



AFFIRMED
N.J. MOTOR VEHICLE COMMISSION

ORLA
State of New Jersey Date **6-25-18**
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NO MVH 02395-18
AGENCY DKT NO TXXXX XXXXX
03736

MOTOR VEHICLE COMMISSION,

Petitioner,

v

ALEXANDER W. TRAINOR,

Respondent

Cassandra Berry, Regulatory Officer 4, for petitioner, pursuant to N J A C 17-5.4(a)(2)

Randolph H. Wolf, Esq, for respondent

Record Closed April 18, 2018

Decided May 9, 2018

BEFORE **DAVID M. FRITCH, ALJ**

STATEMENT OF THE CASE

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, Alexander W Trainor. The issues are whether the respondent's prior criminal charges and convictions are adequate to merit

disqualification within the provisions of N.J.A.C. 13-21-14.5(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)

PROCEDURAL HISTORY

By scheduled Suspension Notice dated June 29, 2017, 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 disqualifying criminal charges/convictions (P-8). By letter dated July 25, 2017, the respondent requested a hearing (P-9). The Commission transmitted the matter to the Office of Administrative Law ("OAL") where it was filed on February 13, 2018, for determination as a contested case. The undersigned held a hearing on April 18, 2018, and the record closed.

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 The respondent is currently forty-five-years-old and financially supports himself and his three children by driving a truck.
- 2 The respondent has worked as a tow truck driver since 2003 and recently began working as a commercial truck driver.
- 3 The respondent applied for, and was issued, a CDL with a passenger endorsement on May 3, 2017. The respondent wishes to seek future employment as a bus driver utilizing the passenger endorsement on his CDL.
- 4 In processing the respondent's CDL license application, the Commission learned the respondent had a criminal record.
- 5 The respondent's criminal record consists of the following:

- a On November 3, 2003, the respondent was charged in Complaint No W 2003 001719 1506 with one count of simple assault, in violation of N.J.S.A 2C 12-1A(1) arising from a domestic incident with his wife. This charge was amended to a municipal ordinance violation of loitering, and the respondent pled guilty to that violation in municipal court on December 17, 2003 (P-4)
- b On June 23, 2003, the respondent was charged in Complaint No W 2003 000966 1506 with crimes of luring, enticing a child, in violation of N.J.S.A. 2C 13-6, aggravated sexual assault of a minor, in violation of N.J.S.A. 2C 14-2A(2), and debauching the morals of a minor, in violation of N.J.S.A. 2C 24-4A. (P-3.)
- c On March 11, 2004, the respondent waived his right to indictment and pled guilty to a single count accusation charging him with one count of endangering the welfare of a child, in violation of N.J.S.A. 2C 24-4A, a third-degree crime. The respondent was sentenced to a three year probationary sentence (P-2) and the remaining charges in Complaint W 2003 000966, 1506 were dismissed as part of his negotiated plea agreement (See R-1)
- d On January 13, 2007, the respondent was charged via Complaint No. S 2007 000102 1506 with one count of obstruction of law or government function, in violation of N.J.S.A. 2C 29-1. On March 7, 2007, the charge was amended to the municipal ordinance violation of loitering, and the respondent pled guilty to that charge (P-5)

i The respondent clarified that this charge arose from a minor motor vehicle incident in front of his house involving his ex-girlfriend where the respondent refused to discuss the matter or provide his license and registration to police investigating the matter

- 6 As part of his colloquy in pleading guilty to the endangering the welfare of a child charges on March 11, 2004, the respondent gave sworn testimony before the

Court in Ocean County, New Jersey (R-1) During this colloquy, the petitioner admitted the following

- a His wife made contact with a fifteen-year-old girl over the internet who left her home without parental permission and stayed with the respondent and his wife at their house for a weekend. (Id.)
- b The respondent met the girl in front of her house in Bergen County, New Jersey, and drove her from her house down to Ocean County, New Jersey, to spend the weekend with he and his wife at their home (Id.)
- c During the time she was with the respondent and his wife, the girl had no contact with her family, and the respondent and his wife took the girl to various bars or restaurants and purchased her alcohol (Id.)
- d As a result of his actions, the respondent admitted that he caused the girl harm that made her an abused or neglected child (Id.)
- e In accepting the respondent's plea to the charge of endangering the welfare of a child on March 11, 2004, the Court noted that

