

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO MVH 02684-16

AGENCY REF NO FXXXX

XXXXX 56882

NEW JERSEY MOTOR VEHICLE COMMISSION,

Petitioner,

v.

SHAKORAH S. FOYE,

Respondent

Motor Vehicle Commission, petitioner, appearing on the papers only,
pursuant to N.J.A.C. 17:27-5.6

Shakorah S. Foye, respondent, pro se

Record Closed. April 5, 2016

Decided April 20, 2016

BEFORE **THOMAS R. BETANCOURT**, 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) to suspend indefinitely the New Jersey passenger endorsement on the Commercial Driver License (CDL) of respondent Shakorah S. Foye. The issues are 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 on June 2, 2015, the Motor Vehicle Commission (Commission) proposed to suspend respondent's passenger endorsement indefinitely because she failed to satisfy the requirements for the endorsement on her CDL based on information that she had a disqualifying criminal arrest and/or conviction record. Respondent timely requested a hearing. The Commission conducted an informal pre-hearing conference on October 26, 2015. The Commission transmitted the matter to the Office of Administrative Law (OAL) where it was filed on February 12, 2016, for determination as a contested case.

A hearing was held on March 22, 2016. The record was held open until April 5, 2016, to permit respondent to produce documentary evidence to support her position that she is rehabilitated.

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

Based upon a review of the testimony and the documentary evidence presented, I FIND the following **FACTS**:

1. Respondent is currently twenty-seven years of age and financially supports herself and her son through full-time employment as a driver for Sunshine Horizon, where she drives a passenger van transporting residents. This is a new position and she has worked at Sunshine Horizon for two months. Her child's father is currently incarcerated on a parole violation. She is the sole support of her child.
2. Prior to her current employment she drove a school bus for Jones Transportation in Newark. She was required to leave this employment as she lost her school

bus endorsement due to her prior criminal record She was only employed at Jones Transportation for one month.

3. Prior to working at Jones Transportation respondent worked at the Hampton Inn in Union doing housekeeping
4. Prior to that employment respondent worked as a security guard for Strike Force Security, a position she held for approximately two years
5. Respondent holds a commercial driver's license with a passenger endorsement. N.J.A.C. 13.21-23.12. Respondent's Abstract of Driver History indicates that she has never had any points or accidents against her license (P-1.)
6. On ~~December~~ ^{June} ~~24~~ ², 201~~4~~ ⁵, the Commission issued respondent a Scheduled Suspension Notice from which respondent appealed (P-1)
7. The Commission submitted documents in support of its contention that respondent had disqualifying criminal records. Respondent does not dispute the criminal records presented by the Commission but argues that she has succeeded in turning her life around
8. The predominant charges against respondent relied upon by the Commission are that she has a disorderly persons conviction for theft in contravention of N.J.S.A. 2C 20-3 from 2011; a felony conviction for shoplifting in contravention of N.J.S.A. from 2012; a shoplifting conviction in contravention of N.J.S.A. 2C.20-11b(2) from 2013; and, and a charge for endangering the welfare of a child in contravention of N.J.S.A. 2C 24-4A from 2014
9. The latter offense of endangering the welfare of minor was dismissed by the Court It entailed a motor vehicle stop while in her cousin's vehicle with her then four-year-old son The result was a discovery of CDS by the police that led to the charges of endangering the welfare of her son It is not a disqualifying offense as it was dismissed
10. Respondent readily admits to the past convictions. Since her last conviction respondent has completed Parenting Skills Class (P-1)
11. Respondent states she is a hard worker and a good parent She assists her mother with her younger siblings. She is a congregant at the Abdul Rachman Mosque in East Orange

corrected
dates
←
(see
p. 2)

12 She has had gainful employment for approximately three consecutive years. She aspires to drive for New Jersey Transit.

13 Respondent has submitted letters from family and friends attesting to her character and rehabilitation

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.A. § 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:

1. He or she has been convicted of, or forfeited bond or collateral upon, any of the following

(3) A crime or other offense involving the use of force or the threat of force to or upon a person or property, such as armed robbery, assault and arson,

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

In addition, there are these general requirements for a person to hold such an endorsement. "Applicants shall be at least 21 years of age, have a minimum of three years driving experience, be of good character and physically fit and possess a valid New Jersey driver license" N J A.C. 13.21-14 5(a). The Commission charged respondent with respect to these disqualifying provisions

Nevertheless, the law vests the Chief Administrator with discretion on this type of suspension both because of the permissive use of "may" rather than the mandatory "shall" language above and because it 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 provides 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 deemed to have demonstrated significant rehabilitation and other mitigating factors in support of retaining her commercial passenger endorsement including, but not limited to, her currently clean abstract and the fact that he has been financially supporting himself and her son for the past three years. Furthermore, she has completed a Parenting Skills Class in an effort to improve herself

I **CONCLUDE** that the public is not at risk as a result of the passenger endorsement of respondent and that she is deserving of a waiver of her past transgressions so that her future can continue to grow in a positive direction; and, she can continue to support herself and her child.

ORDER

It is **ORDERED** that the Scheduled Suspension Notice issued against the passenger endorsement on respondent Shakorah S. Foye's Commercial Driver License be and hereby is **REVERSED**

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.

April 20, 2016

DATE

Thomas R. Betancourt

THOMAS R. BETANCOURT, ALJ

Date Received at Agency

April 20, 2016 (db)
Laura Sanders

Mailed to Parties

APR 21 2016

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

db

APPENDIX

List of Witnesses

For Petitioner:

None

For Respondent

Shakorah S Foye, petitioner

List of Exhibits

For Petitioner.

