



AFFIRMED

N.J. MOTOR VEHICLE COMMISSION

By ORLA

Date 7/17/17

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NO MVH 03790-17

AGENCY DKT NO PXXXX

XXXX 62882

**NEW JERSEY MOTOR VEHICLE
COMMISSION,**

Petitioner,

v

JOVANNI G. POLHILL,

Respondent

Sharkner Michaud, Driver Improvement Analyst 1, for petitioner New Jersey
Motor Vehicle Commission, pursuant to N.J.A.C. 17:27 4(a)2

Jovanni G. Polhill, respondent, pro se

Record Closed May 5, 2017

Decided May 31, 2017

BEFORE **CATHERINE A. TUOHY, ALJ.**

STATEMENT OF THE CASE

Respondent appeals the proposed thirty-day suspension of her New Jersey driving privileges. Petitioner seeks to suspend respondent's license because she has

accumulated more than twelve points on her driving record. At issue is whether respondent's license should be suspended.

PROCEDURAL HISTORY

By letter dated April 28, 2016 petitioner noticed respondent, Ms Polhill that her New Jersey driving privilege was scheduled to be suspended as of May 22, 2016 for thirty days (P-2). Respondent filed a request for a fair hearing and the Motor Vehicle Commission transmitted this matter to the Office of Administrative Law (OAL) where it was filed on March 8, 2017 as a contested case pursuant to N.J.S.A. 52:14B-1 and 14F-1 to 13. The matter was heard on May 5, 2017, and the record closed.

FACTUAL DISCUSSION AND FINDINGS

Sharkner Michaud testified on behalf of the petitioner. Respondent had accumulated sixteen points overall after she entered a plea to a careless driving charge that occurred on March 1, 2016 (P-1). She had rear-ended a car in front of her and received two points for that offense. Her abstract indicates that she completed a point credit course back on February 26, 2008 (P-1), that was the only course she has ever taken to reduce her points. A scheduled notice of suspension issued on April 28, 2016 and was sent to respondent at her address (P-2). The notice advised respondent that her privileges would be suspended as of May 22, 2016 for thirty days. Following respondent's request for a fair hearing, the matter was conferenced with a hearing officer on July 26, 2016 (P-3).

Jovanni Polhill testified on her own behalf. She does not dispute the fact that she has accumulated sixteen points but requests leniency in the imposition of the thirty-day suspension of her license privileges. Respondent was pregnant at the time she was involved in the accident and now has three children ages seven, two and six months. She was initially working part-time and now has secured full-time employment and it would be financially disastrous to lose her license. She said the loss of her license would cause her to lose her job with Arc of Gloucester County where she currently works as a Bakery Technician assisting the clients in their job duties. She was initially hired part-time as a

Residential Technician on July 8, 2016 (R-1) When she was hired, her employer did not make any comments regarding her motor vehicle record although a motor vehicle search was conducted She has been working full-time for Arc since February 6, 2017 (R-2) Respondent estimates approximately twenty-five percent of her job duties involve driving. She plans on taking a safe driving course in the near future

Based upon the testimony and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witnesses, I **FIND** as **FACT** that respondent had accumulated sixteen points and that she is required to drive for work

LEGAL ANALYSIS AND CONCLUSIONS

N J S A 39 5-30 8 provides that except for good cause, the director shall suspend the license to operate a motor vehicle of any person who accumulates twelve or more points in a period of two years or less or fifteen or more points in a period greater than two years The proposed suspension for thirty days was triggered in this case by the careless driving violation that occurred on March 1, 2016.

