



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

AFFIRMED
N. J. MOTOR VEHICLE COMMISSION
By ORLA Date 9-25-17
INITIAL DECISION

OAL DKT NO MVH 00937-17
AGENCY REF NO FXXXX XXXXX 58812

NEW JERSEY MOTOR VEHICLE COMMISSION,

Petitioner,

v

ANA M. FELICIANO,

Respondent.

Kenneth Vercammen, Esq., for Petitioner (Kenneth Vercammen & Associates,
attorneys)

Brian J. Neary, Esq , appearing for Respondent

Record Closed July, 28, 2017

Decided. August 11, 2017

BEFORE THOMAS R. BETANCOURT, ALJ

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, New Jersey Motor Vehicle Commission (Commission or Pétitioner), proposes to suspend respondent's driver's license for a period of 1,080 days (thirty-six months) due to respondent's involvement in a fatal motor vehicle accident, and having determined that respondent committed the offenses of Driving Under the Influence, Reckless Driving, and Speeding Respondent requested a hearing.

The Motor Vehicle Commission transmitted the matter to the Office of Administrative Law (OAL), where it was filed on January 23, 2017, as contested case. N.J.S.A. 52:14B-1 to -15, N.J.S.A. 52:14F-1 to -13

A preliminary hearing was held on February 1, 2017, before the Honorable Robert Giordano, ALJ, and an Order was issued on the same date.

The matter was scheduled for a plenary hearing on March 21, 2017, before the undersigned. The matter was adjourned, with the consent of both parties, to allow the parties to resolve outstanding discovery issues.

The matter was then scheduled for a plenary hearing on July 5, 2017, which was adjourned to July 6, 2017, by the undersigned.

A hearing was held on the matter on July 6, 2017. The record remained open for the parties to submit written summations. Petitioner submitted a written summation on July 17, 2017. Respondent did not submit a written summation. The record was closed on July 28, 2017.

SUMMARY OF RELEVANT TESTIMONY

Robert Cirri testified as follows:

He is employed by the Town of West New York, New Jersey as a police officer. He was so employed on December 6, 2014. On that date, at approximately 2:16 a.m., he responded to a two-vehicle accident. Upon arrival he saw one vehicle with an unresponsive male. The second vehicle was empty. The respondent was on the side of the road and stated she drove the second vehicle. She seemed dazed and confused. She complained of a pain in her chest. She stated she was not drunk. Officer Cirri did not perform any field sobriety tests on respondent and could not offer an opinion as to her sobriety. The air bags in respondent's vehicle were deployed.

This could be consistent with respondent's chest pain. Respondent was cooperative. Respondent's dazed and confused state could be attributed to the accident. Officer Cirri did not witness the accident. Officer Cirri had no further involvement in the matter.

Joseph Steneck testified as follows:

He is a lieutenant with the Hudson County Sheriff's Department. On December 6, 2014, he was a sergeant with the Hudson County Sheriff's Department. He was dispatched to the scene of a motor vehicle accident. Upon his arrival there were multiple EMS personnel and police officers present. The unresponsive male was not on scene and was previously removed by EMS. Respondent was being treated by EMS and he spoke with her. She described how the accident occurred. She stated she had two drinks. Respondent was transported to the hospital by EMS and was accompanied in the ambulance by a female officer. She was not under arrest at this time. At the hospital blood and urine samples were obtained with the consent of the respondent. Those samples were placed into evidence and then transported to the New Jersey State Police laboratory for analysis. Respondent's blood alcohol concentration (BAC) was .102%. Respondent was placed under arrest while in the hospital at 3:17 a.m. At 8:27 a.m. on December 6, 2014, Lieutenant Steneck administered an Alcotest on respondent to determine her BAC. That test result showed BAC of .02%. The difference between the blood analysis obtained by the hospital, and the breath analysis obtained by the Alcotest, could be explained lapse in time between the two tests and the body's normal absorption rate for alcohol. He issued two summonses to respondent: driving while intoxicated; and, reckless driving. Lieutenant Steneck stated the other car came into respondent's lane. Respondent was calm and cooperative with Lieutenant Steneck. The other driver (decedent), who died, had a BAC much higher than that of respondent. The decedent's car was in respondent's lane of traffic. It was raining the night of the accident. The location of the accident is a treacherous turn, which Lieutenant Steneck characterized as a "little bit of a blind turn." This contributed to the accident.

