow and she wouldn't do it, because she's
10 not allowed to do that. And everybody understands it. And
11 the other thing that was telling about the testimony is
12 almost every witness who sat up there knows that this is a
13 violation of the policy and procedures, and they would not
14 look up those records. They understood it. Even witnesses
15 that testified on Cara's behalf said the same thing. So
16 they all know that it was a violation.

17 Now, the Department interprets its prohibitions
18 and penalties, and that's entitled to deference, because
19 just because an employee reads them and says, well, that's
20 not how I see it. Well, that's how DMV sees it. That's how
21 DMV has interpreted those prohibitions and penalties and
22 that's how they've applied them in a consistent manner
23 throughout the agency. And that is entitled to deference.

24 The idea that she just looked at the screens is
25 not true. She had to enter someone's name. She had to

1 enter someone's driver's license. She had to enter some
2 kind of information to access those records. They don't
3 just pop up. And that's what she did. And the substantial,
4 reliable, and probative evidence reveals that.

5 Now, counsel says that they should have
6 investigated while she was gone so when she came back she
7 would not be eligible for rehire. I don't know any
8 provision that permits an agency that no longer has an
9 employee working there to investigate them so they can say
10 you're no longer eligible for rehire. There would be all
11 kinds of due process issues with that, because the employee
12 is entitled, as Ms. O'Keefe was, to be notified of the -- of
13 the charges to be able to tell her story to the
14 investigator, not once but twice. She got to tell her story
15 to the investigator twice. She got to tell her story to the
16 predisciplinary hearing officer. So she had three chances
17 to put her position forward before DMV before discipline was
18 imposed.

19 MR. BLANCK: I want to object. That's not the
20 testimony of the first investigation. It was very short,
21 so...

22 MS. HOOVER: Well, she wasn't -- that's --

23 HEARING OFFICER: So noticed for the record, but
24 she did have three -- I would have to agree that she had
25 three opportunities to discuss the incident.

1 MS. HOOVER: And as far as the testimony of Karen
2 Stoll, she testified she did give her good evaluations, but
3 she didn't know that she was getting into the confidential
4 database and looking things up that she had no business
5 looking up. That would have definitely changed the
6 evaluations and would've led to termination.

7 The letter from Bruce Breslow, there's a reason
8 that that line says that she can be terminated for this.
9 It's in bold. It's underlined. He wanted people to see
10 that. There's a reason it's bolded and underlined. It was
11 to put the employees on notice this is not a joke. This
12 doesn't mean you can look up your own record or you can look
13 up your friend's record. It means that you're not allowed
14 to do that. And I think that DMV did everything it could.
15 When they were told she was coming back they began looking
16 at whether they were going to have to investigate this.

17 And there was no way to tell her, oh, we're going
18 to investigate you if you come back, because they didn't
19 know if any of these allegations even had any basis. They
20 didn't know if this guy was a Motor Carrier employee [sic].
21 And Karen had to -- Motor Carrier customer. Karen Stoll had
22 to look at the records and determine what was going to
23 happen. So, yes, it was basically nine months from the time
24 that she left DMV. And it was only -- it was a much shorter
25 time than that because they didn't find out until after she

1 had gone. The supervisors did not know that she had been
2 accessing the confidential database. If they had known that
3 they would have launched an immediate investigation and she
4 probably would have been fired before she was able to
5 promote up to the Division of Insurance.

6 Other employees have been treated the same way.
7 If this employee is treated differently then it's not fair
8 to all the other employees that have been fired for
9 accessing the database. DMV has been consistent. They have
10 not put people's names into the record on purpose, because
11 it isn't fair to those other people to have their records
12 made public, and they're not allowed to do it by law.

13 I'll say in closing that DMV has treated
14 Ms. O'Keefe the same as other employees and they have --
15 they had no authority at all to investigate her, but when
16 they were forced to take her back then they had to look at
17 the violation, because they cannot treat her differently
18 than others. Others have been fired for this and she did
19 the same thing that she was -- that every employee who
20 testified here knew that this was wrong and she knew it was
21 wrong. And so we're asking that you uphold the termination.

22 HEARING OFFICER: Thank you. I guess just a
23 couple comments. G-1 on the -- as far as the Page 4. I
24 guess, Mr. Blanck, your interpretation, the way I'm
25 understanding it, is that they have to be -- there has to be

1 some tie to NRS 205.481, and the way I read it, it doesn't -
2 - it just says "may be subject to prosecution." I don't see
3 a requirement that (inaudible) fall under that.

4 MR. BLANCK: I think the "may" applies here, but
5 it doesn't mean you have to go out and prosecute them
6 criminally. But I think that sets the standard of what type
7 of misconduct we're looking at. Not that -- I agree. You
8 can't say it if you don't -- if I don't prosecute you I
9 can't discipline you. I think that's where the "may" comes
10 in. In other words, you may be prosecuted and for what?
11 For all these things; manipulation. So my argument -- well,
12 they're saying just the use, and I'm kind of going if you
13 just say that use can get you terminated, you don't need a
14 whole bunch of prohibitions and penalties. It negates the
15 others.

16 So I understand what you're saying. You're right.
17 It does not mean prosecution is mandatory, but "may" means
18 that in this -- I don't think you can pull it out and look
19 at it separately. That's -- so I'm tying them together that
20 way, not by the fact that you have to prosecute.

21 HEARING OFFICER: But wouldn't you agree that if
22 it was just the use of production data or information
23 outside the scope of one's job responsibilities would be a
24 violation?

