



AFFIRMED
MOTOR VEHICLE COMMISSION
State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
By OZLA Date 10-13-15
INITIAL DECISION

OAL DKT. NO. MVH 01710-15

AGENCY DKT. NO. CXXXX-XXXX-03702

NEW JERSEY MOTOR VEHICLE COMMISSION,

Petitioner,

v.

HERIBERTO CRUZ,

Respondent.

New Jersey Motor Vehicle Commission, appearing without a representative,
pursuant to N.J.A.C. 1:1-5.6(a)

Diego F. Navas, Esq. for respondent

Record Closed: August 19, 2015

Decided: August 21, 2015

BEFORE **KIMBERLY A. MOSS, ALJ**:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This proceeding is brought under N.J.S.A. 39:3-10 et seq., 39:5-30 and N.J.A.C. 13:21-14.5(a) and (c) to suspend indefinitely the New Jersey passenger endorsement of the Respondent's (Respondent or Cruz) Commercial Driver License (CDL). The issues are whether respondent committed a disqualifying crime or offense within the meaning of N.J.A.C. 13:21-14.5(c)(12) or N.J.A.C. 13:21-14.5(c) (13) and, if so, whether respondent

has affirmatively demonstrated sufficient rehabilitation to justify a wavier under N.J.A.C. 13:21-14.5(d)

By notice dated November 8, 2013, the Commission proposed to suspend respondent's passenger endorsement indefinitely; on the basis that respondent has a disqualifying criminal arrest and/or conviction. Respondent requested a hearing by letter dated December 13, 2014. The matter was transmitted to the Office of Administrative Law (OAL) as a contested case on February 3, 2015. Hearings were scheduled for March 6, 2015, May 13, 2015 and June 29, 2015. Petitioner requested an adjournment of hearing dates which was granted. I heard the matter on August 19, 2015, at which time the record closed.

FINDING OF FACTS

Having had an opportunity to consider the evidence and testimony of the witnesses, I **FIND** the following **FACTS** in this case:

Respondent was convicted on December 5, 1991 of aggravated sexual assault. He was sentenced as a youthful offender to a maximum of seven years. He served sixteen months in prison before he was paroled on April 19, 1993. Once on parole Cruz went to counseling at Mount Carmel Guild in Newark once or twice a week for eight to nine months. The counseling was a condition of his parole. He believes that the counseling helped him. His term of parole ended August 30, 1998 and he is a registered sex offender. Cruz did not have any parole violations.

Cruz was arrested for DWI in 2006. He had been drinking in a club before his arrest. Cruz was taken to the police station. He requested to use the rest room and was told to sit down. He urinated in a bucket at the police station. There was a cleaning woman present at that time. He was charged with lewdness. Cruz pled guilty to DWI and lewdness. He lost his driver's license for seven months and had to attend

the Intoxicated Drivers Resource Center (IDRC) for twelve hour screening and education session

Cruz works as a driver for Golden Touch. He has been employed there for two years. He drives Federal Express pilots from the airport to hotels. He needs a passenger endorsement and commercial driver's license (CDL) in order to keep his job. Prior to that job he worked at Ironbound Fence doing iron work from 2008 to 2013. He also worked at Viking Security as a security guard and Excellent Solutions as a driver. Cruz lives with his mother and is her primary caretaker.

Cruz worked with Newark Police Detective Olga Perez (Perez) at Viking Security. Perez has known Cruz for twenty years. She was his supervisor at Excellent Solutions. Cruz has picked up Perez's children from school on several occasions. She believes that he is a person of good moral character and is rehabilitated. Cruz worked with Sergeant Edward O'Hara (O'Hara) of the Department of Corrections at Viking Security. He was Cruz's supervisor at Viking Security. They have known each other for ten years. O'Hara believes that Cruz is fully rehabilitated. Sonia Martinez, a Union Lead Organizer has known Cruz for twenty-nine years. She believes that he is fully rehabilitated. Jeremias Ocasio, a Newark firefighter has known Cruz for thirty-three years. Ocasio believes that Cruz is fully rehabilitated.