Luigi Dececco testified as follows

He is a lieutenant with the Hudson County Sheriff's Department and was so employed on December 6, 2014. The data from the black box in respondent's vehicle indicated a speed of 57.2 miles per hour (MPH). Her vehicle slowed to 44.27 MPH prior to impact with heavy braking. The New Jersey State Police did the data download from the black box. He issued no motor vehicle summonses. He prepared the fatal accident reconstruction. The decedent's BAC was double the legal limit. It was "pretty high" according to Lieutenant Dececco. Respondent was cooperative with the investigation. The accident was caused by the decedent.

FINDINGS OF FACT

Based upon a review of the testimony and the documentary evidence presented,

I FIND the following **FACTS**

1. On December 6, 2014, Respondent was operating her vehicle on County Route 505 (Delfino Way) in the Town of West New York and was involved in a motor vehicle crash with another vehicle driven by Fernando Tlatelpa.

2. That motor vehicle crash resulted in the death of Fernando Tlatelpa.

3. At the time of the accident Respondent was travelling at a speed of 47 miles per hour.

4. The posted speed limit on County Route 505 is 25 miles per hour.

5. The motor vehicle crash occurred at approximately 2.16 a.m.

6. The roadway was illuminated with overhead lighting and was wet as it was raining.

7. Respondent was operating her 2008 Toyota Highlander westbound on County Route 505.

8. Mr. Tlatelpa was operating his 2002 Acura TL eastbound on a curve in the roadway.

9. Mr. Tlatelpa's vehicle rotated in a counter clockwise direction into the westbound lane of County Route 505 and into the path of Respondent's vehicle.

10 Respondent was unable to take evasive action and the vehicles collided.

11 Respondent consented to blood testing which revealed she had a Blood Alcohol Concentration (BAC) of 102%

12 Mr Tlatelpa had a BAC over 20%

13 Mr. Tlatelpa significantly contributed to the accident by failing to maintain control of his vehicle while negotiating on a wet curved roadway and failing to remain in his lane of travel

LEGAL ANALYSIS AND CONCLUSION

N J S A 39:5-30(a) provides in pertinent part. Every registration certificate, every license certificate, every privilege to drive motor vehicles . . . may be suspended or revoked . . . by the director for a violation of any of the provisions of this Title or on any other reasonable grounds, after due notice in writing of such proposed suspension, revocation, disqualification or prohibition and the ground thereof ¹

Clearly, the Commission is empowered to suspend a motorist's driving privileges for a violation of any provision of the motor vehicle statutes or for any other "reasonable grounds" N.J.S.A. 39.5-30(a) The Legislature has vested authority in the Commission to impose a driver's license suspension as a preliminary matter prior to a plenary proceeding in a motor vehicle fatality case N J S A 39 5-30(e)(3). Where the Commission proposes suspension of driving privileges under N J S A 39 5-30 as an administrative enforcement of the motor vehicle regulations, it bears the burden of proof by the preponderance of the competent and credible evidence Atkinson v Parsekian, 37 N J 143, 149 (1962)

The primary object of a suspension or revocation of a driver's license "is to foster safety on the highway and not to impose criminal punishment to vindicate public justice" Id at 155; see also David v Strelecki, 51 N J 563 (1968) A decision to suspend rests on a finding that "a law of the highway has been violated and that the highway would be a safer place for the public if the violator were removed as a driver

¹ The director is now the Chief Administrator of the Motor Vehicle Commission

for some period of time" Ibid Suspensions must be imposed only for the purpose of reforming the particular motorist and are not to be imposed administratively for the purpose of deterring others. This matter involves a proposed suspension of respondent's license for a period of three years due to the death of an individual in an accident where it is alleged by the Commission that respondent operated her vehicle in violation of. N.J.S.A. 39:4-50 (driving while intoxicated); N.J.S.A. 39:4-96 (reckless driving); and, N.J.S.A. 39:4-98 (speeding)

The record is clear that respondent had a BAC of .102% at the time shortly after the accident occurred, which is in excess of the legal limit of .08% BAC established in N.J.S.A. 39:4-50 (driving while intoxicated) The record is also clear that respondent was travelling at a speed in excess of 57 MPH, which was reduced prior to impact to in excess of 44 MPH The speed limit on the roadway where the crash occurred is 25 MPH The record is devoid of any evidence respondent operated her vehicle in a reckless manner Petitioner has sustained its burden by a preponderance of the credible evidence that respondent was in violation of N.J.S.A. 39:4-50 (driving while intoxicated) and N.J.S.A. 39:4-98 (speeding) Petitioner has not sustained its burden regarding the allegation that respondent drove recklessly in violation of N.J.S.A. 39:4-96 (reckless driving).