25 MR. BLANCK: It would be a violation, but not a

1 terminable offense. I think the number five, mandatory
2 termination, means you did something that was possibly a
3 crime. That's why -- that's why you're terminated, because
4 the next one under there says "unauthorized or improper
5 disclosure of confidential information." Same thing.
6 That's the use of confidential information is a one to a
7 five. There's a realm. I'm saying G-1, by being five only,
8 the five only has to apply with conduct that's potentially
9 criminal or serious -- or rises to the level of that
10 seriousness.

11 HEARING OFFICER: I guess that goes to if that's
12 what they meant, why didn't they say that specifically?

13 MR. BLANCK: Well, that's what I'm saying here.
14 They put it in there.

15 HEARING OFFICER: But why didn't they say clearly
16 it (inaudible) --

17 MR. BLANCK: I don't know why they didn't -- I
18 don't -- but if they didn't think NRS 205.461 [sic] had any
19 weight, don't put it in there. They put it in there, so you
20 have to give it some meaning.

21 HEARING OFFICER: Well --

22 MR. BLANCK: And as well as -- well, no -- I mean,
23 yeah, it is in there. It has to be given meaning. You
24 can't ignore it. They want to ignore it.

25 HEARING OFFICER: Okay.

1 MR. BLANCK: I don't think that's appropriate
2 (inaudible).

3 HEARING OFFICER: Ms. Hoover, do you want to
4 respond to that?

5 MS. HOOVER: The testimony was that other people
6 haven't been charged criminally, but still have been fired
7 under this very provision. None of the people that have
8 been for this provision since 2011 were charged with
9 NRS 205.481. You may be charged. It is a warning to the
10 employee that if you manipulate that data in such a way that
11 it's forged, you can also face criminal penalties.

12 HEARING OFFICER: I -- no, I understand that. I
13 guess -- and well, if --

14 MS. HOOVER: It doesn't say you have to.

15 HEARING OFFICER: -- if you go with the
16 interpretation of G-1 that it's just the use of the data is
17 a five, then what's the point of H-4? Isn't that
18 duplicative or is there a difference between them?

19 MS. HOOVER: There's different -- there's a
20 difference between what is in the database and other kinds
21 of confidential information that DMV may handle. In other
22 words, the personnel records aren't in the database. Nobody
23 can get into the personnel records, yet you can get a one to
24 a five if you release those confidential personnel records
25 under 284.718 and 284.726 of the NAC. So this H-4 could

1 cover that also. There's other types of confidential
2 information that is a one to a five. And that's not the
3 information that's in that production data and information
4 technology databases. That has its own separate P and P,
5 which is a five. So there's other confidential information
6 that H-4 would cover.

7 HEARING OFFICER: Okay.

8 MR. BLANCK: That's not what it says though,
9 but -- because then H --

10 MS. HOOVER: Well, that's why they're separate.

11 MR. BLANCK: Well, G-1 doesn't say -- it says
12 manipulation/production of data and is -- and the only
13 testimony is that she accessed confidential information
14 improperly.

15 MS. HOOVER: It's information technology. It's
16 under misuse of information technology.

17 MR. BLANCK: Right. And she didn't -- all she did
18 was go on her work computer. How that's information
19 technology abuse, because computers are technology? I mean
20 it just opens up -- like you said, it opens it up for
21 anything. Anything you do using your computer at work we
22 can fire you for the first offense. I think that's what the
23 hearing officer --

24 MS. HOOVER: If you get into the -- if you get
25 into the confidential DMV database for a nonbusiness

1 purpose, yes, you can be fired for that.

2 MR. BLANCK: Everything is confidential, so you're
3 right. Why is four listed if everything she looked at was
4 confidential? And that's what you're faced with as far as
5 interpreting -- how do you give that meaning to give the
6 other ones meaning?

7 MS. HOOVER: Four covers other -- doesn't cover
8 the -- isn't a --

9 MR. BLANCK: Doesn't --

10 MS. HOOVER: -- doesn't cover database. It just
11 talks about disclosure of confidential information.

12 MR. BLANCK: She was -- she's charged with
13 exposure of confidential information. That's what -- I mean
14 I don't know how many times I heard that in testimony.
15 Not -- she's not improperly giving data to somebody. No.
16 You accessed confidential information for personal use. And
17 I'm like there you go. Yeah --

18 MS. HOOVER: She did and she used it to call the
19 sheriff's office.

20 MR. BLANCK: And there it is. Personal business,
21 number four -- C-4, an unauthorized thing. H-4. Nothing in
22 G-1.

23 HEARING OFFICER: Okay. I understand --

24 MR. BLANCK: Okay.

25 HEARING OFFICER: -- both your arguments -- both

1 party's arguments. And we're going to close the hearing and
2 close the record. I'll have a decision within 30 days. I
3 thank both parties for presenting (inaudible) good closing
4 arguments. Thank you.

5 MS. HOOVER: Thank you.

6 MR. BLANCK: Thank you.

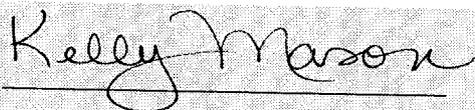
7 (Whereupon, the hearing
8 was adjourned.)

9 --oOo--

CERTIFICATE OF TRANSCRIPT

I, Kelly Mason, as the Official Transcriber, hereby certify that the attached proceedings before Hearing Officer, were held as herein appears and that this is the original transcript thereof and that the statements that appear in this transcript were transcribed by me to the best of my ability.

I further certify that this transcript is a true, complete, and accurate record of the proceeding that took place in this matter on March 25, 2014.

A handwritten signature in cursive script that reads "Kelly Mason". The signature is written in black ink on a light-colored background.

Kelly Mason
May 31, 2014