Respondent has the burden of proving "good cause" for a special exception to the usual suspension imposed in similar cases. Good cause is a flexible concept which appears in many statutes and rules "The essence of the phrase is its ability to afford relief in exceptional situations." Hovland v Dir., Div of Taxation, 204 N J Super 595, 600 (App. Div. 1985). It is impossible to construct a "definitive catalogue" of all circumstances to be considered in determining the existence of good cause. "Each case must be decided upon its own facts." Ullmann v Hartford Fire Ins Co, 87 N J Super 409, 414 (App Div 1965)

Factors which may be relevant in determining the appropriateness of any suspension include the individual's past driving record, length of time licensed, receipt of prior warnings or prior attendance at driver improvement school, attitude and maturity level, evidence of recent improvement, need for a license and other aggravating or mitigating circumstances N J A C 13 19-10 2(b) Cresse at 549. Need alone cannot be the deciding factor, since in today's motorized society virtually everyone needs a driver's license to earn

a living and perform normal daily activities. See, Div of Motor Vehicles v Morton, 4 N.J.A.R. 95 (Div of Motor Vehicles 1982).

In the present matter, there is no question that respondent has accumulated a total of sixteen motor vehicle points, and the agency has demonstrated that a suspension is appropriate. Reviewing respondent's driving record, it is clear that prior to the incident described above, she last accumulated points in 2013; and the most recent incident for which she accumulated points prior to that was 2011. She also has demonstrated need in that she is required to possess a valid driver's license for her continued full time employment. Respondent has also represented that she will take a drivers' safety course (R-3)

Accordingly, based upon the totality of the circumstances, including the respondent's driving record, her personal background, including her family and employment situation, I **CONCLUDE** that respondent's driving privileges should be suspended, for remediation purposes only, for ten days, for point accumulation in violation of N J S A 39 5-30 8.

ORDER

Based upon the foregoing, I therefore **ORDER** that the Commission's decision to suspend respondent's license for a total period of thirty days should be and is hereby **MODIFIED** to a period of ten days, effective on such date as shall be set forth in an Order of Suspension, which the Commission will send to respondent

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.

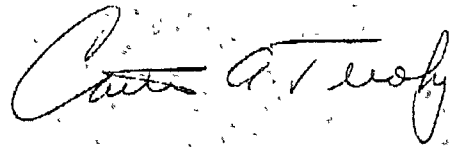
Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, PO Box 160, Trenton, New Jersey 08666-0160**, marked "Attention Exceptions " A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

May 31, 2017
DATE

Date Received at Agency

Date Mailed to Parties

/mel



CATHERINE A. TUOHY, ALJ

May 31, 2017 (emailed)

6/1/17

WITNESSES

For Petitioner:

Sharkner Michaud

For Respondent:

Jovanni G Polhill

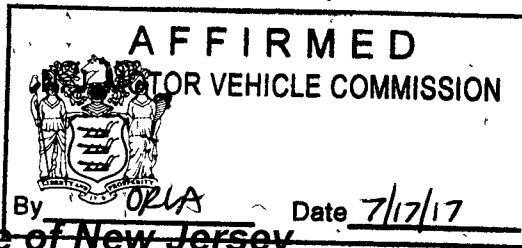
EXHIBITS

For Petitioner:

- P-1 Certified Abstract
- P-2 Copy of Scheduled Suspension Notice, dated April 28, 2016
- P-3 Copy of Conference Report dated July 26, 2016

For Respondent:

- R-1 Letter of Employment from The Arc Gloucester dated July 8, 2016
- R-2 Letter of Employment from The Arc Gloucester dated February 6, 2017



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NO MVH 04226-17

AGENCY REF NO AXXXX XXXXX 11734

NEW JERSEY MOTOR VEHICLE COMMISSION,

Petitioner,

v.

SHKELQIM AFJANI,

Respondent

Kenneth Vercammen, Esq , Special Counsel, for petitioner

Shkelqim Afjani, pro se

Record Closed May 9, 2017

Decided May 31, 2017

BEFORE RICHARD McGILL, ALJ.