Having determined that respondent contributed to the serious bodily harm and fatality in this matter, the length of any suspension must be addressed In accordance with well-established principles applicable to motor vehicle license suspensions in cases where fatalities occur, respondent does not even have to be the sole cause of the accident that took place to incur a suspension Cresse v Parsekian, 81 N.J. Super. 536, 544 (App. Div. 1963) Factors in mitigation and aggravation should be considered in determining the length of the suspension

The Director must weigh each case individually, to determine whether a suspension is required at all for the purposes above mentioned, and, if so, for how long. Among other things, he should consider the facts which constitute the particular violation; whether the motorist was willful or reckless, or merely negligent, and, if merely negligent, how negligent, how long the motorist has been driving; whether

this is his first offense; whether he has been involved in any accidents; his age and physical condition; whether there were any aggravating circumstances, such as drinking, or, on the other hand, whether there were extenuating circumstances. Upon these and all the other facts and circumstances, he should determine whether it reasonably appears, as a matter of prophylaxis and not of punishment, that the motorist should be kept off the highway, and, if so, for how long

[Id at 549]

In the present matter there is little doubt respondent contributed to the accident as she was driving well in excess of the posted speed limit and was also under the influence of an intoxicating beverage at the time. These would constitute the aggravating factors. However, there is much in mitigation. Respondent did not cause the accident. The decedent did pursuant to the testimony of Lieutenant Dececco, who performed the accident reconstruction report. Further, the decedent was highly intoxicated at the time of the accident, he was driving in respondent's lane, and he was not wearing his seatbelt. Decedent caused the accident and contributed to his own death by his failure to wear a seatbelt. Further, Respondent was fully cooperative with the police in the conduct of their accident investigation. While this does not excuse respondent's conduct on the date of the accident, it greatly mitigates in her favor.

I **CONCLUDE** that the Schedule Suspension issued by Petitioner, dated December 27, 2016, should be affirmed, but should be modified to eighteen months.

ORDER

It is **ORDERED** that the Schedule Suspension issued by Petitioner, dated December 27, 2016, should be **AFFIRMED**; and,

It is further **ORDERED** that the suspension be **MODIFIED** to eighteen months.

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.

Aug 11, 2017
DATE


THOMAS R. BETANCOURT, ALJ

Date Received at Agency

August 11, 2017

Date Mailed to Parties
db

August 11, 2017

APPENDIX

List of Witnesses

For Petitioner:

Robert Cirri
Joseph Steneck
Luigi Dececco

For Respondent:

None

List of Exhibits

For Petitioner:

- P-1 New Jersey Police Crash Investigation Report prepared by Officer Cirri
- P-2 Google map of accident scene
- P-3 Incident Report Form prepared by Lieutenant Steneck 12/6/14
- P-4 Incident Report Form prepared by Lieutenant Dececco 12/8/14
- P-5 Incident Report Form prepared by Lieutenant Dececco 12/8/14
- P-6 Incident Report Form prepared by Lieutenant Dececco 12/8/14
- P-7 Incident Report Form prepared by Lieutenant Dececco 12/17/14
- P-8 Incident Report Form prepared by Jennifer Vernaglia 01/14/15
- P-9 Incident Report Form prepared by Jennifer Vernaglia 01/14/15
- P-10 Incident Report Form prepared by Lieutenant Dececco 1/20/15
- P-11 Incident Report Form prepared by Lieutenant Steneck 12/6/14
- P-12 Incident Report Form prepared by Lieutenant Dececco 12/8/14
- P-13 Incident Report Form prepared by Lieutenant Steneck 12/6/14
- P-14 Toxicology Analysis 12/16/14
- P-15 N J State Police Fatal Accident Investigation Unit report
- P-16 Toxicology Analysis 1/6/15
- P-17 Toxicology Analysis 12/16/14 (duplicate of P-14)

- P-18 Evidence Receipt 12/8/14
- P-19 Evidence Submission Review 12/8/14
- P-21 Field Sketch—Hudson County Sheriff's Office²
- P-22 Alcohol Influence Report
- P-23 Arrest Report
- P-24 Police Officer's Report (Blood and Urine)
- P-25 Consent Form (Blood and Urine)
- P-26 Consent to Copy/Duplicate/Download Stored Electronic Data
- P-27 Evidence Receipt
- P-28 Toxicology Analysis (duplicate of P-14 and P-17)
- P-29 Certificate of Death
- P-30 Motor Vehicle Summonses
- P-31 Abstract of Driver History Record

For Respondent.

None

² No document was marked P-20