P-1 Package of Documents

For Respondent

R-1 Letter dated March 28, 2016, from Tiffany Holmes

R-2 Undated letter from Teresa M. Cooper

R-3 Undated letter from Monica Blackwell

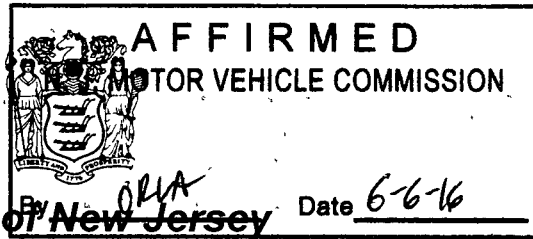
R-4 Undated letter from Rachel Foye



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 APR 21 2016**



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO MVH 02685-16

AGENCY REF. NO WXXXX XXXXX

01712

NEW JERSEY MOTOR VEHICLE COMMISSION,

Petitioner,

v

TEREAK R. WASHINGTON,

Respondent

Motor Vehicle Commission, petitioner, appearing on the papers only,
pursuant to N.J.A.C. 1.1-5.6(a)

Tereak R. Washington, petitioner, pro se

Record Closed: April 5, 2016

Decided: April 20, 2016

BEFORE **THOMAS R. BETANCOURT**, 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) to suspend indefinitely the New Jersey passenger endorsement on the Commercial Driver License (CDL) of respondent Tereak R. Washington. The issues are 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 on December 24, 2014, 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 and/or conviction record Respondent timely requested a hearing The Commission conducted an informal pre-hearing conference on June 1, 2015 The Commission transmitted the matter to the Office of Administrative Law (OAL) where it was filed on February 12, 2016, for determination as a contested case.

A hearing was held on March 22, 2016. The record was held open until April 5, 2016, to permit respondent to produce documentary evidence to support his position that he is rehabilitated

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

Based upon a review of the testimony and the documentary evidence presented, I **FIND** the following **FACTS**.

- 1 Respondent is currently forty-five years of age and financially supports himself through full-time employment as a driver for Atlantic Labor Solutions, where he primarily drives a wine truck He also on occasion drives a crash truck, a vehicle used to protect road crews while working on roadways He has held this position for approximately two years
- 2 Prior to his current employment respondent was employed by FSR in West Paterson as an inventory clerk He held that position for approximately four years

- 3 Respondent holds a commercial driver's license with a passenger endorsement N J A C 13.21-23 12 Respondent's Abstract of Driver History indicates that he has never had any points or accidents against his license. (P-1.)
4. On December 24, 2014, the Commission issued respondent a Scheduled Suspension Notice from which respondent appealed. (P-1.)
5. The Commission submitted documents in support of its contention that respondent had disqualifying criminal records. Respondent does not dispute the criminal records presented by the Commission but argues that he has succeeded in turning his life around
6. The predominant charges against respondent relied upon by the Commission are that he has a felony conviction for possession of CDS on school property in contravention of N J.S.A. 2C:35-7 from 2007, and a disorderly person conviction for loitering to obtain CDS in contravention of N.J.S.A 2C:33-2.1 That offense occurred in 2006
- 7 Respondent readily admits to the past convictions. He stated, "It took me a while to grow up " Since his last conviction respondent has completed a Drug Court Program(R-); has entered into and completed six-month rehabilitation program at Damon House (R-), and has completed an eighteen-month program at Eva's village in Paterson.
- 8 He has had gainful employment for approximately six consecutive years When he left his employment with FSR he decided to get his CDL He wants to retain his passenger endorsement to provide employment flexibility.

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 Div 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.A. §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

* * *

(3) A crime or other offense involving the use of force or the threat of force to or upon a person or property, such as armed robbery, assault and arson;

[N.J.A.C. 13.21-14.5(c).]

In addition, there are these general requirements for a person to hold such an endorsement: "Applicants shall be at least 21 years of age, have a minimum of three years driving experience, be of good character and physically fit and possess a valid New Jersey driver license." N.J.A.C. 13.21-14.5(a). The Commission charged respondent with respect to these disqualifying provisions

Nevertheless, the law vests the Chief Administrator with discretion on this type of suspension both because of the permissive use of "may" rather than the mandatory "shall" language above and because it 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 deemed to have demonstrated significant rehabilitation and other mitigating factors in support of retaining his commercial passenger endorsement including, but not limited to, his currently clean abstract and the fact that he has been financially supporting himself for the past six years. Furthermore, he is entirely compliant with the requirements of Drug Court, has the support of his employer, and has demonstrated sincere and serious commitment to the community and his own continued progress

I **CONCLUDE** that the public is not at risk as a result of the passenger endorsement of respondent and that he is deserving of a waiver of his past transgressions so that his future can continue to grow in a positive direction.

ORDER

It is **ORDERED** that the Scheduled Suspension Notice issued against the passenger endorsement on respondent Tereak R. Washington's Commercial Driver License be and hereby is **REVERSED**.

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.

April 20, 2015

DATE

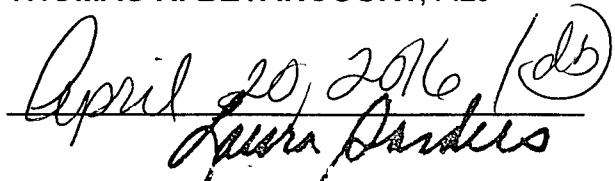
Date Received at Agency:

Mailed to Parties.

db



THOMAS R. BETANCOURT, ALJ



DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APR 21 2016

APPENDIX

List of Witnesses

For Petitioner.

