

COMMONWEALTH OF PENNSYLVANIA

Gerald L. Rea : State Civil Service Commission  
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 v. :  
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 Pennsylvania Department of :  
 Transportation and Office of :  
 Administration, Executive Offices : Appeal No. 30575

Jamie Kuntz  
Indispensable Party<sup>1</sup>

Gerald L. Rea  
*Pro Se*

Eric J. Jackson  
Attorney for Appointing Authority

Anthony R. Holbert  
Amy Jo Gregory  
Attorneys for Office of Administration

ADJUDICATION

This is an appeal by Gerald L. Rea challenging his non-selection for promotion to the position of Driver License Center Supervisor with the Pennsylvania Department of Transportation. A hearing was held on March 9, 2021, via video, before Commissioner Gregory M. Lane.

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<sup>1</sup> In recognition of the due process requirements noted in *Jefferson County Assistance Office, Department of Public Welfare v. Wolfe*, 582 A.2d 425 (Pa. Commw. Ct. 1990), the individual currently occupying the challenged position was given the opportunity to participate in the proceedings, which she accepted. Comm. Exs. B, B-1.

The Commissioners have reviewed the Notes of Testimony and the exhibits introduced at the hearing. The issue before the Commission is whether the appointing authority did not select appellant for the position of Driver License Center Supervisor for reasons motivated by discrimination.

### FINDINGS OF FACT

1. On June 12, 2020, appellant was verbally informed he was not selected for the position of Driver License Center Supervisor with the Pennsylvania Department of Transportation (hereinafter “appointing authority”). Comm. Ex. A.
2. The appeal was properly raised before this Commission and was heard under Section 3003(7)(ii) of Act 71 of 2018.
3. Appellant is currently employed by the appointing authority as a Driver License Examiner. Appellant has held this position since March 16, 1993. Appellant also worked out-of-class in a supervisory position for seventeen years. N.T. pp. 31, 36.
4. In May 2020, appellant applied for the position of Driver License Center Supervisor with the appointing authority. N.T. pp. 33-34; Ap. Ex. 1.

5. Jamie Kuntz was selected for the Driver License Center Supervisor position to which appellant applied. N.T. p. 164.
6. To be eligible for the Driver License Center Supervisor position, candidates were required to satisfy the minimum experience and training requirements (hereinafter “METs”), as well as the meritorious service and seniority requirements for the position. N.T. pp. 34, 68, 98; Ap. Ex. 1; OA Ex. 6 (p. 2).
7. Under the METs, there were two methods, by which candidates could qualify for the position. Candidates were required to have: 1) one year of experience as a Driver License Examiner; *or* 2) three years of experience obtaining, evaluating, and providing information to the public, including one year of experience conducting driver tests or driver training. N.T. pp. 34, 42; Ap. Ex. 1 (p. 3).
8. The Evaluation Guide for the Driver License Center Supervisor, Examiner, and Assistant job titles (hereinafter “Evaluation Guide”) defines the phrase “experience conducting driver tests and driver

training.” As it pertains to the Driver License Center Supervisor job title, this phrase includes both road testing and computerized testing of drivers. N.T. pp. 73-76; OA Ex. 3 (p. 2).

9. To satisfy the meritorious service requirement, the candidate: 1) cannot have any discipline above a written reprimand during the twelve months preceding the closing date of the posting; and 2) must have received a rating of “Satisfactory” or above on the most recent employee performance review (hereinafter “EPR”). N.T. p. 99; Ap. Ex. 1 (p. 4).
  
10. To satisfy the seniority requirement, candidates are required to have served a minimum of one year in the next lower classification by the posting closing date. Alternatively, the candidate may have served in a position for which there is a logical occupational, functional or career developmental relationship to the posted position, or a clear linkage between the required knowledge, skills, and abilities of the previously or currently held job with those needs for the posted position. N.T. pp. 97-98, 100, 109; Ap. Ex. 1 (p. 4); OA Ex. 6 (p. 2).