LEGAL ANALYSIS

N.J.A.C. 13:21-14.5(12) provides:

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:

- (1) An offense involving the manufacture, transportation, possession, sale or habitual use of a "controlled dangerous substance" as defined in the "New Jersey Controlled Substance Act";
- (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;
- (5) He or she fails to notify the Motor Vehicle Commission that he or she has been arrested for, charged with, indicted for, convicted of, or forfeited bond or collateral upon any crime or other offense within 14 days after the date of such event.

In this case respondent was convicted on December 5, 1991 of aggravated sexual assault. He was sentenced as a youthful offender for a term in prison not to exceed seven years. He has been convicted of a disqualifying offense.

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.

Respondent is a driver. His job entails picking up Federal Express pilots from the airport and bringing them to hotels. The aggravated sexual assault conviction resulted in him receiving a prison sentence not to exceed seven years. He was paroled after sixteen months. While he was on parole he went to weekly counseling at Mount Carmel Guild for eight months. Cruz was twenty years old at the time of the conviction. The lewdness conviction was as a result of urinating in a police station after he had been arrested for DWI. Cruz was thirty five years old at the time of this conviction.

Four people who have known Cruz for at least ten years and know of his convictions, believe that he is fully rehabilitated; two of these people, O'Hara and Perez are in law enforcement.

The convictions were fifteen years apart. The aggravated sexual assault conviction of 1991 is by far the more serious charge. Cruz was convicted of this charge

twenty-four years ago. He has not had any other indictable conviction. His lewdness conviction occurred nine years ago. Cruz has worked steadily at least since 2008, prior to that he worked at Viking Security. He is the caretaker for his mother. Respondent has provided sufficient evidence that he is rehabilitated. He attended the twelve hour IDRC sessions.

I **CONCLUDE** that respondent is not disqualified from holding a passenger endorsement on his CDL under the provisions of N.J.A.C. 13:21-14.5(c) (12) because he has provided sufficient evidence that he is rehabilitated. He attended counseling for nine months while he was on probation, he attended the twelve hour IDRC sessions, people who know him, including two people in law enforcement, believe is fully rehabilitated and the more serious crime, aggravated sexual assault, occurred twenty-four years ago and the lewdness offense occurred nine years ago.

N.J.A.C. 13:21-14.5(13) provides:

In the absence of a conviction, the Chief Administrator of the Motor Vehicle Commission shall refuse to issue or shall revoke or suspend the bus driver license 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 bus driver license, or is a potential danger to his or her passengers or to other motorists or to himself or herself.

In this case respondent has shown that he is rehabilitated and has become a person of good character who is morally fit to retain the privilege of holding a passenger endorsement on a commercial driver's license. Respondent testified that he has held the same job for two years and supports his mother.

I **CONCLUDE** that Respondent is not disqualified from holding a passenger endorsement on his CDL under the provisions of N.J.A.C. 13:21-14.5(c) (13) because he has been rehabilitated since his convictions.

ORDER

Based upon the foregoing, I **ORDER** that the scheduled suspension of respondent's passenger endorsement on his Commercial Driver License be and is hereby **DISMISSED** and that such endorsement remain in full force and effect.

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.

8-21-15

DATE



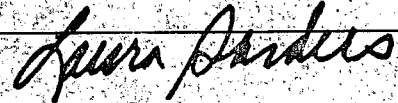
KIMBERLY A. MOSS, ALJ

Date Received at Agency

Date Mailed to Parties:

AUG 24 2015

ljb



DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

DOCUMENTS IN EVIDENCE

For Petitioner:

- P-1 Abstract of Driver History Record of Heriberto Cruz
- P-2 Letter Requesting a Hearing Dated November 26, 2013
- P-3 Scheduled Suspension Dated November 8, 2013
- P-4 Passenger Endorsement Warning
- P-5 New Jersey Motor Vehicle Commission Supplemental Specifications Dated February 10, 2014
- P-6 New Jersey Motor Vehicle Commission Supplemental Specifications Dated January 6, 2014
- P-7 Judgment of Conviction Dated December 5, 1991
- P-8 ATS/ACS Code Tables
- P-9 Motor Vehicle Commission Conference Report Dated February 10, 2014

For Respondent:

- R-1 Affidavit of Detective Olga Perez Dated June 16, 2015
- R-2 Affidavit of Edward O'Hara Dated August 14, 2015
- R-3 Central Reception & Assignment Facility Face Sheet Report for Heriberto Cruz
- R-4 IDRC Verification of Attendance
- R-5 Affidavit of Sonia Martinez Dated August 18, 2015
- R-6 Affidavit of Jeremias Ocasio Dated August 19, 2015



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 AUG 24 2015**



OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. MVH 1677-15

AGENCY DKT. NO. W 10762

**NEW JERSEY MOTOR VEHICLE
COMMISSION,**

Petitioner,

v.

BENJAMIN M. WILLIAMS,

Respondent.

Sharken Michaud, Agency Representative, for petitioner appearing pursuant to
N.J.A.C. 1:1-5.4(a)2

Benjamin M. Williams, respondent pro se

Record Closed: July 20, 2015

Decided: September 3, 2015

BEFORE **ROBERT BINGHAM II**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

By notice dated March 29, 2013, petitioner, the Motor Vehicle Commission (the Commission), proposed indefinite suspension of respondent Benjamin Williams's driving privileges on the basis that he has a disqualifying criminal arrest and/or conviction. N.J.S.A. 39:3-10 et seq., 39:5-30 and N.J.A.C. 13:21-14.5(a) and (c). Williams requested

a fair hearing and the Commission transmitted the matter to the Office of Administrative Law (OAL), where it was filed on February 3, 2015. N.J.S.A. 52:14B-1 et seq.; N.J.S.A. 52:14F-1 et seq. The hearing was held on May 28, 2015, and the record remained open for the receipt of supplemental submissions. On July 20, 2015, the record closed following receipt and review of respondent's supplemental submissions.

FACTUAL DISCUSSION

Having had an opportunity to consider the evidence and testimony of the witnesses, I **FIND** the following **FACTS**:

Following an arrest on November 4, 2008, and related guilty plea on March 25, 2009, (P-10) respondent was convicted of possession of a controlled dangerous substance, a fourth-degree crime, on August 20, 2009 (P-9). At that time, he was sentenced to three years probation, conditioned upon obtaining/maintaining employment, TASC, drug testing, community service and mandatory fines and penalties. Aggravating factors were the risk of another offense and the need for deterrence. Mitigating factors were that Williams was likely to respond affirmatively to probationary treatment, and imprisonment would be excessive hardship to respondent or his dependents. Respondent passed all random drug testing and successfully completed probation.

On August 5, 2014, following a guilty plea on June 3, 2014, (P-5, P-6) respondent was convicted of possession of a controlled dangerous substance, a fourth-degree crime that occurred on March 11, 2013 (P-3). At that time, he was sentenced to two years probation, conditioned upon seeking/maintaining employment, random urine monitoring, remaining offense free and complying with probation reporting requirements, and mandatory fines and penalties. Aggravating factors were the risk of another offense and the need for deterrence. Mitigating factors were that Williams was likely to respond affirmatively to probationary treatment, and his willingness to cooperate with law enforcement authorities. Respondent again passed all random drug screening and successfully completed probation.

By notice, dated March 29, 2013, petitioner, the Motor Vehicle Commission (the Commission), proposed indefinite suspension of respondent's driving privileges on the basis that he has a disqualifying criminal arrest and/or conviction, specifically, the two above convictions (P-12). On December 2, 2013, the Commission held a conference at which Williams explained that the March 2013 drug charge resulted from an illegal search, seizure, and arrest. Regarding his employment, he indicated that he performed maintenance work on buses but had previously driven school buses from 1998 until 2005. He desired to continue driving school buses in order to gain a better income (P-14). At the time of the conference, he also signed the Commission's Passenger Endorsement Warning (P-13), thereby acknowledging that convictions under the Comprehensive Drug Reform Act will result in suspension of his passenger endorsement privilege.