None

For Respondent

Tereak R Washington

List of Exhibits

For Petitioner.

P-1 Package of Documents

For Respondent

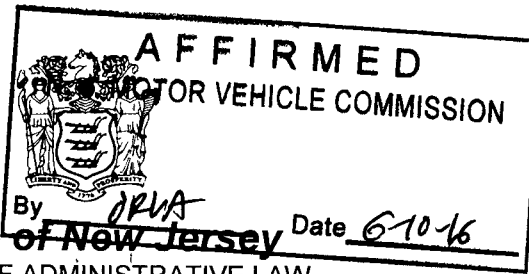
- R-1 Eva's Village Discharge Summary
- R-2 Letter from John Graves of Eva's Village
- R-3 Pay stubs from Atlantic Labor Solutions, LLC
- R-4 Certificate of Graduation Essex Vicinage Drug Court
- R-5 Certificate of Recognition from Eva's Village



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

**This decision was mailed to the parties
on APR 21 2016**



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NO MVH 2567-16

AGENCY DKT NO SXXXX XXXXX 05672

MOTOR VEHICLE COMMISSION,

Petitioner,

v

AMR A. SOLIMAN

Respondent

Motor Vehicle Commission, appearing without a representative, pursuant to
N J A C 1 1-5 6(a)

Amr A. Soliman, respondent, pro se

Record Closed April 22, 2016

Decided April 26, 2016

BEFORE **W. TODD MILLER, ALJ**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

By notice dated September 30, 2012, the Director of the Motor Vehicle Commission (Division or MVC) indicates his intent to indefinitely suspend the New Jersey passenger endorsement of Amr A Soliman (respondent) because he has a disqualifying conviction (P-1 8)

Respondent requested a hearing. An MVC settlement/conference was held on March 25, 2013 (P-1 9). No settlement was reached. On February 12, 2016, the MVC transmitted the matter to the Office of Administrative Law ("OAL") for determination as a contested case, pursuant to N.J.S.A. 52.14B-1 to -15 and N.J.S.A. 52.14F-1 to -13. A hearing de novo was held on April 22, 2016, and the record closed. For the reasons discussed below, respondent's passenger endorsement is not suspended.

STATEMENT OF FACTS AND CONSIDERATIONS

Respondent was convicted as follows:

<u>Arrest</u>	<u>Charge</u>	<u>Disposition</u>
9/18/12	2C 39-5(b) ¹	Guilty 1/20/16

[R-1 5]

The following testimony was unopposed by the MVC and found to be credible based upon the records submitted. Petitioner is a forty-eight-year old male. He is married and his household consisted of five children in 2012. Petitioner was the owner or operator of a small convenience store in the northeast inlet of Atlantic City. He also lived in the same area with his family.

In or around 2011 his home was burglarized. His safe with all his vital personal belongings was stolen. Also he was brutally beaten while working at his convenience store during another incident. The assailant attacked petitioner by punching him in the head around the eye socket with brass knuckles. The assailant took all of the cash from the store's cash register. Respondent required eye surgery for a broken orbit.

¹ The MVH ex parte submission incorrectly states that respondent was convicted of Kidnaping or Coercion (P-1 5). The correct charge was unlawful possession of a weapon.

Respondent decided to purchase a handgun for his own protection while at the store and the protection of his family at home. He went through the permitting process to own and possess a hand gun. He did not however, have a license to carry a weapon on his person.

In or around 2012 petitioner was having a marital problem. He moved to Connecticut and worked as a gas station attendant. Petitioner and his wife later decide to attempt reconciliation. Petitioner came back from Connecticut. He arranged a meeting with his wife at the marital home in Atlantic City. His wife asked that he take his handgun from their home because she had five children in the house. They also decided to discuss their marital situation outside the home away from the children.

Respondent rented a hotel room in Absecon, New Jersey. He met his wife there and they engaged in discussions about their marriage. Discussions turned heated and loud. The motel management called the police, an investigation ensued and petitioner was eventually arrested for having a handgun in his automobile (See, R-1 6-12 for detailed history)

Respondent explained that the handgun was in the vehicle glove compartment, the gun magazine was in the vehicle's center console, and the ammunition was in the rear area of his Ford Expedition, as there is no trunk. This approximates the procedures for transporting handguns except that the magazine was too close in proximity to the gun. Ordinarily, the gun and ammunition must be locked in the trunk if the owner is not licensed to carry a weapon.

Respondent was eventually charged with unlawful possession of a weapon. Several years passed between the date of the charge and date of his plea because the State of New Jersey was evaluating its rules and regulations in connection with possession and transportation of handguns and the mandatory penalties. Therefore, the case took almost four years to resolve. Respondent was eventually denied entry into the Pretrial Intervention Program (PTI) apparently because of the Graves Act.

On or about January 20, 2016 respondent pled guilty to unlawful possession of a weapon-handgun 2C 39-5(b) He was sentenced to three years' probation, one hundred and twenty days community service and a \$300 fine Respondent has no prior convictions, arrest, or other adverse contact with law-enforcement.