11. The next lower job classifications are designated on the job posting. N.T. p. 101.
12. The next lower job classifications for the Driver License Center Supervisor position are Driver License Examiner Assistant and Driver License Examiner. Ap. Ex. 1 (p. 4).
13. Driver License Examiner Assistant was properly designated as a next lower classification because promotion to Driver License Center Supervisor is considered to be a logical career path. N.T. pp. 110-111.
14. Kuntz qualified for the position under the second method listed in the METs, and she satisfied the meritorious service and seniority requirements. N.T. pp. 79, 81-82, 106, 108.
15. Prior to being selected for the position, Kuntz held the position of Driver License Examiner Assistant, from 2009 until her selection. N.T. pp. 35, 79, 109-110; OA Ex. 4 (p. 1).
16. As a Driver License Examiner Assistant, Kuntz proctored standardized driver knowledge tests, performed visual acuity screenings, verified identity

and related documents, and processed driver license applications and test results. Kuntz's duties also required her to interact with the public. N.T. pp. 79-81; OA Exs. 4 (p. 1), 5 (p. 1).

17. Kuntz did not have any discipline. N.T. p. 108.
18. On her most recent EPR, Kuntz received an overall rating of "Outstanding." N.T. p. 107; OA Ex. 4 (p. 8).
19. In evaluating Kuntz's eligibility, the Office of Administration did not deviate from the applicable rules, regulations, or policies. N.T. pp. 82, 111.
20. In or around May 27, 2020, appellant and Kuntz interviewed with the appointing authority for the Driver License Center Supervisor position. AA Exs. 6, 7.
21. A three-member panel conducted the interviews for the Driver License Center Supervisor position. N.T. p. 130.

22. Retired Northwest District Manager Larry Tanner, Greater Pittsburgh District Manager Dana Nash, and Dwaine Kromer served on the interview panel. N.T. pp. 126, 129-130, 152-153, 155-156.
23. The Driver License Center Supervisor position, for which appellant and Kuntz interviewed, was located in Tanner's District. Therefore, Tanner was responsible for making the selection recommendation. N.T. p. 156.
24. Tanner, Nash, and Kromer unanimously agreed Kuntz was the best candidate based on her interview. N.T. pp. 132-133, 164.
25. Kuntz and appellant were asked the same questions during the interview. AA Exs. 6, 7.
26. Kuntz was more professional, more motivated, and better prepared than the other candidates. Also, she gave the best answers to the interview questions. N.T. pp. 132-133, 136, 138, 159.
27. Appellant did not come prepared for the interview. N.T. pp. 147-148.

28. When appellant came to the interview, his mask was below his nose and practically off. N.T. pp. 146, 161.
29. Appellant failed to share relevant work experiences in response to the interview questions. Also, appellant “hemmed and hawed” before providing his responses to the interview questions. N.T. pp. 147, 162-163; AA Ex. 7.
30. Interview question number four asked: “Tell us about a time when you had to defend a decision you made even though others were opposed to your decision.” In response, appellant provided an example from his work with the fire department, rather than experiences related to his position with the appointing authority. N.T. pp. 147, 162; AA Ex. 7.
31. Interview question number five asked: “When evaluating an employee or team member’s performance, what factors are most important to you?” In response, appellant asked, “What would we be evaluating them for,” and then he “hemmed and hawed” before providing an answer. N.T. p. 162; AA Ex. 7.

32. Interview question number seven asked: “Describe a situation in which you had to follow up on assignments that you had delegated to others.” Appellant responded, “I cannot think of what that would include,” before providing an answer, which did not answer the question. N.T. p. 163; AA Ex. 7.

### DISCUSSION

The issue before the Commission is whether appellant presented sufficient evidence to prove his non-selection for the position of Driver License Center Supervisor was for reasons motivated by discrimination. Appellant could only bring this challenge through Section 3003(7)(ii) of Act 71 of 2018<sup>2</sup> (hereinafter “the Act”) based upon an allegation that the appointing authority’s decision not to select him was motivated by discrimination in violation of Section 2704 of the Act. 71 Pa.C.S.A. §§ 2704, 3003(7)(ii). Specifically, appellant alleges he was discriminated against based on his sex and age. Comm Ex. A.