This matter concerns a scheduled suspension of the New Jersey driving privileges of Shkelqim Afjani ("respondent"), who was involved in a traffic fatality on the highways of this State on November 15, 2014. The New Jersey Motor Vehicle Commission ("NJMVC") sent respondent a notice of scheduled suspension dated December 27, 2016, advising him that he was charged with a violation of NJ S A 39:4-

97 (careless driving) resulting in the death of Ernesta G. Fernandez and that his driving privileges would be suspended for a period of eleven months

Respondent requested a hearing by letter dated January 6, 2017, and the matter was transmitted to the Office of Administrative Law on March 27, 2017, for determination as a contested case. A hearing was conducted on April 28, 2017, at the Office of Administrative Law in Newark, New Jersey, and the record closed on May 9, 2017, upon the receipt of NJMVC's written summation.

The issues in this proceeding are whether the charge of careless driving should be sustained and, if so, whether respondent's driving privileges should be suspended. Respondent's main contentions are that his vehicle did not make contact with the pedestrian, that she was crossing the street in the middle of the block and that it would be a hardship for him to lose his driving privileges

FACTS

NJMVC called two witnesses in this proceeding, and respondent testified on his own behalf. NJMVC's witnesses included Anthony D'Antuono, who saw the incident, and Patrolman Joseph O'Halloran of the Nutley Police Department, who investigated the accident.

All witnesses testified to essentially the same course of events, but there were two differences. First, Anthony D'Antuono testified that as he was approaching a stop sign at the intersection of Ravine Avenue and Center Street in Nutley, New Jersey, he saw the driver side of a dark-colored Ford Econoline van brush against a woman, who went up in the air, cleared the top of the vehicle with her feet in the air, and came down landing on her head. In contrast, respondent testified that his vehicle did not make contact with a pedestrian. Respondent did not see a pedestrian, but he inferred that she must have fallen on her own and hit her head.

Mr. D'Antuono was a motorist who happened to see this accident, and he has no interest in the outcome of this case. His testimony is considered to be fully credible, and his version of the events is accepted as true.

Patrolman O'Halloran explained that a crosswalk can be marked or unmarked. In this case, the road was unmarked, but due to the intersection, there was a crosswalk. When Patrolman O'Halloran arrived at the intersection where the accident occurred, the victim had already been removed from the scene, but there was a blood spot approximately ten feet from the unmarked crosswalk. The location was consistent with being hit by a vehicle and thrown in the air. Patrolman O'Halloran's testimony on this point is accepted as true.

Based upon the evidence presented at the hearing, I **FIND** as follows:

- 1 On November 15, 2014, at approximately 11 45 a.m , respondent was driving a black Ford Econoline van on Ravine Avenue and approached an intersection with Center Street in Nutley, New Jersey
- 2 Ravine Avenue has one lane in each direction, and at the intersection with Center Street, a driver must turn left or right
- 3 At this intersection, respondent made a left turn from Ravine Avenue onto Center Street
- 4 Respondent's van brushed against a pedestrian, Ernesta G Fernandez, and caused her to go up in the air and come down landing on her head.
- 5 It was a sunny day and the road was dry
- 6 Respondent was driving at a slow rate of speed
- 7 Ms Fernandez was in an unmarked cross walk.
- 8 Respondent did not see Ms. Fernandez in the crosswalk
- 9 The cause of death for Ms Fernandez was blunt impact injuries
- 10 Respondent did not stop at the scene of the accident
- 11 Respondent lives in Queens in New York City and has a New York driver license

- 12 Respondent works as an electrician and must drive to various work locations.
- 13 Respondent supports his wife and two children.

LAW AND ANALYSIS

A person's driving privileges, including the reciprocity privileges of any nonresident, may be suspended for a violation of any of the provisions of Title 39 of the New Jersey statutes or on any other reasonable grounds N.J.S.A. 39:5-30a. The charge against respondent in this proceeding is that he violated N.J.S.A. 39-4-97, which provides as follows: "A person who drives a vehicle on a highway carelessly, or without due caution and circumspection, in a manner so as to endanger, or be likely to endanger, a person or property, shall be guilty of careless driving."