At the hearing, Williams credibly testified that he is thirty-eight years of age, resides with his mother, and has joint custody of his fourteen-year-old son. He described his current employment at Delaware Valley Bus Company as involving maintenance work on buses, a job that he has held since 2010. Between 1998 and 2005, he drove a school bus. He desires his passenger endorsement to enable him to continue such work in the future.

Respondent described his November 2008 drug offense as having occurred when he admittedly had marijuana after the de-escalation of an argument with his girlfriend. He accepted responsibility through his guilty plea and successfully completed probation, including community service and random drug testing. As for the March 2013 drug offense, he explained that an illegal search of his residence resulted in seizure of drugs and a firearm, but charges were dropped through a plea agreement in which he pled guilty to a lesser marijuana charge. He completed two years probation and paid a fine. At the time of the above offenses respondent was thirty-three (or thirty-four) years of age and thirty-six years of age, respectively. He further explained that he initially used marijuana after the death of his father during his senior year in high school.

Regarding rehabilitation, respondent explained that he had played sports as a youth, and later became involved with the Boys and Girls Club. He wishes to continue

with his education and self-improvement, and is interested in perhaps becoming an IT technician. Though he had spoken with a counselor at the Trenton Treatment Center in January 2015, an assessment had determined that no drug treatment was necessary. Respondent further stated that now he is hard working and he takes care of his responsibilities.

Respondent provided two letters of reference. By letter dated June 3, 2015, (P-1) respondent's employer at Delaware Valley Bus Line, Mary Ann Tysko, indicates that she has known him for sixteen years, and describes him generally as a reliable employee whose work and veracity she has not had to question. By letter dated June 3, 2015, Mark A. Fury, Esq., who has known respondent for a few years, describes him as "a family man, gainfully employed, pays his bills and is a help to his elderly mother." In the opinion of Mr. Fury, the circumstances that led to respondent's marijuana conviction are unlikely to recur, and loss of his CDL/passenger endorsement would create financial hardship to both respondent and his family.

LEGAL ANALYSIS AND CONCLUSION

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). The primary duty of the Commission "is to foster safety on the highways of this state." Atkinson v. Parsekian, 37 N.J. 143, 155 (1962).

N.J.S.A. 39:3-10.1 creates a special license for bus drivers and others, sometimes known as a passenger-carrying endorsement to a commercial driver's license, and directs that an applicant for such a license present satisfactory evidence of his or her "previous experience," "good character" and "physical fitness." Ibid.; Mernick v. Division of Motor Vehicles, 328 N.J. Super. 512 (App. Div. 2000). The statute authorizes the Chief Administrator of the Commission to suspend or revoke such a license for a violation of the motor vehicle laws "or on other reasonable grounds, or where, in his opinion, the licensee is either physically or morally unfit to retain the same." N.J.S.A. 39:3-10.1.

Pursuant to N.J.A.C. 13:21-14.5(c)12, the Commission “may not issue a bus driver license, or may revoke or suspend the bus driver license of any person when it is determined that the applicant or holder of such license has . . . [a] criminal record which is disqualifying.” The applicant will be deemed to have a disqualifying record if he has been convicted of a crime or other offense involving the manufacture, transportation, possession, sale or habitual use of a "controlled dangerous substance" as defined in the New Jersey Controlled Substance Act. N.J.A.C. 13:21-14.5(c)12(i)(1). However, the existence of one or more elements of N.J.A.C. 13:21-14.5(c) does not require a per se disqualification, because the Administrator has reserved the right to waive any portion of the regulation “[i]f 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 (RCOA), N.J.S.A. 2A:168A-1 to -3, provide guidance in assessing whether the proofs are sufficient to justify a waiver of a disqualifying condition. 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 statute also provides that “a person shall not be disqualified or discriminated 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.” Ibid. Factors to consider in determining if a conviction relates adversely to a given occupation 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. N.J.S.A. 2A:168A-2.