In an appeal alleging discrimination, the burden of presenting evidence in support of all allegations of discrimination lies with the appellant. *Nosko v. Somerset State Hospital*, 139 Pa. Commw. 367, 370-371, 590 A.2d. 844, 846 (1991). Accordingly, the sole question for determination by this Commission is whether appellant has presented evidence sufficient to establish his claim of discrimination. Section 2704 of the Act provides:

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<sup>2</sup> Act of June 28, 2018, P.L. 460, No. 71, § 1.

An officer or employee of the Commonwealth may not discriminate against an individual in recruitment, examination, appointment, training, promotion, retention or any other personnel action with respect to the classified service because of race, gender, religion, disability or political, partisan or labor union affiliation or other nonmerit factors.

71 Pa.C.S.A. § 2704. The prohibition set forth in this section encompasses two general types of discrimination—“traditional discrimination,” which encompasses claims of discrimination based on labor union affiliation, race, sex, national origin or other non-merit factors; and “technical discrimination,” which involves a violation of procedures required pursuant to the Act or related Rules. *Price v. Luzerne/Wyoming Counties Area Agency on Aging*, 672 A.2d 409, 411 n. 4 (Pa. Commw. Ct. 1996), citing *Pronko v. Department of Revenue*, 114 Pa. Commw. 428, 539 A.2d 462 (1988). Here, appellant has alleged traditional discrimination claims based on his sex and age. N.T. pp. 37-38; Comm Ex. A.

At the hearing, appellant testified on his own behalf. The Office of Administration (hereinafter “OA”) presented the testimony of Evaluation Unit Supervisor Deborah Krammes<sup>3</sup> and Audit Section Manager Amanda Crawford.<sup>4</sup>

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<sup>3</sup> Krammes is employed by OA as a Human Resource Analyst 3. N.T. pp. 63-64. The working title for her position is Evaluation Unit Supervisor. N.T. p. 64. Krammes works within OA’s Bureau of Talent Acquisition, which is responsible for reviewing information provided by job candidates and determining whether the candidates meet the minimum experience and training requirements for a position. N.T. p. 67. Krammes has approximately thirty-one years of Commonwealth service, nineteen of which are in performing evaluations. N.T. pp. 65-66. Krammes was responsible for evaluating the selected candidate’s eligibility for the position. N.T. p. 77.

<sup>4</sup> Crawford is employed by OA as a Human Resource Analyst 4, within OA’s Bureau of Talent Acquisition. N.T. pp. 90-92. The working title for her position is Manager of the Audit Section. N.T. p. 91. Crawford has approximately fifteen years of Human Resources experience with the Commonwealth. N.T. pp. 91-92. The Audit Section, which Crawford supervises, was responsible for determining whether the selected candidate met the meritorious service and seniority requirements of the position. N.T. pp. 107, 109.

The appointing authority presented the testimony of District Manager Dana Nash<sup>5</sup> and retired District Manager Larry Tanner.<sup>6</sup> The indispensable party, Jamie Kuntz, did not present testimony on her own behalf. The evidence presented by the parties is summarized below.<sup>7</sup>

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<sup>5</sup> Nash is employed by the appointing authority as the District Manager for the Greater Pittsburgh District. N.T. p. 126. Nash has served in this position for approximately two years and has worked for the appointing authority for twenty-one years. N.T. pp. 127-128. Nash was on the interview panel for the Driver License Center Supervisor position, which is at issue in the present appeal. N.T. p. 129.

<sup>6</sup> Tanner was employed by the appointing authority as the Northwest District Manager. N.T. p. 152. Tanner served in this position for a little over one year, and prior to that, he was the supervisor at the Bradford Driver License Center for eight years. N.T. pp. 154-155. Before becoming the supervisor at the Bradford Driver License Center, Tanner served as a Driver License Examiner. N.T. pp. 154-155. Tanner retired after nineteen years of service with the appointing authority. N.T. p. 153. Tanner was on the interview panel for the Driver License Center Supervisor position, which is at issue in the present appeal, and he was responsible for making the recommendation to hire the selected candidate. N.T. p. 156.