Respondent and his wife reconciled and are now back together The household has been reduced to two children as the older children have moved on in adulthood He has no alcohol or drug related involvement and has otherwise been a law-abiding citizen

Respondent has a significant work history. His current employer is Caring Adult Health Care Services Caring provides transportation services for the aged and disabled Petitioner has worked for Caring for three years as a bus/van driver Caring is aware of petitioner's conviction and has nonetheless offered him high recommendations (P-1)

LEGAL ANALYSIS

The Director has promulgated a set of regulations setting forth the qualifications for bus driver licensure N J A C 13 31-14 5 The Director's notice dated September 30, 2012, does not state with specificity which section of the pertinent regulation it is seeking to disqualify and suspend respondent's passenger endorsement (P-1.8) And the conviction was noted as kidnapping (P-1.5) The undersigned contacted the Director's representatives prior to the hearing and requested which section of the regulation was being applied to respondent The Director's staff indicated that it was proceeding under subsection (c)(12)(i)(4) of this regulation This sections provides that the Director may revoke or suspend the bus driver license of any person who has been convicted of "any crime or other offense indicative of bad moral character"

The Director has reserved the right to waive any portion of the regulations "[i]f sufficient and reasonable grounds are established at the hearing" N J A C 13 21-14 5(d) Guidance on whether to grant a waiver may be sought from the standards in

the Rehabilitated Convicted Offenders Act, N J S A 2A 168A-1 to -6 That Act prohibits a governmental authority from disqualifying an applicant from obtaining a business or professional license due to a criminal conviction, unless the crime "relates adversely to the occupation or business for which the license or certificate is sought "

N J S A 2A.168A-2 specifies the factors which the licensing agency must consider in making its determination. These factors include: the nature and duties of the occupation or profession, the nature and seriousness of the crime, the circumstances under which the crime occurred, the date of the crime, the age of the person when the crime was committed, whether the crime was an isolated or repeated incident, any social conditions which may have contributed to the crime; and any evidence of rehabilitation, including good conduct in prison or the community and the recommendations of persons who have had the applicant under their supervision

Here, respondent is a mature and responsible businessman and husband that was brutally attacked while working in his store. His home was burglarized in a separate incident. He resided in a section in Atlantic City that has had high crime. So he lawfully purchased a firearm to protect his business and family. This does not reflect bad moral behavior or conduct.

Respondent left the gun at his marital home while the couple was experiencing marital difficulties. He was later asked to remove the gun by his wife due to children being in the home. Removing the gun does not reflect bad moral judgement or character.

Respondent's criminal conduct arises from technical compliance with firearm possession, transportation, and carrying laws². The owners of guns can move them

² Interstate transportation is covered under the Safe Passage provision of the Firearm Owners Protection Act (FOPA), 18 USC § 926A, which states

Notwithstanding any other provision of any law or any rule or regulation of a State or any political subdivision thereof, any person who is not otherwise prohibited by this chapter [18 USCS §§ 921 et seq.] from transporting, shipping, or receiving a firearm shall be entitled to transport a firearm for any lawful purpose from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm if, during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle. *Provided*, That in the case of a vehicle

from place to place, even without a license to carry, so long as the firearm is properly stored and secured (see footnote 2)

In this case, respondent was moving his gun out of the family home. He did not brandish the gun at anyone or threaten to use it. The criminal charges and plea arose from the improper storing of the firearm in his car. This reflects poor understanding and compliance with the laws associated with gun ownership and transportation. But it does not reflect bad moral character, especially mindful why respondent purchased the firearm in the first place – protection of property, family, and self-defense.

CONCLUSION

I **CONCLUDE** that respondent's criminal conviction does not relate adversely to the occupation or business for which the license or certificate is sought. N.J.S.A. 2A 168A-1 to -6. He has no prior history of any adverse contact with law enforcement. He is a mature, forty-eight-year old employed family man and his employer holds him in high regard. He purchased a firearm for self-defense and made a technical violation of the gun possession/transportation laws. There is no nexus between his conviction and his employment.

For the reasons stated above, I **CONCLUDE** that respondent has sufficiently demonstrated that his New Jersey passenger endorsement should not be suspended.

ORDER

Based upon the findings, credibility determinations, and conclusions in this de novo hearing, I **ORDER** that respondent's New Jersey passenger endorsement shall not be suspended.

without a compartment separate from the driver's compartment the firearm or ammunition shall be contained in a locked container other than the glove compartment or console.

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.

April 26, 2016
DATE


W. TODD MILLER, ALJ

Date Received at Agency

April 26, 2016

Date Mailed to Parties

4/26/17

/jb

WITNESSES

For Petitioner:

None

For Respondent:

Amr A Soliman

DOCUMENTS IN EVIDENCE

For Petitioner:

P-1 Ex Parte submission – Exhibits 1 to 9

For Respondent:

R-1 Respondent's Submission Pages 1 to 15

**STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
AGENCY DKT. NUMBER: CXXXX XXXXX 02822
OAL DOCKET NUMBER: M.V.H. 20337-15**

IN THE MATTER OF :
RUSSELL S. CLINE¹ : **FINAL DECISION**

The Motor Vehicle Commission (“Commission”) hereby determines the matter of the proposed suspension of the registration privileges of **RUSSELL S. CLINE**, respondent, for failure to pay tolls and administrative fees due to the New Jersey Turnpike Authority (“NJTA”), pursuant to N.J.S.A. 27:23-38 and N.J.S.A. 39:5-30. Pursuant to N.J.S.A. 27:23-38, respondent’s New Jersey registration privileges are subject to suspension until he has satisfied the outstanding tolls and administrative fees. In addition, respondent must also pay the Commission’s registration privilege restoration fee due if his registration privileges are suspended. Prior to this final agency determination, I have reviewed and considered the Initial Decision rendered by the Administrative Law Judge (“ALJ”) and the letter of exceptions filed by respondent in this matter, as well as the reply to exceptions filed on behalf of the Commission. Based upon a de novo review of the record presented, I shall accept and adopt the findings and conclusions contained in the Initial Decision; however, I shall modify the ALJ’s recommendation as stated below.