Here, respondent is employed by Delaware Valley Bus Line, where he presently performs maintenance on buses, which does not require a passenger endorsement. However, he had previously driven a school bus for seven years, and aspires to resume such work to earn a better living. Williams's convictions were for fourth-degree marijuana possession, offenses that did not warrant a sentence of incarceration. Williams's offenses occurred, respectively, over six years ago (when he was thirty-three or thirty-four years of age) and two years ago (when he was thirty-six years of age) respectively. The first offense followed the de-escalation of an argument with his girlfriend, and the second was an admitted setback, despite the alleged issue regarding the search. Both offenses, however, were identical in nature.

Respondent successfully completed probation and did not test positive for drugs. Further, an assessment at the Trenton Treatment Center indicated that no drug treatment was needed. Respondent aspires to continue with his education. His supervisor at his job submits a positive letter of reference, describing him as a reliable and valued employee. Attorney Mark Fury, who has also known respondent for a number of years, estimates that circumstances underlying respondent's offense are unlikely to recur. He further described respondent as a responsible individual who, along with his family, would suffer financially if he were to lose his ability to have a passenger endorsement.

At the hearing, respondent's demeanor was sincere and respectful, and he presented the appearance of someone who is now handling his responsibilities as a law-abiding adult.

Accordingly, I **CONCLUDE** that respondent, through proof of rehabilitation, has sufficiently demonstrated reasonable grounds for waiver of the relevant CDL passenger endorsement suspension provisions and should not be disqualified from holding a passenger endorsement. Furthermore, I **CONCLUDE** that waiver of the relevant CDL

passenger endorsement suspension provisions in this particular case is in keeping with the stated policy and purpose of the RCOA.

DECISION AND ORDER


Based upon the foregoing, I **ORDER** that the scheduled suspension of respondent's passenger endorsement on his Commercial Driver License be and is hereby **DISMISSED** and that such endorsement remain in full force and effect.

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.

September 3, 2015
DATE



ROBERT BINGHAM II, ALJ

Date Received at Agency: 9.3.15

Date Mailed to Parties: 9.4.15

/lam

APPENDIX

EXHIBITS

For Petitioner:

- P-1 Certified Abstract
- P-2 Letter from petitioner requesting a hearing, dated April 19, 2014
- P-5 Judgment of Conviction Superior Court of New Jersey, Mercer County
- P-4 Motion for Dismissal of Conviction
- P-5 New Jersey Judiciary Plea Form
- P-6 New Jersey Judiciary Supplemental Plea Form for Drug Offense
- P-7 New Jersey Motor Vehicle Commission Supplemental Specifications
- P-8 New Jersey Motor Vehicle Commission Notice
- P-9 New Jersey Superior Court Law Division-Criminal, Mercer County
Judgment of Conviction
- P-10 Plea Form
- P-11 Administrative Office of the Courts, Municipal Court Services Division,
ATS/ACS Code Tables
- P-12 New Jersey Motor Vehicle Commission Scheduled Suspension, dated
March 29, 2013
- P-13 New Jersey Motor Vehicle Commission Passenger Endorsement Warning
- P-14 New Jersey Motor Vehicle Commission Conference report, dated
December 2, 2013

For Respondent:

- R-1 Letter from Delaware Bus Line, dated June 3, 2015
- R-2 Letter from Mark A. Fury, Esq., dated June 3, 2015

WITNESSES

For Petitioner:

N/A

For Respondent:

Benjamin M. Williams

**STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
CASE FILE NUMBER: CXXXX XXXXX 12872
OAL DOCKET NUMBER: MVH 1682-15**

