

# *Dep't of Sanitation v Wight*

OATH Index No. 1601/12 (May 31, 2012)

Sanitation worker charged with failing to restore suspended driver's license and with AWOL. After default hearing, charges sustained and termination recommended.

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## NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

*In the Matter of*  
DEPARTMENT OF SANITATION

*Petitioner*

*- against -*

CHARLES WIGHT

*Respondent*

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### **REPORT AND RECOMMENDATION**

**JOHN B. SPOONER**, *Administrative Law Judge*

This disciplinary proceeding was referred to me in accordance with section 75 of the Civil Service Law. Respondent, Charles Wight, is charged with failing to have his suspended driver's license reinstated and with being absent without leave (AWOL), from April 18, 2012, to date.

A hearing on the charges was scheduled to be conducted before me on May 21, 2012. Upon respondent's failure to appear, proper proof of service of the charges and the notice of hearing were submitted (Pet. Ex. 1). Such evidence established the jurisdictional prerequisites for finding respondent in default and the hearing went forward as an inquest, in which petitioner submitted documentary evidence in support of the charges.

As discussed below, I find that the charges should be sustained and that respondent should be terminated.

### **ANALYSIS**

As proof of the two charges, petitioner submitted two affidavits. The first affidavit (Pet. Ex. 2) was from an executive assistant who had reviewed respondent's Department of Motor Vehicle records. These records indicated that respondent's driver's license, which was issued in 1993, was suspended on October 15, 2009, for lapsed insurance. On March 1, 2012, another

suspension was ordered due to respondent's failure to pay child support. Pursuant to Department rule 3.4, all sanitation workers are required to have a valid driver's license. This charge should be sustained.

A second affidavit from Department superintendent, dated May 18, 2012, indicated that respondent was ordered to report for work on April 18, 2012, and had failed to do so. Respondent had then been absent through May 18. Respondent was marked AWOL for these absences. Department rule 1.4 provides that employees may not be absent without authorization. Department rule 3.1 requires employees to obey all rules and orders. This charge should also be sustained.

### **FINDINGS AND CONCLUSIONS**

1. Respondent was properly served with the charges and notice of hearing.
2. Respondent failed to reinstate his driver's license after it was suspended on October 15, 2009, in violation of Department rule 3.4.
3. Respondent was absent without leave from April 18, 2012, to present, in violation of Department rules 1.4 and 3.1.

### **RECOMMENDATION**

Upon making the above findings, I requested and received a copy of respondent's personnel record. He was appointed as a sanitation worker in 1993. He has been disciplined once, in 2010, when he was suspended for 14 days for disobeying an order. His performance evaluation for 2010 was "unsatisfactory," although his 2009 evaluation was "outstanding."

Respondent has been found guilty of failing to have a valid driver's license and with failing to have the license reinstated after being notified of the need to do so. Respondent's failure to possess a valid driver's license precludes him from continued employment as a sanitation worker. *See Dep't of Sanitation v. Wallace*, OATH Index No. 887/00 (May 15, 2000), *aff'd*, 303 A.D.2d 295, 756 N.Y.S.2d 571 (1st Dep't 2003); *Dep't of Sanitation v. Carpenter*, NYC Civ. Serv. Comm'n Item No. CD 91-145 (Dec. 2, 1991); *Triborough Bridge and Tunnel Auth. v. Weeks*, OATH Index No. 165/88 (May 13, 1988) (where driver's license is required for employee's job title and employee loses license, termination appropriate). In addition, his

unauthorized absence is a fundamental form of misconduct which impedes the agency's ability to function.

The appropriate penalty for this misconduct is termination and I so recommend.

John B. Spooner  
Administrative Law Judge

May 31, 2012

SUBMITTED TO:

**JOHN J. DOHERTY**  
*Commissioner*

APPEARANCES:

**CARLTON LAING, ESQ.**  
*Attorney for Petitioner*

*No Appearance by Respondent*