



AFFIRMED
MOTOR VEHICLE COMMISSION

OPRA
State of New Jersey

Date 1-3-17

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NO. MVH 14176-16

AGENCY DKT. NO. PXXXX XXXXX 02641

MOTOR VEHICLE COMMISSION,

Petitioner,

v

DAVID K. PATTERSON,

Respondent

Motor Vehicle Commission, petitioner, appearing on the papers only, pursuant to
N J A C 1:1-5.6(a)

David K. Patterson, respondent pro se

Record Closed: November 14, 2016

Decided: November 17, 2016

BEFORE **GAIL M. COOKSON**, ALJ

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This proceeding is brought under N J S A 39-3-10.1 and N J A C 13-21-14.5(a) and (c)(12) as an appeal from the decision of the New Jersey Motor Vehicle Commission to deny the New Jersey passenger endorsement on the Commercial Driver License (CDL) of respondent David K. Patterson. The issue is whether respondent committed a disqualifying crime or offense within the meaning of N J A C 13-21-14.5(a) and (c), and, if

so, whether respondent has affirmatively demonstrated sufficient rehabilitation to justify a waiver under N J A C. 13:21-14.5(d).

By Scheduled Suspension Notice dated March 17, 2016, the Motor Vehicle Commission (Commission) proposed to suspend respondent's passenger endorsement indefinitely because he failed to satisfy the requirements for the endorsement on his CDL based on information that he had a disqualifying criminal arrest. By letter dated on or about April 2, 2016, respondent requested a hearing. The Commission transmitted the matter to the Office of Administrative Law (OAL) where it was filed on September 7, 2016, for determination as a contested case

The undersigned held a hearing on November 14, 2016, and, after the conclusion of testimony, the record closed. The Commission relied upon the packet of discovery materials in support of its Notice and chose not to appear or present testimony at the hearing

FINDINGS OF FACT

The relevant facts are not disputed. Based upon a review of the testimony and the documentary evidence presented, I **FIND** the following **FACTS**:

1. Respondent is currently fifty-two years of age. While he lives alone, he has two adult children and six grandchildren whom he assists whenever he is able. Respondent has two part-time jobs from which he tries to earn full-time wages. He works in the mailroom for the New York Daily News and he is also a mechanic helper for a bus company

2. Respondent sought to obtain a commercial driver's license with a passenger endorsement. N.J.A.C. 13:21-23.12. Respondent feels passionate about helping people, especially children with special needs and he looks forward to being able to drive a passenger van. I **FIND** that respondent was very genuine in his description of his passion for helping others. He drove a bus over twenty years ago before his addiction became a big issue for him.

3. The Commission submitted documents in support of its contention that respondent has had a long list of disqualifying arrests, the latest being in August 2012. Respondent does not deny the existence of these offenses but explained that he has worked very hard to get himself into a state of recovery from his substance abuse addiction. Respondent has a network of support now, utilizing sponsors from both AA and NA programs as well as his church.

4. Because respondent was considered an appropriate candidate for Drug Court, he received a five year probationary term on his last conviction. That probation will terminate early if he completes all the requirements imposed upon him and he stays clean. To date, he has stayed clean and been diligent in his program according to the Probation Office.

5. Respondent has successfully completed the first two phases of the Drug Court program. He is presently in Phase III and anticipates getting into Phase IV and completing it within the next several months.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

Under the police authority of the State, the Administrator of the Commission has the right to impose reasonable restrictions on the issuance of licenses for various occupations in order to protect the public health and safety. Sanders v Division of Motor Vehicles, 131 N.J. Super. 95, 97 (App. Div. 1974). It further has been said that the primary objective of administrative proceedings before the Director "is to foster safety on the highway." Atkinson v Parsekian, 37 N.J. 143, 155 (1962).

In 1986, the federal Commercial Motor Vehicle Safety Act was enacted at 49 U.S.C. §2701 to 2718. Section 2708 of the federal act required the states to adopt commercial driver licensing laws in compliance with federal standards or have their highway funds withheld. In response, the legislature enacted the New Jersey Commercial Driver License Act in 1990. N.J.S.A. 39:3-10.9 to 10.31. Under rules promulgated by the Commission regarding the right of a commercial driver to have a passenger endorsement, N.J.A.C. 13:21-14 et seq, the Administrator --

may not issue a passenger endorsement, or may revoke or suspend the passenger endorsement of any person when it is determined that the applicant or holder of such license has.

12 A criminal record that is disqualifying. The phrase "crime or other offense" as used hereinafter shall include crimes, disorderly persons offenses or petty disorderly persons offenses as defined in the "New Jersey Code of Criminal Justice" and any offenses defined by any other statute of this State. A driver has a disqualifying record if:

i He or she has been convicted of, or forfeited bond or collateral upon, any of the following:

(1) An offense involving the manufacture, transportation, possession, sale or habitual use of a "controlled dangerous substance" as defined in the "New Jersey Controlled Substance Act";

[N J A.C. 13:21-14 5(c)]

Respondent does not dispute that he has had a long history of crimes associated with his addiction problems. He argues that he has shown sufficient rehabilitation and community support that the Commission should grant him the passenger endorsement. In addition, he commented that it would have been fairer if the Commission had made its determination before taking his fees because every dollar earned is needed by respondent for minimum living expenses.