IN THE MATTER OF :
MICHAEL J. COLEMAN : **FINAL DECISION**

The Motor Vehicle Commission (“Commission”) hereby determines the matter of the proposed suspension of the New Jersey Commercial Driver License (“CDL”) **passenger-carrying endorsement** of **MICHAEL J. COLEMAN**, respondent, pursuant to N.J.S.A. 39:3-10.1, 39:5-30 and N.J.A.C. 13:21-14.5(c)12(i)(1) and (i)(3) because he has a criminal record which may be disqualifying. Prior to this final agency determination, I have reviewed and considered the Initial Decision rendered by the Administrative Law Judge (“ALJ”). No exceptions have been filed. Based upon the record presented I shall modify certain of the ALJ’s findings of fact and analysis as specifically indicated below. To the extent that I have not specifically modified a finding or conclusion herein I have adopted those findings and conclusions of the ALJ and incorporate those by reference in this decision. Finally, I shall affirm the ALJ’s recommendation that respondent’s passenger-carrying endorsement privileges be indefinitely suspended.

In his Initial Decision, the ALJ recommends that the MVC’s proposed indefinite suspension of respondent’s passenger endorsement should be affirmed. Initial Decision at 4. In arriving at this conclusion, the ALJ notes respondent’s three criminal convictions and provides an analysis resulting in a determination that all three convictions are disqualifying records under N.J.S.A. 39:3-10.1 and N.J.A.C. 13:21-

14.5(c)(12). Initial Decision at 2, 4. The three criminal convictions under review in this case are: (1) an October 31, 2014 conviction for N.J.S.A. 2C:12-3A Terroristic Threats (Threatening Violence), a third degree crime; (2) an October 31, 2014 conviction for N.J.S.A. 2C:17-3a(1) Criminal Mischief, a fourth degree crime; and (3) a May 18, 2007 conviction for N.J.S.A. 2C:35-10a(4) Possession of Marijuana/Hashish, a disorderly person's offense. In light of respondent's criminal record, the Commission initiated an administrative action to indefinitely suspend respondent's CDL passenger-carrying endorsement.¹

Pursuant to N.J.A.C. 13:21-14.5(c)12i, a criminal record disqualifies a person from holding a passenger endorsement when the conviction is for an offense that is, "(1) An offense involving the . . . possession . . . of a 'controlled dangerous substance' as defined in the 'New Jersey Controlled Substances Act,'" or "(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." Upon conviction of such an offense, under which the ALJ concluded, and I concur, all of respondent's convictions fall, there is a presumption that respondent's passenger-carrying endorsement will be revoked, suspended, or denied. This presumption can only be overcome if "sufficient and reasonable grounds" are established under the procedural means described in N.J.A.C. 13:21-14.5(d) and are such that respondent has established rehabilitation to the degree that the public interest would be protected.

¹ It is noted that the Initial Decision on page 2 indicates that respondent's passenger endorsement was suspended at the time the administrative action was initiated. The Commission notes that the initial notice to respondent was merely a "Scheduled Suspension Notice" proposing a suspension. Upon receiving respondent's request for an administrative hearing, that proposed suspension was stayed pending the outcome of this administrative proceeding. Thus, the Initial Decision is modified accordingly.

In his Initial Decision, the ALJ did not explicitly discuss his analysis of this case with regard to rehabilitation under the “Rehabilitated Convicted Offender’s Act” (RCOA), N.J.S.A. 2A:168A-1 to -16, although it is implied that sufficient rehabilitation was not demonstrated.

The RCOA was passed by the Legislature in recognition that on occasion people make poor decisions and that under certain circumstances, the interest of justice is best served by declaring such persons rehabilitated so as to prevent them from being disqualified from positions of employment because of their criminal history. To assist in the analysis of respondent’s rehabilitation efforts, I utilize the eight factors set forth in the RCOA for determining rehabilitation. The factors, found in N.J.S.A. 2A:168A-2, are as follows:

- 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 offense;
- 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.