<sup>7</sup> On Thursday, February 25, 2021, about one week before the hearing, the appointing authority submitted multiple Pre-Hearing Motions, to include: 1) Motion to Dismiss, or Alternatively, Join OA as a Party; 2) Motion to Consolidate with *James Zahn v. Pennsylvania Department of Transportation and Jamie Kuntz, Indispensable Party*, Appeal No. 30576; and 3) Motion to Stay, pending resolution of its other two Motions. By letter, dated Wednesday, March 2, 2021, OA consented to joinder and requested a continuance. On Friday, March 5, 2021, the Commission granted the Motion to Join OA, denied the appointing authority's other Motions, and denied OA's continuance request. Late Friday, March 5, 2021, the appointing authority and OA filed Petitions for Reconsideration, and on Monday, May 8, 2021, OA filed a Motion to Dismiss. The Commission denied the Petitions for Reconsideration and OA's Motion to Dismiss.

At the hearing on this matter, OA requested a second day of hearing be scheduled should issues arise that were unanticipated or for which it did not have time to adequately prepare since the continuance request had been denied. N.T. pp. 21-22. OA was directed to re-raise this issue at the conclusion of the testimony if it determined that it could not adequately present its case. N.T. p. 23. OA did not re-raise this issue at the conclusion of its testimony, nor did OA re-raise this issue during its closing statement. Thus, the issue has been waived.

At the hearing, the appointing authority also renewed its objection to the denial of its Motion to Stay. N.T. pp. 24-25. Ruling on the appointing authority's objection was deferred pending review by the full Commission. N.T. p. 25. We find the issues raised in the Motion to Stay are now moot because: 1) the appointing authority's Motion to Dismiss has been granted upon review of the record; and 2) the appellant in the matter pertaining to the Motion to Consolidate withdrew his appeal. The withdrawal was accepted by the Commission at its meeting on June 16, 2021.

### *Summary of the Evidence*

Appellant is currently employed by the appointing authority as a Driver License Examiner. N.T. p. 30. Appellant has held this position since March 16, 1993. N.T. p. 31. Appellant also worked “out-of-class” in a supervisory position for seventeen years. N.T. p. 36.

In or around May 27, 2020, appellant interviewed with the appointing authority for a position as a Driver License Center Supervisor. AA Ex. 7. Appellant testified, despite being rated as “Outstanding” and “Commendable” on his employee performance reviews (hereinafter “EPR”), he was not selected for the position. N.T. p. 37. Appellant believes he was not selected because he is an older male. N.T. pp. 37-38. Appellant testified a female, who was younger than him and not qualified for the position, was selected. N.T. p. 38.

Appellant explained, to be eligible for the Driver License Center Supervisor position, candidates were required to meet the minimum experience and training (hereinafter “METs”), as set forth on the job description. N.T. p. 34; Ap. Ex. 1. Specifically, candidates were required to have: 1) one year of experience as a Driver License Examiner; *or* 2) three years of experience obtaining, evaluating, and providing information to the public, including one year of experience conducting driver tests or driver training. N.T. pp. 34, 42; Ap. Ex. 1 (p. 3). Appellant testified he met these requirements. N.T. p. 34. Appellant further argued the selected candidate, Jamie Kuntz, did not meet the requirements because she has never held a

Driver License Examiner position, nor had she conducted driver tests or driver training. N.T. pp. 34-35. Appellant testified Kuntz held the position of Driver License Examiner Assistant, which conducts “knowledge tests,” not “driving tests.” N.T. pp. 35, 40.

Additionally, appellant asserted the METs also required candidates to hold a motorcycle license, which he did not believe Kuntz held.<sup>8</sup> N.T. p. 36. However, appellant acknowledged he never looked at Kuntz’s driver’s license classes to determine whether she held a motorcycle license. N.T. p. 44. Based on his belief that Kuntz did not meet the METs, appellant concluded the only reason she could have been selected was for some discriminatory basis. N.T. p. 47. With that said, appellant acknowledged if Kuntz was qualified for the position, no discrimination occurred. N.T. pp. 47-48.