One of the most basic elements of due care for a driver is to observe other vehicles or pedestrians in his lane of travel. Here, respondent did not see Fernandez, who was crossing a street in an unmarked crosswalk, despite the fact that he was driving slowly and there were no obstructions to his vision. Respondent's failure to observe Fernandez under these circumstances is a clear indication that he did not exercise due care and circumspection. Under the circumstances, I **CONCLUDE** that the charge of careless driving in violation of N.J.S.A. 39.4-97 must be sustained.

The impact caused Fernandez to fall and hit her head on the pavement. There is no doubt that the accident caused Fernandez's death. In view of the violation of N.J.S.A. 39-4-97 resulting in a death, I **CONCLUDE** that respondent's reciprocity driving privileges are subject to suspension pursuant to N.J.S.A. 39-5-30.

Each case must be weighed individually to determine whether a suspension is required at all and, if so, for how long. Cresse v Parsekain, 81 N.J. Super 536, 549 (App Div 1963), aff'd 43 N.J. 326 (1964). Here, the only factor in respondent's favor is that his failure to observe Fernandez reflects carelessness as opposed to willfulness or

recklessness On the other hand, respondent's lack of due care led to a tragedy, and his claim of hardship is unpersuasive considering that he lives and works in New York. Under the circumstances, I **CONCLUDE** that a reduction in the scheduled suspension to a period of six months is warranted

Accordingly, it is **ORDERED** that respondent's New Jersey driving privileges be suspended for a period of 180 days. The effective date of this suspension shall be set forth in an order of suspension which shall be sent to respondent by NJMVC.

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.

May 31, 2017
DATE

Richard McGill
RICHARD MCGILL, ALJ

Date Received at Agency.

Debra Sanders

Date Mailed to Parties.

JUN 1 2017

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

ljb

APPENDIX

WITNESS LIST

For petitioner:

Anthony D'Antuono

Joseph O'Halloran

For respondent

Shkelqim Afjani

EXHIBIT LIST

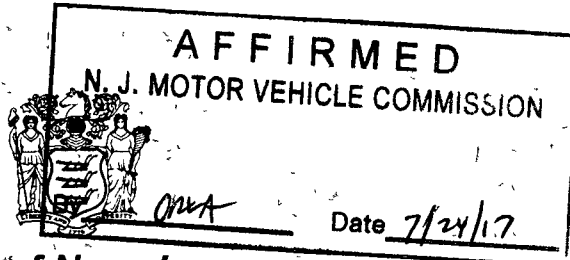
- P-1 New Jersey Police Crash Investigation Report
- P-2 New Jersey Police Crash Investigation Report
- P-3 Investigation Report dated November 15, 2014
- P-4 Supplemental Investigation Report dated November 17, 2014
- P-5 Supplemental Investigation Report dated November 22, 2014
- P-6 Supplemental Investigation Report dated November 15, 2014
- P-7 Certificate of Death for Ernesta G. Fernandez
- P-8 Fatal Accident Report dated November 28, 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 JUN 1 2017**



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. MVH 04232-17

AGENCY DKT. NO WXXXX-XXXX-07962

MOTOR VEHICLE COMMISSION,

Petitioner,

v

ANSUMANA WALLY,

Respondent

Conrad Olear, Esq, for petitioner, New Jersey Motor Vehicle Commission.
(Strasser & Associates, attorneys)

Ansumana Wally, pro se, Failed to Appear

Record Closed. May 24, 2017

Decided June 7, 2017

BEFORE JUDE-ANTHONY TISCORNIA, ALJ.

STATEMENT OF THE CASE

Petitioner alleges that respondent's driving privileges should be suspended for forty-nine months because he was involved in a fatal accident. Respondent failed to appear at both the preliminary hearing and the plenary hearing. I **FIND** the suspension should be upheld for the reasons set forth below.