[I]t's a very rare situation where there are initial allegations of a Megan's type nature where we would allow ever the charge to result in the endangering the welfare of a child without those types of allegations being present. But, apparently, the State has made it clear to the Court that the victim in this case basically refuses to testify, doesn't wish to testify. Based upon that, really, the State has no alternative and the Court really has no alternative but to allow the plea along the lines indicated

(Id.)

- 7 On June 29, 2017, the Commission issued a scheduled Suspension Notice informing the respondent that his New Jersey Passenger Endorsement was scheduled to be suspended indefinitely as of July 28, 2017 (P-8) The stated reason for this suspension was that the Commission received information that

the respondent had a disqualifying criminal arrest and/or conviction record. (Id)

The respondent appealed this disqualification

LEGAL DISCUSSION

Under the police authority of the State, 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 an administrative enforcement case such as this, where the agency claims that a license endorsement should be suspended, the agency bears the burden of proof, by a preponderance of the competent and credible evidence, of facts essential to its claim. Atkinson, 37 N.J. at 149, Cumberland Farms, Inc. v Moffett, 218 N.J. Super 331 (App. Div 1987),

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

[M]ay 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

(2) A crime or other offense involving deviate or illicit social behavior such as rape, incest, sodomy or carnal abuse;

(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,

(4) Any crime or other offense indicative of bad moral character,

13. In the absence of a conviction, the Chief Administrator of the Motor Vehicle Commission shall refuse to issue or shall revoke or suspend the passenger endorsement of any person arrested for, charged with or indicted for any crime or other offense if the Chief Administrator determines that such person is of bad character or is morally unfit to retain the privilege of holding a passenger endorsement, or is a potential danger to his or her passengers or to other motorists or to himself or herself.

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

In addition, there are other 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)

An evaluation of the respondent's criminal history under N.J.A.C. 13-21-14 5(c)(12) is limited to a review of convictions or forfeiture of bond or collateral on the relevant charge. The respondent's November 2003 simple assault charge and January 2007 obstruction charge were subsequently pled out to municipal ordinance violations. The provisions of N.J.A.C. 13-21-14 5(c)(12) are limited in to "crime[s] or other offense[s] 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 " N.J.S.A. 13-21-14 5(c)(12). A municipal ordinance violation is considered a "lesser offense" which

does not carry the "stigma or the disabilities which follow upon a conviction of crime". State v Owens, 54 N J 153, 157 (1969) (citing State v Maier, 13 N J 235, 250-51 (1953), State v Block, 119 N.J.L 277, 282 (Sup Ct 1938), affirmed, 121 N.J.L 73 (E. & A. 1938), Huff v C.W. Goddard Coal, etc., Co., 106 N.J.L 19, 21 (Sup Ct 1930)). I **FIND**, therefore, that the respondent's prior municipal ordinance violations are not considered "crimes, disorderly persons offenses, or petty disorderly persons offenses" as defined in the New Jersey Code of Criminal Justice and do not fall under the provisions of N J A C. 13.21-14.5(c)(12). See, e.g., N J S A 2C 52-4, State v Laird, 25 N J. 298, 303 (1957) (holding that "punishments for violations of municipal ordinances are treated as civil actions").

On March 11, 2004, the respondent was convicted of the crime of endangering the welfare of a child, in violation of N J S A 2C 24-4A, a crime of the third degree. This is a "crime" as defined in the New Jersey Code of Criminal Justice as referred to in the provisions of N J A C. 13.21-14.5(c)(12). The relevant provision of the criminal statute reads

Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who causes the child harm that would make the child an abused or neglected child as defined in R S 9 6-1, R S 9 6-3, and section 1 of P L. 1974, c 119 (C 9 6-8 21) is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this paragraph to a child is guilty of a crime of the third degree.