In response to the testimony presented by appellant, Evaluation Unit Supervisor Deborah Krammes testified Kuntz qualified for the position under the second option listed in the METs. N.T. pp. 72, 79. Krammes explained, contrary to appellant’s belief, Kuntz had the requisite “experience conducting driver tests or driver training.” N.T. p. 79. Krammes stated the phrase “experience conducting driver tests and driver training” is defined in the Evaluation Guide for the Driver License Center Supervisor, Examiner, and Assistant job titles (hereinafter

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<sup>8</sup> Contrary to appellant’s testimony, the job posting, which appellant entered into evidence, indicates candidates must possess a valid Pennsylvania Class C Driver’s License. Ap. Ex. 1 (p. 3). The job posting does not require candidates to possess a Class M Driver’s License, which is issued to persons who have demonstrated their qualifications to operate a motorcycle. Ap. Ex. 1. *See also* 75 Pa.C.S.A. § 1504(d)(4)(i).

“Evaluation Guide”).<sup>9</sup> N.T. pp. 73-74; OA Ex. 3. As it pertains to the Driver License Center Supervisor job title, this phrase refers to both road testing and computerized testing of drivers. N.T. pp. 75-76; OA Ex. 3 (p. 2). Kuntz administered computerized knowledge testing of drivers from 2009 to the present in her position as a Driver License Examiner Assistant. N.T. pp. 79-82; OA Exs. 4 (p. 1), 5 (p. 1). Therefore, Krammes determined Kuntz was eligible under the METs. N.T. p. 82. Krammes further stated she did not deviate, in any way, from the rules, regulations, or policies when evaluating Kuntz’s eligibility. N.T. p. 82.

Additionally, Audit Section Manager Amanda Crawford confirmed Kuntz met the other requirements of the position. Crawford explained for competitive promotions without examination, such as in the present matter, candidates must also meet the meritorious service and seniority requirements listed on the job posting. N.T. pp. 98, 106; OA Ex. 6 (p. 2). To meet the meritorious service requirement, candidates cannot have any disciplinary action above a written reprimand within the previous twelve months before applying and their most recent EPR must be at least satisfactory or above. N.T. p. 99. To meet the seniority requirement, candidates are required to have served or currently serve in one of the designated next lower job classifications or in a position for which there is a logical occupational, functional or career developmental relationship to the posted position, or a clear linkage between the required knowledge, skills and abilities of the

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<sup>9</sup> Evaluation Guides are created by agency subject matter experts to provide clarification on terms set forth in the METs for a particular job title. N.T. p. 73. Subject matter experts at the appointing authority, in conjunction with OA, developed the Evaluation Guide for the Driver License Center Supervisor, Examiner, and Assistant job titles. N.T. p. 75; OA Ex. 3.

previously or currently held job with those needs for the posted position. N.T. pp. 97-98, 100; OA Ex. 6 (p. 2). Crawford noted the next lower classifications are designated on the job posting. N.T. p. 101.

Crawford testified Kuntz met both the meritorious service requirement and the seniority requirement for the Driver License Center Supervisor position. N.T. p. 106. Regarding the meritorious service requirement, Crawford stated Kuntz included her most recent EPR with her application, on which she received an overall rating of “Outstanding.” N.T. p. 107; OA Ex. 4 (pp. 5-9). Crawford also confirmed Kuntz did not have any discipline. N.T. pp. 107-108. Therefore, Crawford concluded Kuntz met the meritorious service requirement. N.T. p. 108.

Regarding the seniority requirement, Crawford testified Kuntz held one of the designated next lower classifications. N.T. pp. 109-110. Pursuant to the job posting, candidates were required to have held regular civil service status in one of the following classifications: Driver License Examiner Assistant or Driver License Examiner. N.T. p. 109; Ap. Ex. 1 (p. 4). Crawford testified Kuntz held regular status in the Driver License Examiner Assistant classification. N.T. pp. 109-110. Crawford further explained Driver License Examiner Assistant was properly designated as a next lower classification because promotion to Driver License Center Supervisor is considered to be a logical career path. N.T. pp. 110-111. Crawford also noted the review of Kuntz’s meritorious service and seniority did not deviate from the applicable regulations or policies. N.T. p. 111.

Additionally, retired District Manager Larry Tanner and District Manager Dana Nash testified regarding the reasons Kuntz was selected over the other candidates. Tanner and Nash served on the interview panel for the position,

which was located in the district managed by Tanner. N.T. pp. 129, 155-156. Since the position was located in Tanner's district, he was responsible for making the selection recommendation. N.T. p. 156.