In the Initial Decision, the ALJ concluded, after a thorough and careful examination of the evidence and a comprehensive analysis of the applicable legal

¹ The Initial Decision contains a typographical error for the respondent’s first name; the respondent’s name correctly spelled is Russell S. Cline.

principles, that the Commission had met its burden of proof with regard to the unpaid toll violations and administrative fees. Thus, the ALJ recommended that respondent's New Jersey registration privileges be suspended until he has satisfied unpaid tolls in the amount of \$1,079.55, administrative fees of \$14,500, and the registration privilege restoration fee (\$100). Initial Decision at 6. The ALJ specifically found that: respondent maintained an E-Z Pass account with the NJTA from August 2011 through April 2012; the Commission presented evidence of 572 toll violations attributable to a vehicle owned by respondent; respondent acknowledged that some, but not all, of the 572 violations were his responsibility; respondent provided no documentation disputing the 572 violations; respondent acknowledged some resolution of other unpaid tolls and agreements with NJTA to waive certain administrative fees; and respondent has obtained use of another E-Z Pass account under an acquaintance's name.

After hearing testimony from witnesses on behalf of the Commission, as well as from respondent, and considering the evidence submitted, the ALJ found that the Commission "properly seeks to suspend respondent's registration privileges for his failure to pay \$1,079.55 in toll violations and \$14,500 in administrative fees for respondent's failure to pay tolls on 572 occasions during the period of August 2011 through December 2012." Id. at 5.

In his letter of exceptions, respondent asserts that the Commission "only presented evidence for less than the 572 toll violations listed," that some violations had been satisfied and therefore the amount owed should be \$912.30 in tolls and \$12,200 in administrative fees, that the matter should have first been brought in municipal court, that the Commission failed to prove that respondent has "tried to

refuse, evade or attempt to evade, any tolls,” and that respondent did not receive notices from the NJTA in a timely fashion.

Respondent made the same arguments at the hearing, at which time the ALJ provided respondent with the opportunity to identify any errors in the 572 violations and present proofs in support of his arguments. However, respondent failed to present any specific evidence of errors in the 572 violations. He merely argued that he did not receive the notices, or did not receive them in a timely fashion, and that he had already paid some of the outstanding tolls and administrative fees. The Commission acknowledges that respondent has resolved some of the outstanding tolls since the evidence was first assembled, and that the outstanding amounts due in this matter are \$912.30 in tolls, \$12,225 in administrative fees, and a \$100 registration privilege restoration fee.

At the hearing the ALJ also heard respondent’s arguments regarding respondent’s claimed failure to receive the notices from NJTA, that respondent had successful payment arrangements with NJTA in the past, and that the matter should have first been brought in municipal court. The ALJ addressed these arguments in the Initial Decision and determined them to be without merit, ultimately finding that the Commission met its burden of proof and therefore respondent does in fact owe NJTA for outstanding toll violations and administrative fees.

First, it is noted that the fact that respondent had payment arrangements with regard to tolls that are not the subject of this administrative matter is not relevant to whether respondent owes the tolls and administrative fees at issue.

With regard to respondent's claimed failure to receive all of the notices, the Commission presented evidence that the violation notices were mailed to the correct address, which respondent admitted was his home address during the period in question. Furthermore, respondent admitted to receiving several of the notices presented to the ALJ.

With regard to respondent's argument concerning where the action should have been brought, the ALJ concluded, and I agree, that the Commission has the authority to take administrative action against respondent's registration privileges pursuant to N.J.S.A. 27:23-38, and there is no legal authority in support of respondent's argument that NJTA would first have to bring an action for collection in the municipal court. See, N.J.S.A. 27:23-34.3. The two remedies, municipal court and administrative action, are not mutually exclusive, and they do not need to be brought in any particular order.

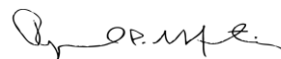
Thus, I agree, based on my independent assessment of the facts in evidence, that the Commission has proven the outstanding violations and that the violations were sent to the correct address, and I defer to the ALJ's credibility determination as to proper service and receipt of the notices. Indeed, based on a de novo review of the record, it appears that respondent's issue is more with the administrative fees than the amount of outstanding tolls. However, the administrative fees are statutorily authorized and set forth in regulation. See, N.J.S.A. 27:23-34.3 and N.J.A.C. 19:9-9.2.

Based upon the foregoing, I wholly concur with the ALJ's overall factual findings and legal conclusions. However, the Commission has identified partial payment of the outstanding amount due and can confirm that the actual amount due as of the date of this final decision is \$912.30 in tolls and \$12,225 in administrative fees.

I, like the ALJ, have taken respondent's circumstances into consideration when arriving at my decision, but I also have a responsibility to impress upon respondent that the owners of motor vehicles have an obligation to pay the tolls due and owing to the authorities maintaining the toll roads in this State, and that failure to pay those tolls may result in the suspension of registration privileges, by law. While I am sympathetic regarding the hardship that respondent may suffer as a result of his New Jersey registration privileges being suspended, respondent must nevertheless appreciate the responsibility that he owes to the tolling authorities under the laws of the State of New Jersey.

It is, therefore, on this 6th day of June, 2016, **ORDERED** that the New Jersey registration privileges of **RUSSELL S. CLINE** be suspended until he makes payment of \$912.30 in tolls and \$12,225 in administrative fees, and the restoration fee of \$100, for failure to pay tolls due to NJTA for the period August 2011 through December 2012.