On the basis of the undisputed facts, I **CONCLUDE** that respondent does have a disqualifying criminal record. Nevertheless, the regulation is not mandatory but permissive. In addition, the Chief Administrator has reserved the right to waive any portion of the disqualifying regulation "[if]" sufficient and reasonable grounds are established at a hearing " N J A.C. 13:21-14 5(d) Proof of rehabilitation establishes grounds to waive the regulation Sanders, supra, 131 N.J. Super. at 98 The standards set forth in the Rehabilitated Convicted Offenders Act provide guidance in assessing whether the proofs are sufficient to justify a waiver of a disqualifying condition See

N.J.S.A. 2A:168A-1 to -3. As a matter of policy, "it is in the public interest to assist the rehabilitation of convicted offenders by removing impediments and restrictions upon their ability to obtain employment or to participate in vocational or educational rehabilitation programs based solely on the existence of a criminal record." N.J.S.A. 2A 168A-1. Various factors are enumerated in N.J.S.A. 2A:168A-2 to determine whether a conviction for a crime relates adversely to a particular occupation. The factors include. (1) the nature and duties of the occupation; (2) the nature and seriousness of the crime; (3) the circumstances under which the crime occurred, (4) the date of the crime, (5) the age of the person when the crime was committed, (6) whether the crime was an isolated or repeated incident; (7) social conditions which may have contributed to the crime, and (8) any evidence of rehabilitation, including good conduct in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, or the recommendation of persons who have or have had the person under their supervision

I **CONCLUDE** that respondent should be required to complete the phased program requirements of Drug Court before being reconsidered for his passenger endorsement. I am mindful of the tremendous effort of respondent and the support he has behind him but, on balance, the public interest is best served by this last chapter being 100% in the rear view mirror before he re-presents his rehabilitation to the discretion of the Commissioner

ORDER

It is **ORDERED** that the denial of the application for a commercial driver's license with a passenger endorsement by respondent David K Patterson Commercial Driver License be and hereby is **AFFIRMED** This Order is entered without prejudice to any future applications respondent might make to the Motor Vehicle Commission, which will be considered by the agency on its merits at that time

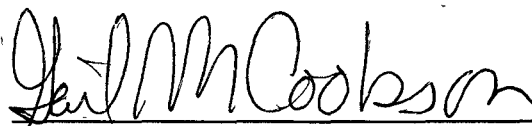
I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, PO Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 17, 2016

DATE



GAIL M. COOKSON, ALJ

Date Received at Agency:

Date Mailed to Parties.

NOV 18 2016



DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

id

APPENDIX

LIST OF WITNESSES

For Petitioner

None

For Respondent

David K. Patterson

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

P-1 Packet of Documents from Agency

For Respondent:

R-1 Letter of Character Reference and Support, dated November 10, 2016

R-2 Letter of Character Reference and Support, dated November 2, 2016



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
33 Washington Street
Newark, NJ 07102
(973) 648-6008

**A copy of the administrative law
judge's decision is enclosed.**

**This decision was mailed to the parties
on NOV 18 2016**



AFFIRMED
MOTOR VEHICLE COMMISSION

BY *ORVA*
State of New Jersey

Date *1-26-17*

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

FAILURE TO APPEAR

OAL DKT. NO MVH 10688-16

AGENCY DKT. NO. 066728

NEW JERSEY MOTOR VEHICLE COMMISSION,

Petitioner,

v.

JOSE VAZQUEZ,

Respondent

Motor Vehicle Commission, petitioner appearing pursuant to N.J.A.C. 17:27-5.6(a)

Prosper A. Bellizia, Esq., appearing on behalf of respondent

Record Closed December 6, 2016

Decided December 12, 2016

BEFORE JOANN LASALA CANDIDO, ALAJ:

STATEMENT OF THE CASE

In this matter respondent, Jose Vazquez (Vazquez or respondent), appeals the thirty-day (30) proposed suspension of his New Jersey driver's license by petitioner, Motor Vehicle Commission (MVC or Commission), effective January 10, 2016. The MVC scheduled the suspension because respondent has 12 or more points on his

driving record

As a result of a scheduled suspension notice issued by the MVC, Vazquez appealed and the matter was thereafter transmitted to the Office of Administrative Law (OAL) as a contested case pursuant to the provisions of N J S.A 52:14B-1 through -15 and N J S A 52.14F-1 through -13. The matter was heard on December 6, 2016. Respondent failed to appear.

PROCEDURAL HISTORY

By notice dated December 17, 2015, the MVC proposed to suspend respondent's driving privileges because he has accumulated 12 points on his driving record. Respondent had the option of accepting the suspension or requesting a hearing. MVC also offered participation in a driver improvement program.