During their careers with the appointing authority, both Nash and Tanner held the position of Driver License Center Supervisor, which is the position at issue in this appeal. N.T. pp. 136, 154. They also both previously held the position of Driver License Examiner, which is the position currently held by appellant. N.T. pp. 30, 136, 154-155. Furthermore, Nash held the position of Driver License Examiner Assistant, which was the position held by Kuntz prior to her selection for the Driver License Center Supervisor position. N.T. pp. 109-110, 136; OA Ex. 4.

Nash explained in a supervisory position, such as the Driver License Center Supervisor position, leadership, customer service skills, the ability to get along with the staff, and confidence, such as how a person carries themselves, are essential qualities. N.T. pp. 137-138. Nash stated Kuntz "shined" the most during the interviews in the way she carried herself and because she was better prepared than the other candidates. N.T. p. 138. Nash testified Kuntz was more professional, more motivated, and she gave the best answers to the interview questions. N.T. pp. 132-133, 136, 138. Tanner agreed and characterized Kuntz's interview as "overall excellent," based on her preparation and direct responses to the questions. N.T. p. 159; AA Ex. 6.

In comparison, Tanner described appellant's interview as "not a stellar performance." N.T. p. 163. Additionally, Nash noted appellant did not come prepared for the interview, like he should have, and it showed during the interview. N.T. pp. 147-148. For example, when appellant came to the interview, his mask was

below his nose and practically off.<sup>10</sup> N.T. pp. 146, 161. Tanner attempted to alert appellant to this issue by adjusting his own mask, but appellant never picked up on it and failed to wear his mask properly throughout the interview. N.T. p. 161.

Nash and Tanner also noted the substance of appellant's responses to the interview questions was lacking. Specifically, appellant failed to share relevant work experiences in response to the interview questions. N.T. p. 147; AA Ex. 7. For example, appellant talked about his experiences with the fire department, rather than experiences related to his position with the appointing authority. N.T. p. 147; AA Ex. 7. Tanner recalled appellant's response to question number four was illustrative of this. N.T. pp. 162-163.

Question number four asked: "Tell us about a time when you had to defend a decision you made even though others were opposed to your decision." N.T. p. 162; AA Ex. 7. In response, appellant provided an example from his work with the fire department. N.T. p. 162; AA Ex. 7. Tanner explained this was concerning because appellant has acted in a supervisory position for the appointing authority for seventeen years, yet he could not provide an example related to his work for the appointing authority. N.T. p. 162.

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<sup>10</sup> The Commission takes administrative notice that the interview for this position occurred during the COVID-19 pandemic, during which masks were required to be worn. *See Falasco v. Commonwealth of Pennsylvania, Pennsylvania Board of Probation and Parole*, 104 Pa. Commw. 321, 326 n.6, 521 A.2d 991, 994 (1987) (holding an administrative agency may take official notice of facts which are obvious and notorious to an expert in the agency's field and those facts contained in reports and records in the agency's files, in addition to those facts which are obvious and notorious to the average person).

In addition to failing to provide relevant examples, Tanner stated appellant “hemmed and hawed” before providing his responses to the interview questions. N.T. pp. 162-163. For example, question number five asked: “When evaluating an employee or team member’s performance, what factors are most important to you?” N.T. p. 162; AA Ex. 7. Appellant responded by asking, “What would we be evaluating them for,” and then he “hemmed and hawed” before providing an answer. N.T. p. 162. Tanner explained this was concerning because appellant should have known this based on his experience acting in a supervisory position. N.T. p. 163.

Tanner noted appellant also had difficulty answering question number seven. N.T. p. 163. Question number seven asked: “Describe a situation in which you had to follow up on assignments that you had delegated to others.” N.T. p. 163; AA Ex. 7. Appellant responded, “I cannot think of what that would include,” before providing an answer, which Tanner indicated did not answer the question. N.T. p. 163.