NOTE: The **effective date** of this suspension is set forth in the "Order of Suspension," which the Commission will forward in a separate mailing.



Raymond P. Martinez
Chairman and Chief Administrator

RPM:eha

C: Jennifer Jaremback, DAG



AFFIRMED
MOTOR VEHICLE COMMISSION

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

By OPLA Date 6-20-16

INITIAL DECISION

OAL DKT NO MVH 2566-16

AGENCY DKT NO MXXXX XXXXX 08762

MOTOR VEHICLE COMMISSION,

Petitioner,

v

DESMOND MICHEAUX,

Respondent

Motor Vehicle Commission, appearing without a representative, pursuant to
N J A C 1 1-5 6(a)

Mark H. Stein, Esq , for respondent

Record Closed April 22, 2016

Decided May 5, 2016

BEFORE **W. TODD MILLER, ALJ**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

By notice dated June 4, 2015, the Director of the Motor Vehicle Commission (Division or MVC) indicates his intent to indefinitely suspend the New Jersey passenger endorsement of Desmond Micheaux (respondent) because he has a disqualifying conviction (P-1 36)

Respondent requested a hearing. A MVC settlement/conference was held on November 16, 2015 (P-1.37). No settlement was reached. On February 12, 2016, the MVC transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A hearing de novo was held on April 22, 2016, and the record closed. For the reasons discussed below, respondent's passenger endorsement is suspended.

STATEMENT OF FACTS AND CONSIDERATIONS

Respondent was convicted as follows:

<u>Arrest</u>	<u>Charge</u>	<u>Disposition</u>
10/2/96	2C 12-1B1 (Agg Assault)	Guilty 10 years jail
10/11/96	2C 15-1 (Robbery)	Guilty 20 years jail
10/11/96	2C 14-2a (Agg Sex Assault)	Guilty 20 years jail

[P-1 2-7]

Respondent was released from jail in 2013 after sixteen years. He is currently thirty-nine years old. Respondent admits to being convicted for the above mentioned crimes. He indicated that when he was twenty he "hung out" with a bad crowd. His "crowd" used drugs and engaged in bad acts. He did not want to appear weak so he would engage in bad acts so he could remain part of the group.

In 1996, his group robbed a twenty-nine-year old woman, then took her back to a room and forcibly raped her. Respondent indicated that he did not actually rape the victim due to his inability to perform, but he did attempt to do so.

Respondent appeared remorseful as he testified about the incident. He was embarrassed and explained that he let his mother and father down. He appeared to be

forthright, well spoken, well dressed, intelligent and very aware of how improper his conduct was in 1996. He clearly knows right from wrong based upon this level of intelligence.

Respondent was very active while he was in jail. He completed numerous courses so he could better his life when he got out of prison. He offered several coursework certificates into evidence including behavioral modification, anger management, job training courses, and his GED diploma (R-1a-o). Respondent also provided recommendations from church ministers.

Respondent was employed shortly after being released from prison. He worked at a men's clothing store, a jewelry store, gas station, construction company, and limousine company. Respondent is presently working for Caesars Casino which includes Bally's Casino and Harrah's Casino. He works in transportation department. He transports customers around Atlantic City between the various casino properties. He has worked at Caesars for about nine months. Respondent asserts that his employer is well aware of his background and still hired him.

The MCV ex parte submission included respondent's up to date criminal history. On November 15, 2014, respondent was arrested for robbery by force (2C 15-1A(1)) an indictable offense (P-1). He pled guilty to the charge or a downgraded version of the charge. He was represented by counsel.

Remarkably, he did not mention the 2014 arrest, charge or conviction during his testimony in connection to his rehabilitation or lack thereof. The charge was noted by the undersigned after the hearing was concluded. Respondent was provided additional time to address the 2014 arrest and conviction for robbery either by offering supplemental testimony or by submission of a supplemental certification, for which he choose the latter.

Respondent's certification portrayed the 2014 arrest and conviction as de minimis. It was a dispute between friends over twenty dollars.

LEGAL ANALYSIS

The Director has promulgated a set of regulations setting forth the qualifications for bus driver licensure N.J.A.C. 13 31-14.5. The Director's notice dated June 4, 2015, indicates that it is seeking to disqualify and suspend respondent's passenger endorsement pursuant to N.J.A.C. 13 31-14.5 (a) and (c) (P-136). This section provides that the Director may revoke or suspend the bus driver license of any person who has been convicted of certain crimes that involve force, illicit or deviate sexual acts, threats, arson, or other acts involving bad moral character.

The Director has reserved the right to waive any portion of the regulations "[i]f sufficient and reasonable grounds are established at the hearing." N.J.A.C. 13 21-14.5(d). Guidance on whether to grant a waiver may be sought from the standards in the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 to -6. That Act prohibits a governmental authority from disqualifying an applicant from obtaining a business or professional license due to a criminal conviction, unless the crime "relates adversely to the occupation or business for which the license or certificate is sought."

N.J.S.A. 2A:168A-2 specifies the factors which the licensing agency must consider in making its determination. These factors include: the nature and duties of the occupation or profession, the nature and seriousness of the crime, the circumstances under which the crime occurred, the date of the crime, the age of the person when the crime was committed, whether the crime was an isolated or repeated incident, any social conditions which may have contributed to the crime, and any evidence of rehabilitation, including good conduct in prison or the community and the recommendations of persons who have had the applicant under their supervision.