N.J.S.A. 2C:24-4(a)(2) (emphasis added)

Pursuant to N J S A 9 6-1(e) and (f), "abuse" is defined as including

(e) the performing of any indecent, immoral or unlawful act or deed, in the presence of a child, that may tend to debauch or endanger or degrade the morals of the child,

(f) [the] permitting or allowing of any other person to perform any indecent, immoral or unlawful act in the presence of a child that may tend to debauch or endanger the morals of such child[.]

It is clear that the conduct to which the respondent pled guilty to under this statute, namely, picking up a fifteen-year-old girl at her home without her parents knowledge or consent, taking her to his home in another part of the state and giving, supplying or allowing her to ingest alcohol over the course of a weekend while being incommunicado from her family not only created a substantial risk of harm, but may have also tended to debauch or endanger her morals and it is reasonable to suggest that this conduct is indicative of bad moral character of the respondent See, e.g., State v. McKinney, 2017 N J Super Unpub LEXIS 181, 20 (App Div January 25, 2017) **I FIND** that the respondent's March 2004, criminal conviction for endangering the welfare of a child constitutes a conviction for a crime "indicative of bad moral character" within the definition of N J.A.C 13.21-14.5(c)(12)(i)(4). The Commission, therefore, is within its statutory authority to exercise its discretion to withhold the respondent's passenger endorsement as a result of this prior conviction N J A C 13.21-14.5(c)(12).

In addition to a review of the respondent's prior criminal convictions, the provisions of N J A C 13.21-14.5(13) require the chief administrator of the Motor Vehicle Commission to refuse to issue or revoke a passenger endorsement upon a determination that the person is "morally unfit to retain the privilege of holding a passenger endorsement, or is a potential danger to his or her passengers or to other motorists or to himself or herself." N.J A C 13.21-14.5(13) This assessment is done "in the absence of a conviction" and is based upon the person being "arrested for, charged with, or indicted" for crimes or offenses. Id. In June 2003, the respondent was charged with the crimes of luring, enticing a child, in violation of N J S A 2C:13-6; aggravated sexual assault of a minor, in violation of N J S A 2C:14-2A(2); and debauching the morals of a minor, in violation of N J S A 2C:24-4A. (P-3) In November 2003, the respondent was charged with one count of simple assault, in violation of N J S A. 2C:12-1A(1) and, in January 2007, the respondent was charged with one count of obstruction of law or government function, in violation of N J S.A 2C:29-1 (P-4 and P-5) **I FIND** that the nature of these charges brought against the respondent, even without consideration of the subsequent convictions on lesser offenses, is also adequate to justify a finding by the Commission that the respondent's passenger endorsement was subject to revocation pursuant to N J A.C 13.21-14.5(13)

Although the petitioner's criminal record constitutes adequate cause to refuse to issue or revoke a passenger endorsement pursuant to N.J.A.C. 13 21-14.5, the regulations governing the suspension or revocation of a passenger endorsement are not mandatory, but permissive. The law vests the chief administrator with discretion on suspensions based on prior criminal convictions because of the permissive use of "may" rather than the mandatory "shall" language used in that portion of the statute N.J.A.C. 13 21-14 5(c). The chief administrator has further 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, 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

The Rehabilitated Convicted Offenders Act, N.J.S.A. 2A 168A-2, states:

Notwithstanding the contrary provisions of any law or rule or regulation issued pursuant to law, no State, county or municipal department, board, officer or agency, hereinafter referred to as "licensing authority" authorized to pass upon the qualifications of any applicant for a license or certificate of authority or qualification to engage in the practice of a profession or business or for admission to an examination to qualify for such a license or certificate may disqualify or discriminate against an applicant for a license or certificate or an application for admission to a qualifying examination on the grounds that the applicant has been convicted of a crime, or adjudged a disorderly person, except that a licensing authority may disqualify or discriminate against an applicant for a license or certificate if N.J.S. 2C 51-2 is applicable or if a conviction for a crime relates adversely to the occupation, trade, vocation, profession or business for

which the license or certificate is sought. In determining that a conviction for a crime relates adversely to the occupation, trade, vocation, profession or business, the licensing authority shall explain in writing how the following factors, or any other factors, relate to the license or certificate sought:

- a. The nature and duties of the occupation, trade, vocation, profession or business, a license or certificate for which the person is applying,
- b. Nature and seriousness of the crime,
- c. Circumstances under which the crime occurred,
- d. Date of the crime;
- e. Age of the person when the crime was committed,
- f. Whether the crime was an isolated or repeated incident;
- g. Social conditions which may have contributed to the crime,
- h. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

The respondent is seeking a passenger endorsement so he can seek future employment as a bus driver. His disqualifying conviction is fourteen years old. He successfully completed his probation on that charge, and currently works as a truck driver. Prior to his current employment, the respondent worked as a tow truck driver since 2003. In that capacity, he was occasionally called upon to transport people along with their vehicles, and did so for many years without incident or complaint.

The respondent's 2004 conviction for endangering the welfare of a child, while old, is a serious crime. The nature and circumstances of this crime are particularly acute considering the line of work the respondent seeks to enter into once he obtains a CDL passenger endorsement. The respondent pled guilty to charges involving him

luring a fifteen-year-old girl away from her parents' home to his house and providing her with liquor over the course of a weekend without her parents' knowledge or consent. The broader circumstances of this offense, particularly the fact that the respondent was charged, even though not convicted, of sexual assault on the girl are deeply troubling

Although public policy favors the removal of impediments and restrictions on convicted offenders based on their criminal record, see N.J.S.A. 2A:168A-1, the crime which the respondent was convicted of in 2004 is particularly serious. The criminal expungement statute is another expression of the Legislature's intent to "provide relief to the one-time offender who has led a life of rectitude and disassociated himself with unlawful activity." In re Expungement of J.S., 223 N.J. 54, 66 (2015) (quoting In re Kollman, 210 N.J. 557, 568 (2012)). The legislature, in crafting the expungement statute, did not treat all crimes alike, and specifically deny the opportunity for persons convicted of certain serious crimes to restore their full rights and privileges and remove certain disabilities associated with a criminal conviction. The crime that respondent was convicted of in 2004, endangering the welfare of a child, N.J.S.A. 2C:24-4(a), is one of the enumerated crimes which a convicted offender cannot obtain an expungement for—further underscoring the Legislature's recognition of the serious nature of this crime. N.J.S.A. 2C:52-2(b). See also In re Expungement of J.W., 2018 N.J. Super. Unpub. LEXIS 438 (App. Div. February 26, 2018) (finding convictions of endangering the welfare of a child by abuse or neglect are statutorily barred from expungement)

In addition to the seriousness of the crime, the type of criminal misconduct at issue has a direct bearing on weighing the risks of granting someone the privilege to be employed as a bus driver. While bus drivers can perform a wide variety of tasks, it is undeniable that at least some of the professional employment available to persons with the proper licensing to be a commercial bus driver include operating school buses and providing transportation services that would give the respondent regular and unsupervised, albeit temporary, custody of unaccompanied minors. The inherent risks of someone with the respondent's criminal record transporting busloads of unaccompanied minors to school, field trips, etc. is obvious and dire.

The respondent has not provided substantial evidence of his subsequent rehabilitation to counter the seriousness of his criminal record or the direct nexus of the nature of his prior criminal conduct with the licensing he now seeks. As part of his sentencing on April 29, 2004, the respondent was ordered to receive a psychological evaluation to be followed by whatever treatment/counseling/monitoring recommended (P-6). The respondent did not provide any documentation of the outcome of whatever counseling or treatment he received or the diagnosis from that evaluation for consideration as part of this record.