After each candidate’s interview, the interview panel reviewed the candidate’s answers as a group. N.T. p. 164. There were three persons on the interview panel—Tanner, Nash, and Dwaine Kromer. N.T. p. 130. All three interview panelists unanimously agreed Kuntz was the best candidate based on her interview. N.T. pp. 132-133, 164. Therefore, Kuntz was selected for the position. N.T. p. 164.

### ***Motion to Dismiss***

Following the presentation of appellant's case-in-chief, OA made a Motion to Dismiss the present appeal for failure to establish a *prima facie* case of discrimination. N.T. p. 53. The appointing authority joined OA's Motion. N.T. p. 56. At the hearing, ruling on the Motion was deferred pending review by the full Commission. N.T. pp. 55, 57. Following our review, we find appellant has not met his burden of establishing traditional discrimination based on his sex and age. Accordingly, the Motion is hereby granted for the reasons set forth in the following section of this adjudication.

### ***Credibility/Evidentiary Determinations***

To establish a claim of "traditional discrimination," the appellant must prove a *prima facie* case of discrimination by producing sufficient evidence that, if believed, indicates that more likely than not discrimination has occurred. *Henderson v. Office of the Budget*, 126 Pa. Commw. 607, 560 A.2d 859 (1989); *Department of Health v. Nwogwugwu*, 141 Pa. Commw. 33, 594 A.2d 847 (1991). Once a *prima facie* case of discrimination has been established, the burden shifts to the appointing authority to present a legitimate non-discriminatory explanation for the employment action. However, the appellant always retains the ultimate burden of persuasion and must demonstrate the proffered merit reason is merely pretext for discrimination. *Henderson*, 126 Pa. Commw. at 616, 560 A.2d at 864. While the Commission recognizes the burden of establishing a *prima facie* case cannot be an onerous one, *Nwogwugwu, supra.*, in this matter, appellant's evidence is not enough to show his non-selection was based on sex and/or age discrimination.

Appellant believed the hiring decision for the Driver License Center Supervisor position was based on his sex and age because he believed Kuntz did not meet the METs as set forth in the job description. N.T. p. 47. However, appellant did not present any credible<sup>11</sup> evidence establishing Kuntz was not qualified for the position, nor did he provide any other evidence to support his belief that he was not selected for the position based on his sex or age.

The job posting, which appellant entered into evidence, established there were two methods by which a candidate could qualify for the position. Ap. Ex. 1 (p. 3). Candidates were required to have: 1) one year of experience as a Driver License Examiner; *or* 2) three years of experience obtaining, evaluating, and providing information to the public, including one year of experience conducting driver tests or driver training. N.T. pp. 34, 42; Ap. Ex. 1 (p. 3). Appellant argued Kuntz did not meet either of these requirements because she has never held a Driver License Examiner position, nor had she conducted driver tests or driver training. N.T. pp. 34-35. While appellant acknowledged Kuntz conducted testing as a Driver License Examiner Assistant, he did not believe this type of testing was sufficient to qualify under the second method. N.T. pp. 34-35, 40. However, he did not provide any credible evidence to support this belief. As such, he failed to establish a *prima facie* case of discrimination.

Furthermore, we find, even if appellant's evidence had been sufficient to shift the burden of proof, OA and the appointing authority presented legitimate, non-discriminatory reasons for their actions. *Nwogwugwu*, 594 A.2d at 850.

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<sup>11</sup> It is within the purview of the Commission to determine the credibility of the witnesses. *State Correctional Institution at Graterford, Department of Corrections v. Jordan*, 505 A.2d 339, 341 (Pa. Commw. Ct. 1986).

Specifically, we find credible the testimony and evidence presented by OA's and the appointing authority's witnesses regarding the evaluation of Kuntz's eligibility and her subsequent selection for the Driver License Center Supervisor position.

Regarding the eligibility evaluation, Krammes and Crawford credibly testified they did not deviate from the applicable regulations and policies when evaluating Kuntz's eligibility. N.T. pp. 82, 111. Krammes explained the type of testing conducted by Kuntz in her position as a Driver License Examiner Assistant was sufficient to satisfy the MET requirement that she have "one year of experience conducting driver tests or driver training." N.T. pp. 79-82; Ap. Ex. 1 (p. 3). Krammes based this conclusion on the definition of the phrase "experience conducting driver tests and driver training," which was set forth the Evaluation Guide. N.T. pp. 75-82. This definition includes computerized testing of drivers, which is the type of testing Kuntz administered from 2009 until her selection for the position. N.T. pp. 75-76, 79-82; OA Exs. 3 (p. 2), 4 (p. 1), 5 (p. 1). Thus, we find Kuntz clearly had more than one year of experience conducting driver tests.