I was initially very impressed with respondent, albeit during an ex parte hearing. He was bright, energetic, articulate, and willing to admit to his shortcomings during his youth. But these hearings are very limited due to the limits of an ex parte hearing. An extraordinary amount of faith and confidence is placed upon the testimony of the

respondent since no one is present to challenge their testimony. That trust is established by the records they submit along with their candor to the tribunal. Rehabilitation is a critical part of the evaluation process.

The fact that respondent was arrested and convicted of robbery by force in 2014, after being released from sixteen years in prison in 2013, does not depict adequate rehabilitation. This is one of the very same charges that respondent went to jail for in 1996. He obviously could not control himself in 2014.

Also, respondent did not mention his 2014 arrest for robbery by force during his testimony before the undersigned. The arrest goes directly to the heart of rehabilitation, or lack thereof. A relapse back to into the life of crime, one which includes robbery by force, should have been mentioned, explained in the context of rehabilitation, rather than ignored. This makes the rest of respondent's presentation about rehabilitation and maturity suspect.

CONCLUSION

I **CONCLUDE** that respondent's 1996 and 2014 criminal convictions do relate adversely to the occupation or business for which the license or certificate is sought. N.J.S.A. 2A 168A-1 to -6. Respondent has a history of robbery, which is stealing money from a person. He was also convicted of sexual assault and is registered sex offender. Transporting casino patrons, i.e. persons with money on them, is not a position fit for respondent at this time. He regressed back to robbing people in 2014 which indicates he is not rehabilitated. He has only been out of prison since 2013, and already has another arrest and conviction which demonstrates a lack of maturity and rehabilitation.

For the reasons stated above, I **CONCLUDE** that respondent's New Jersey passenger endorsement must remain suspended.

ORDER

Based upon the findings, credibility determinations, and conclusions in this de novo hearing, I **ORDER** that respondent's New Jersey passenger endorsement shall be suspended

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 5, 2016
DATE

Todd Miller
W: TODD MILLER, ALJ

Date Received at Agency:

May 5, 2016

Date Mailed to Parties:

5/5/16

/jb

DOCUMENTS IN EVIDENCE

For Petitioner:

P-1 Ex Parte submission – Exhibits 1 to 37

For Respondent:

R-1 Respondent's Submission (A-O)

R-2 Respondent's Certification

WITNESSES

For Petitioner:

None

For Respondent:

Desmond Micheaux



AFFIRMED
MOTOR VEHICLE COMMISSION

State of ^{ORLA} ~~New Jersey~~ Date 6-27-16
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NO MVH 01915-16
AGENCY DKT. NO. 08522
(ON REMAND OAL DKT. NO.
MVH 9786-15) *Retransmittal*

MOTOR VEHICLE COMMISSION,

Petitioner,

v

SANTAM S. BANSAL,

Respondent.

Scharkner Michaud, for petitioner, Driver Improvement Analyst 2, appearing pursuant to N.J.A.C. 1:1-5.4(a)2

Mark H. Jaffe, Esq , for respondent

Record Closed: March 31, 2016

Decided: May 13, 2016

BEFORE T. MORGAN HURLEY, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This contested case involves N.J.S.A. 39:5-30, and N.J.S.A. 39:5-30 10; and N.J.A.C. 13.19-10 6, involving point system regulation and violation within a one-year

probation period Respondent's driving privileges were suspended for ninety days because of this violation.

Mr Bansal requested a fair hearing and the Commission transmitted the matter to the Office of Administrative Law (OAL) on February 2, 2016, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The matter was initially scheduled on November 30, 2015, and under (OAL Docket No. MVH 09786-2015) and respondent failed to appear on that date. The matter was remanded after the Commission accepted the excuse offered by his attorney for his failure to appear. The matter was then rescheduled and heard on March 31, 2016, on which date the Commission submitted exhibits P-1 through P-3 and the record was closed.

Respondent defends on the basis that he did not receive proper notice of the suspension and did not believe that his conduct justified the suspension.

TESTIMONY AND FACTUAL DISCUSSION

The Motor Vehicle Commission issued a Warning Notice (Notice) dated November 25, 2014, which was also given to Mr. Bansal personally after completion of his Driver Improvement Program (DIP). The Notice stated that if he committed any violation during a one-year probationary period, from the date he completed the DIP class, his driving privilege may be suspended for various periods that the Notice itemized, in particular, that if the violation was within the first six months, the suspension would be ninety days. On March 4, 2015, a speeding violation was posted to his record thereby, incurring a persistent violator suspension, posted on the same date. A scheduled suspension notice was issued on March 5, 2015, by the New Jersey Motor Vehicle Commission (MVC). The notice advised respondent that his license was suspended for ninety days because he received a speeding ticket while in the one-year probation period.

Santam Bansal's Testimony:

Upon showing his abstract to Mr Bansal, he expressed his deep sorrow for the incident and stated that he drove each day from Lawrenceville to Basking Ridge to work. He also stated that there was no public transportation from his home to his workplace. Further, he needed to drive in order to work and support his family and to seek medical treatment Mr Bansal stated that the speeding violation occurred on Route 601, which is off Route 27, and that he was going in the northern direction where speed limits vary from 25 miles to 55 miles per hour. He also testified that he has been driving in this county for twenty-five years. He stated that his company profile requires an active driver's license for his job

Mr. Bansal was stopped in Princeton for a speeding infraction as shown in P-2 that would result in a ninety-day loss of license. The Scheduled Suspension Notice,(P-3) was mailed to respondent's address in Lawrenceville, New Jersey Mr Bansal's attorney stated that there was no proof of Mr. Bansal's receipt of notice because the notice was not signed by Mr Bansal. However, Mr. Bansal, in his testimony, acknowledged receipt of the suspension notice and the suspension from May 17, 2008 Mr Bansal stated that he has lived at Nassau Drive in Lawrenceville for twenty-five years Mr. Bansal also acknowledged receipt of the above notices (P-1 and P-3) and stated that he gave them to his attorney