On December 30, 2015 attorney Philip E. Miller (Miller) sent a letter on behalf of respondent requesting a hearing. The matter was transmitted to the Office of Administrative Law (OAL) where it was filed on July 19, 2016. A hearing was scheduled for August 30, 2016 before ALJ Kimberly A. Moss. On August 12, 2016, respondent's counsel sent in correspondence requesting to withdraw as counsel of respondent. Miller stated

I am writing to advise of my decision to withdraw as counsel and to terminate my representation of defendant.....

.....

First, Mr. Vazquez has failed to pay any of my legal fees for this Appeal, he having been advised of same by me immediately after the February 8, 2016 MVC Hearing

.....

Second, I believe that Mr. Vazquez, throughout the process of my representing him before the Ft. Lee Municipal Court and the appeal of MVC's decision to assess him points based on the result thereof, has been less than forthcoming as to his overall driving history and ongoing

events. I was not made aware of the companion appeal out of the 2013 Jamesburg matter until I was advised of same by the Hearing Officer at the February 8, 2016 MVC Hearing. Mr. Vazquez also failed to advise me of his having received two new Summons following the December 15, 2015 Ft Lee Court appearance...

On August 18, 2016, ALJ Moss sent a letter to respondent requesting he advise of any objections to Miller's request to be relieved as counsel and advising that he will proceed pro se for the hearing date.

On August 23, 2016, Aglaia Papadopoulous-Vlantes, Esq. (Vlantes) was retained by respondent. Vlantes requested an adjournment on behalf of her client. The reason for the request was because respondent was in Florida and would not be returning until September 14, 2016. The matter was rescheduled for October 13, 2016 before the undersigned. On October 4, 2016, Vlantes, requested another adjournment until November 18, 2016, when respondent was scheduled to return from Florida. A copy of his itinerary was attached to the letter as proof that he will be out of jurisdiction until November 18, 2016. The adjournment request was denied. On October 11, 2016 Vlantes requested that the October 13th hearing be placed on ready hold due to her having a matter scheduled in Bronx criminal court. The request was granted. However, Vlantes received an adjournment on behalf of her client due to respondent not being in the State of New Jersey at the time of the hearing. The matter was rescheduled for November 22, 2016. A peremptory notice was sent to the parties on October 14, 2016.

On October 26, 2016, Vlantes requested an adjournment of the November 22, 2016 hearing date due to her being scheduled in Bronx Supreme Court. On the same date, the undersigned sent correspondent to Vlantes offering various dates in November for hearing. The dates offered were not acceptable to Vlantes and the matter was scheduled for December 6, 2016. A letter was sent to Vlantes advising that the December 6th hearing date was a peremptory hearing and no further adjournments will be granted.

On November 19, 2016, attorney Prosper A. Bellizia (Bellizia) sent in a letter of representation on behalf of respondent. Bellizia also requested an adjournment. On November 22, 2016 the undersigned sent correspondence to Bellizia denying the adjournment request due to this matter being adjourned on three separate occasions. The undersigned also urged Bellizia to continue settlement discussions with the MVC. Also on November 22, 2016, Viantes sent in a letter advising that respondent relieved her of counsel and she would not be appearing for the December 6, 2016 hearing.

On December 6, 2016, Bellizia appeared on behalf of respondent, however, respondent failed to appear.

N.J.S.A. 39-5-30 provides that a preliminary hearing shall be held by an administrative law judge within fifteen days of the receipt of a timely request for a plenary hearing. The preliminary hearing shall be for the purpose of determining whether a licensee may retain his or her driving privileges or have them summarily suspended pending a plenary hearing on the proposed final agency action. Adjournment of such hearing upon motion by the individual charged shall be given only for good cause shown.

Respondent and each of his attorneys were noticed of the hearing dates. Respondent's attorney of record appeared for the hearing but respondent did not. Respondent had various adjournments due to him being out of State. The Commission has made several attempts to resolve this matter while respondent was out of state. Respondent was well aware of this date as confirmed by his attorney at the hearing.

ORDER

Accordingly, it is **ORDERED** that respondent's driving privileges be suspended for a total of thirty (30) days. The effective date for this suspension shall be set forth in an order of suspension which shall be sent to respondent by the Motor Vehicle Commission under a separate cover.

I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended; this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, PO Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions". A copy of any exceptions must be sent to the judge and to the other parties.

December 12, 2016

DATE

Date Received at Agency:

Date Mailed to Parties

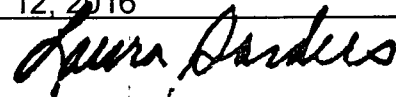
ljb

DEC 14 2016



JOANN LASALA CANDIDO, ALAJ

December 12, 2016



DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
33 Washington Street
Newark, NJ 07102
(973) 648-6008

**A copy of the administrative law
judge's decision is enclosed.**

This decision was mailed to the parties
on DEC 14 2016