Pursuant to N.J.S.A. 2A:168A-2, these factors are used to guide a licensing authority in determining whether a conviction relates adversely to the occupation/business for which the license or certificate (in this case, a “passenger endorsement” on a commercial driver’s license) is sought. Rehabilitation efforts must be considered in light of the offense/s respondent committed and the threat to public safety that respondent may re-offend.

As previously noted, respondent is a CDL driver with a passenger-carrying endorsement. This endorsement allows respondent to drive a vehicle carrying more than six passengers. As the driver of such a vehicle, respondent is primarily responsible for the safety of the passengers while riding in his vehicle. Respondent was convicted of one third degree crime for threatening violence for an incident occurring in 2013, one fourth degree crime for criminal mischief for an incident occurring in 2013, and one disorderly person’s offense for possession of marijuana/hashish for an incident occurring in 2006. Respondent was 25 years old at the time the 2013 offenses were committed and was 18 years old at the time of the 2006 offense. It appears the two incidents were isolated incidents. However, I note with significance the fact that respondent has three criminal convictions on his record despite having been of legal age for a relatively short period of time. As to the severity of the crimes, violence even in the form of a threat is an offense that cannot be understated. Further, crimes for possession/use of a controlled dangerous substance threaten the Commission’s faith that a CDL driver, especially one carrying a passenger endorsement, is driving with the utmost safety and regard for his passengers. The Commission is charged with ensuring that commercial drivers holding a passenger endorsement are of high moral character,

and do not pose an undue risk of danger such that endorsing a particular driver is in the interest of the general public. Waiving criminal disqualification under these circumstances would require demonstration of long-term rehabilitation to an exceptionally high level.

I am unable to analyze the remaining three RCOA factors measuring rehabilitation because there is no evidence on the record in this case that pertains to the circumstances surrounding the subject crimes and offense nor to the social conditions that may have contributed to the crimes/offense. Moreover, there are no documentary submissions made by the respondent, nor any testimony noted by the ALJ, to show any evidence of rehabilitation. Thus, the lack of any exceptions having been filed by respondent pursuant to N.J.A.C. 1:1-18.4, to identify any evidence of rehabilitation that he had presented in the official hearing record mandates that there can be no finding made in this Final Decision that respondent has established his rehabilitation at the current time.²

CONCLUSION

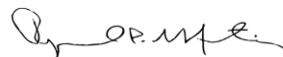
Based on a de novo review of the record, I agree with the ALJ's analysis and the conclusion that respondent's passenger endorsement must be indefinitely suspended. On this record, it is specifically found that the serious and recent nature of the particular convictions relate adversely to respondent's holding a passenger endorsement on his CDL, which permits him to operate a commercial vehicle with passengers. The Commission determines that respondent has not provided any evidence of rehabilitation

² Pursuant to N.J.A.C. 1:1-18.4(c), it is further noted that "[e]vidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be incorporated or referred to within exceptions."

in support of a waiver for disqualifying criminal convictions to outweigh the Commission's obligation to protect the public interest. However, the Commission will allow respondent the opportunity to demonstrate rehabilitation and re-apply for the passenger endorsement after a five year period from his last conviction on October 31, 2014. Upon the passing of five years, respondent may submit an application for a passenger-carrying endorsement to be considered by the Commission. Such submission would require clear and convincing evidence of rehabilitation and with no guarantee that the endorsement will be granted.

ORDER

It is, therefore, on this 26th day of October, 2015, **ORDERED** that the passenger-carrying endorsement on the New Jersey Commercial Driver License of **MICHAEL J. COLEMAN** be suspended indefinitely with no eligibility to re-apply for five years from the date of his last criminal conviction on October 31, 2014. **NOTE:** The **effective date** of this suspension is set forth in an "Order of Suspension" which the Commission has enclosed herein.



Raymond P. Martinez
Chairman and Chief Administrator

Enclosure: Order of Suspension

RPM:sem
cc: Michael J. Coleman