Sharkner Michaud's Testimony:

Scharkner Michaud represented the MVC and testified as to the Warning Notice of November 25, 2014 (P-1), the Certified Driving Abstract (P-2), and the Scheduled Notice of Suspension (P-3) of respondent Santam S Bansal He stated Mr. Bansal had attended a DIP class as indicated in the Certified Driving Abstract (P-2) and received the Scheduled Notice of Suspension (P-3) Mr Michaud noted that the Warning Notice (P-1) clearly sets out the ramifications for incurring a moving violation within the one-year probation period

Mr. Michaud stated that by Mr. Bansal's attendance at the DIP class that he was made aware of the consequences of a violation within the one-year period. Further, Mr. Michaud stated that no signature by Mr. Bansal was needed as Mr. Bansal was instructed at the DIP class as to the probation period (P-1) which outlined the periods that driving privileges could be suspended. Additionally, Mr. Michaud showed Mr. Bansal his driving abstract and the points credited to his record for attendance at the DIP class. Mr. Michaud referred to Mr. Bansal's driving abstract to indicate a previous suspension from May 17, 2008.

As most of the material facts are undisputed, I **FIND** the following **FACTS**:

Mr. Bansal received a suspension notice that resulted in a one-year probation period. The probation period was explained to Mr. Bansal in a DIP class where he received formal notice that he would be on a one-year probation after completing the DIP class and that a three-point reduction off his motor vehicle record would be granted automatically upon completion of the class. The second part of the probation is that he should not receive any moving violations or warnings of unsafe conduct during the one-year probation period. Mr. Bansal's speeding violation, that occurred on January 4, 2015, and posted on the Certified Driving Abstract on March 4, 2015, resulted in the violation of the one-year probationary period and resulted in the requisite ninety-day suspension. Further, a \$100 restoration fee is payable at any time during that year and a written notice of restoration of driving privileges issues automatically after payment of the fee.

LEGAL ANALYSIS

Applicable is N.J.A.C. 13:19-10.6 that provides in pertinent part

§ 13:19-10.6 Restoration; official warning, completion of Driver Improvement or Probationary Driver Program

(a) Persons whose licenses are restored after a suspension imposed under N.J.A.C. 13:19-10.2 or after a suspension imposed under this section, persons who are officially warned

after an administrative hearing, and persons who successfully complete a Commission Driver Improvement Program or Probationary Driver Program may retain their licenses upon the express condition and understanding that any subsequent violation of the Motor Vehicle and Traffic Law of the State of New Jersey committed within one year of the restoration, official warning, or warning following successful completion of a Driver Improvement or Probationary Driver Program shall, except for good cause, result in suspension of driving privileges for the following periods:

1. When the subsequent violation occurs within six months of the date of the restoration, official warning or warning following completion of a Driver Improvement or Probationary Driver Program--90 days,

Respondent's infraction occurred approximately one and one-half months after the start of his one-year probation that commenced when he completed a DIP class. He acknowledges receipt of the warning notice advising of the probation period. Generally, the schedule of suggested suspensions should be followed in the interest of uniformity, unless an individual licensee is able to demonstrate extraordinary circumstances justifying a reduction or waiver. Administrative suspensions are remedial in nature, designed to promote public safety rather than to punish wrongdoers. Atkinson v. Parsekian, 37 N.J. 143, 155 (1962). It is the Commission's function to impose suspensions for the purposes of reforming the particular motorist, and not for the purpose of frightening or deterring others, even though that may be an incidental result. Cresse v. Parsekian, 81 N.J. Super. 536, 549 (App. Div. 1963), aff'd, 43 N.J. 326 (1964).

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 that appears in many statutes and rules. Our courts have held "[t]he 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, and [e]ach 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 aggravation or mitigating circumstances. N J A.C. 13 19-10 2(b); Cresse, supra, 81 N J Super at 549 . Need alone cannot be the deciding factor; however, 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) .

Respondent is working full-time as a project manager and drives from Lawrenceville to Basking Ridge for work . The respondent produced evidence of argument by counsel as to the quality of his driving record, his good intention, and his need to keep his driving privileges since his job was predicated on his ability to drive his family and his medical history required him to drive . The fact that he lived in Lawrenceville, New Jersey and worked in Basking Ridge, New Jersey meant that public transportation was not an option for him .

Having considered respondent's personal situation, I **CONCLUDE** that based on the foregoing, the respondent has met his burden of proving "good cause" for a special exception to the usual suspension imposed in similar cases and the appropriate remedial sanction to be imposed would be a thirty-day suspension of the New Jersey driving privileges of the respondent .

ORDER

Based on the foregoing, I **ORDER** that the Commission's action suspending respondent's New Jersey driver's license for ninety days is **MODIFIED** to a period of thirty days .

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 13, 2016
DATE


T. MORGAN HURLEY, ALJ

Date Received at Agency.

5/13/2016

Date Mailed to Parties

5/14/16

/rp

WITNESSES

For Petitioner:

Scharkner Michaud

For Respondent:

Satnam Bansal

EXHIBITS

For Petitioner:

- P-1 Motor Vehicle Commission Warning Notice, dated 11/25/2014
- P-2 Motor Vehicle Abstract, dated 01/07/2016
- P-3 Motor Vehicle Commission Scheduled Suspension Notice, dated
03/05/2015

For Respondent:

None