To his credit, the respondent has received additional training in furtherance of obtaining a CDL license since the date of this incident, and has provided a written character reference from his CDL driving instructor who applauded the respondent's work ethic (P-10). His driving record remains point-free, and he has not been charged with any motor vehicle violations since 2014 (P-1.) While the respondent has sought to improve himself since his 2004 criminal conviction, his criminal record has not remained unblemished since that time. On January 13, 2007, the respondent was charged with the crime of obstruction of law or government function, in violation of N J S A 2C.29-1. This charge arose from the respondent's failure to cooperate with police investigating a motor vehicle incident. Although this charge pled out to an amended charge of a municipal ordinance violation on March 7, 2007, the respondent has not remained fully clear of subsequent criminal activity since his 2004 conviction. (P-5)

In view of the totality of the circumstances presented, I **CONCLUDE** that the respondent has failed to present sufficient evidence of his subsequent rehabilitation to justify waiving the imposition of an indefinite suspension on his passenger endorsement. This conclusion is consistent with the requirements of the Rehabilitated Convicted Offenders Act, N J S A 2A.168A-1, which provides that "a person shall not be disqualified against by any licensing authority because of any conviction for a crime unless the conviction relates adversely to the occupation for which the license or certificate is sought." A bus driver is first and foremost entrusted with the duty to safely transport members of the public. The seriousness of the respondent's prior criminal

conduct, and the direct nexus this conduct has with the potential responsibilities he may undertake if given the privilege to operate as a bus driver in this State, place the safety of those potentially entrusted to him at an unreasonable risk. Accordingly, I **CONCLUDE** that the scheduled suspension of the respondent's passenger endorsement on his commercial driver license was proper and appropriate

ORDER

Based upon the foregoing, I **ORDER** that the scheduled suspension of the respondent's passenger endorsement on his commercial driver license be and is hereby **AFFIRMED**.

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**, the designee of the Commissioner of the Department of Human Services, who by law is authorized to make a final decision in this matter. If the Director of the Division of Family Development does not adopt, modify or reject this decision within forty-five days, 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 9, 2018
DATE



DAVID M. FRITCH, ALJ

Date Received at Agency

5/9/18

Date Mailed to Parties

5/9/18

/dw

APPENDIX

WITNESSES

For petitioner:

Cassandra Berry

For respondent:

Alexander W Trainor

EXHIBITS

For petitioner:

- P-1 State of New Jersey Motor Vehicle Commission Abstract of Driver History Record
- P-2 New Jersey State Police Fingerprint Identification System Automated Applicant Record, June 23, 2017
- P-3 New Jersey Automated Complaint System, Complaint No W 2003 000966 1506
- P-4 New Jersey Automated Complaint System, Complaint No W 2003 001719 1506
- P-5 New Jersey Automated Complaint System, Complaint No W 2007 000102 1506
- P-6 New Jersey Superior Court, Ocean County Law Division, Criminal, Judgment of Conviction
- P-7 N.J.A.C. 13 21-14 5
- P-8 New Jersey Motor Vehicle Commission, Scheduled Suspension Notice, June 29, 2017

- P-9 Letter from Randolph H Wolf, Esq to MVC Bus Application Unit, July 25, 2017
- P-10 Letter of Reference, Superior Driving School, July 24, 2017
- P-11 Transportation Security Administration, Letter Re TSA Determination of Eligibility, July 11, 2017
- P-12 New Jersey Motor Vehicle Commission, Advisory Notice, August 9, 2017
- P-13 New Jersey Motor Vehicle Commission, Notice to Attend, August 14, 2017
- P-14 BUS (6/07) Form
- P-15 NJMVC Notice Re Mitigating Factors and Evidence of Rehabilitation
- P-16 New Jersey Motor Vehicle Commission, Passenger Endorsement Warning, September 18, 2017
- P-17 New Jersey Motor Vehicle Services, License Number Cross Reference Inquiry, September 5, 2017
- P-18 New Jersey Motor Vehicle Commission, Conference Report, September 18, 2017

For respondent:

- R-1 State of New Jersey v Alex Trainor, 04-03-00507-A, transcripts of March 11, 2004, plea and April 29, 2004, sentencing proceedings