We also find Kuntz had the requisite three years of experience obtaining, evaluating, and providing information to the public, which was also necessary to qualify under the METs. Kuntz served in the position of Driver License Examiner Assistant for over ten years. N.T. p. 79. The job description for this position provides, in relevant part:

Employees in this job perform a variety of limited technical duties that support the application and knowledge testing processes of Pennsylvania's commercial or non-commercial driver licensing program.

Work involves proctoring standardized driver knowledge tests, performing visual acuity screenings, verifying identity and related documents, and processing driver license applications and test results. Work involves a heavy volume of public contact work, which includes regular exposure to disgruntled customers.

OA Ex. 5 (p. 1). Kuntz confirmed she performed such duties on her application for the Driver License Center Supervisor position, which was reviewed in determining her eligibility. N.T. pp. 78-79; OA Ex. 4 (p. 1). Thus, we find Kuntz had the requisite experience to qualify for the position under the second method, and thereby satisfied the METs.

In addition to satisfying the METs, Kuntz also satisfied the meritorious service and seniority requirements for the position, which require: 1) a rating of “Satisfactory” or above on the most recent EPR; 2) no disciplinary actions above a written reprimand within the previous twelve months; and 3) current or prior service in one of the designated lower job classifications. N.T. pp. 99-100, 107-110; Ap. Ex. 1 (p. 4); OA Exs. 4 (p. 8), 6 (p. 2). Kuntz received an overall rating of “Outstanding” on her most recent EPR and did not have any discipline. N.T. pp. 107-108; OA Ex. 4 (p. 8). Kuntz also held regular civil service status in one of the designated next lower classifications—Driver License Examiner Assistant. N.T. pp. 109-110; Ap. Ex. 1 (p. 4). Accordingly, we find Kuntz met the meritorious service and seniority requirements. As such, it is clear the eligibility determination was based on legitimate, non-discriminatory reasons. Appellant does not provide any evidence which would suggest these reasons are pretextual.

Furthermore, we find the appointing authority provided a legitimate, non-discriminatory reason for the hiring decision—the performance of the candidates during the interview. Appellant has failed to provide any credible evidence that this reason is pretextual. The same questions were asked of each candidate and there is no evidence of unequal treatment in the interview process. *See Cola v. State Civil Service Commission (Department of Conservation and Natural Resources)*, 861 A.2d 434 (Pa. Commw. Ct. 2004)(holding a *prima facie* case of discrimination was not established where the same questions were asked of each interviewee, there was no evidence of unequal treatment in the interview process, and the interviewers testified the selected candidate did the best job of answering the interview questions). Appellant simply did not perform as well as Kuntz during the interviews. N.T. pp. 130, 132-133, 136, 138, 146-148, 159, 161-163.

Based on the foregoing, we find appellant has failed to establish a *prima facie* case of traditional discrimination. Appellant did not present evidence of any conduct by OA or the appointing authority that, if believed and not otherwise explained, could be sufficient to persuade us that it is more likely than not that his non-selection was based on his sex and/or age. Moreover, OA and the appointing authority introduced credible evidence sufficient to refute appellant's unsubstantiated assertion of traditional discrimination. Accordingly, we enter the following:

CONCLUSION OF LAW

The appellant has not presented evidence establishing discrimination violative of Section 2704 of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Gerald L. Rea challenging his non-selection for the position of Driver License Center Supervisor with the Pennsylvania Department of Transportation and sustains the action of the Pennsylvania Department of Transportation in not selecting Gerald L. Rea for the position of Driver License Center Supervisor.

State Civil Service Commission

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Maria P. Donatucci  
Chairwoman

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Gregory M. Lane  
Commissioner

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Bryan R. Lentz  
Commissioner

Mailed: July 29, 2021