PROCEDURAL HISTORY

Petitioner, New Jersey Motor Vehicle Commission (MVC), sent a scheduled suspension notice to respondent Ansumana Wally dated February 22, 2017. Respondent contested the suspension. The matter was transmitted to the Office of Administrative Law (OAL) and filed on March 07, 2017. An emergent preliminary hearing was held on April 7, 2017. Respondent failed to appear at the hearing and an Order was issued by Judge John P. Scollo, ALJ, suspending respondent's driving privileges effective immediately. (P-1.) A plenary hearing was held in front of the undersigned on May 24, 2017, at which time the record was closed. Respondent failed to appear at the hearing and petitioner submitted into evidence a packet of documents outlining the relevant facts of the case. (P-2.)

FACTUAL DISCUSSION

Based upon a review of the entire record and evidence offered, I **FIND** the following to be the **FACTS**:

On November 1, 2015, respondent was operating a motor vehicle in Jersey City, New Jersey, that struck and killed Stanly Mis, a pedestrian. Respondent fled the scene of the accident and was subsequently apprehended by the Jersey City Police Department.

On April 7, 2017, Judge John P. Scollo, ALJ, issued an Order immediately suspending respondent's driving privileges pending a plenary hearing. The Order further states that respondent shall immediately surrender his driving license to petitioner MVC and that if respondent fails to appear at the plenary hearing his driving privileges shall be suspended for the full period proposed by petitioner. (P-1.) A copy of this Order was sent to respondent by this office on April 10, 2017. Petitioner proposes a forty-nine-month suspension in this matter. Respondent failed to appear to the plenary hearing and failed to request an adjournment of same.

LEGAL ANALYSIS AND CONCLUSION

The Commission is empowered to suspend a motorist's driving privileges for a violation of any provision of the motor vehicle statutes or for any other "reasonable grounds" N.J.S.A. 39:5-30. The Legislature has vested the authority in the Commission, subject to prompt review, to impose a driver license suspension as a preliminary matter prior to a plenary proceeding in a motor vehicle fatality case N.J.S.A. 39:5-30(e)(3). Where the Commission proposes suspension of driving privileges under N.J.S.A. 39:5-30 as an administrative enforcement of the motor vehicle regulations, it bears the burden of proof by the preponderance of the competent and credible evidence of facts essential to such suspension Atkinson v Parsekian, 37 N.J. 143, 149 (1962).

This matter involves a proposed suspension of respondent's license for a substantial period due to a fatal accident. Respondent fled the scene of the fatal accident and had to be apprehended by police. These facts are set forth by petitioner and supported by the evidence. Respondent requested a hearing but has failed to appear or provided any argument to counter the pending suspension.

Respondent's failure to appear at the plenary hearing is a violation of the Order issued by Judge P. Scollo, ALJ, on April 7, 2017, and the proposed suspension should be implemented as a result.

I **CONCLUDE** that petitioner has proven by a preponderance of the evidence that respondent Ansumana Wally struck and killed Stanly Mis with his vehicle and then fled the scene of the accident.

Administrative suspensions are remedial in nature, designed to promote public safety rather than to punish wrongdoers Atkinson, supra, 37 N.J. at 155. Given the totality of the circumstances, I **CONCLUDE** that the scheduled suspension notice dated

February 22, 2017, setting forth a period of suspension of forty-nine months is appropriate

ORDER

Accordingly, it is hereby **ORDERED** that respondent's New Jersey driving privileges be suspended for a forty-nine-month period. The Commission shall set forth the effective date of this suspension in an Order of suspension to respondent under 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, P.O. 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

June 7, 2017

DATE



JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency.

Date Mailed to Parties:

JUN 8 2017



DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

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APPENDIX

LIST OF WITNESSES

For Petitioner

None

For Respondent.

None

EXHIBITS

For Petitioner.

P-1 Order signed by the Honorable John P. Scollo, ALJ, Dated April 7, 2017

P-2 Evidence Packet

For Respondent.

None



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 JUN 8 2017