



AFFIRMED
MOTOR VEHICLE COMMISSION

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

OPLA
Date 9-24-18

INITIAL DECISION

OAL DKT NO MVH 15590-17

AGENCY DKT NO RXXXX XXXXX 07794

**NEW JERSEY MOTOR
VEHICLE COMMISSION,**

Petitioner,

v

STELIAN I. ROSU,

Respondent

Anthony J. Apicelli, Jr., Esq , for petitioner (Anthony J Apicelli, Jr , LLC, attorneys)

Jeffrey H. Pooner, Esq , for respondent

Record Closed June 28, 2018

Decided August 9, 2018

BEFORE JUDITH LIEBERMAN, ALJ

STATEMENT OF THE CASE

Stelian I Rosu (respondent) appeals from the decision of the petitioner, Motor Vehicle Commission (Commission), to suspend his license for a period of sixteen months due to his involvement in an accident resulting in the death of an individual

PROCEDURAL HISTORY

By letter of May 1, 2017, the Commission notified the respondent of its decision to suspend his license pursuant to N J S A 39 5-30, and he filed a timely appeal. On October 19, 2017, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case. The hearing was held at the offices of the OAL in Mercerville, New Jersey, on June 25, 2018, and the record remained open for a post-hearing submission. The record closed on June 28, 2018.

FACTUAL DISCUSSION AND FINDINGS

The following is undisputed and, therefore, I **FIND** the following as **FACT**

- 1 On September 6, 2016, respondent, a tractor-trailer operator, drove a tractor-trailer to a loading facility for International Paper (IP)
- 2 The respondent signed a log-in sheet maintained by IP when he arrived at the IP site. The respondent did not sign the log-in sheet before he left the site.
- 3 After the respondent arrived at IP, the tractor and trailer were disconnected, to allow a forklift operator to unload the contents of the trailer.
- 4 Later the same day, the respondent backed the tractor toward the trailer, to reconnect the tractor to the trailer.
- 5 The rear of the tractor struck the forklift operator, who was positioned at or about the rear of the tractor.
- 6 The forklift operator sustained fatal injuries as a result of having been hit by the tractor.
- 7 Sergeant Nicholas Czepiel, Supervisor of the Traffic Safety Unit of the Florence Township Police Department, reported to the scene and participated in an investigation of the accident.

- 8 Respondent's abstract of driver record history indicated the most recent incident for which points were assessed was in 2009 (J-2)

Testimony

Sergeant Nicholas Czepiel (Czepiel) testified on behalf of the Commission. When he reported to the scene, he observed a man lying on the ground near a tractor-trailer. The man had a laceration at the top of his head, was bleeding profusely, and unsuccessfully attempted to speak. Czepiel administered first aid before initiating his investigation.

Czepiel approached the respondent, who was standing near the scene and directed him to wait there. He reported that the respondent was very cooperative. Czepiel directed the Traffic Safety Unit to report to the scene. Other officers, including Detective Sergeant Jacoby, Detective Corporal Ford, Detective Powell, and Patrolman Cardone reported to the scene.

Czepiel spoke with another truck driver, Mr. Campbell, who was parked in a spot adjacent to the accident scene. Czepiel testified that Campbell said he did not witness the collision. Czepiel did not speak with other witnesses concerning the collision. The investigation proceeded, including taking photographs and a video recording of the scene. A laser diagram of the scene was prepared using the photographs and video. Jacoby and Cardone spoke with other people at the scene. Jacoby interviewed IP employees and the respondent.

Although Czepiel did not suspect the respondent was intoxicated, he was taken to a local hospital for a blood test. There was no evidence of alcohol or drugs other than phenobarbital in his blood. The respondent advised that his girlfriend had given him medication to calm his nerves.

Czepiel described the protocols governing tractor-trailer operations at the IP site. When a tractor-trailer driver arrives, he is to complete paperwork at an on-site office. He then disconnects the tractor from the trailer and lowers the trailer's legs to the ground. A forklift operator installs a "glad-hand lock," which prevents the tractor from reconnecting to the trailer.

It is intended to ensure the trailer does not move while a forklift operator is inside the trailer, unloading its contents. To remove the lock, an individual must be positioned between the tractor and trailer. Upon being advised by IP staff that his truck was unloaded and ready to leave, a driver would report to the dispatch office and complete paperwork ("sign out") before returning to his truck. Czepiel was told by Jacoby that the respondent signed out on other occasions.

Based on his discussions with Jacoby, who interviewed the respondent, and with Cardone, Czepiel described how the collision occurred. The forklift operator had completed unloading the trailer and radioed IP staff to advise of this. He walked to the tractor-trailer to remove the glad-hand lock. The respondent received a call that the trailer had been unloaded and was told to retrieve paperwork from the office. Rather than report to the office to retrieve the paperwork, the respondent entered the tractor and attempted to connect it to the trailer. This was a violation of IP protocol. Because the forklift operator was removing the glad hand lock, he was positioned between the tractor and trailer, with his back to the respondent, when the respondent backed up the tractor. The respondent's tractor struck the forklift operator. Upon perceiving an obstacle that prevented him from backing up properly, he got out to observe what had happened. He observed that he had struck the forklift operator and returned to the tractor to move it forward, away from the forklift operator. The respondent attempted to assist, called 911, and proceeded to the IP office for further assistance. The collision caused injuries that led to the forklift operator's death. The respondent was charged with careless driving. The charge was based on his failure to ensure that it was safe for him to back up.

Czepiel believed a driver could not see the location of the glad hand lock through the side-view mirrors.¹ It would be very difficult for a tractor driver to be able to see someone positioned between the tractor and trailer, where the lock is located, with his side-view

¹ The driver's side-view mirror had two parts. The top part provided a closer view. The bottom mirror provided a wider angle, which caused objects to appear further away. Czepiel reviewed a rendering of the field of vision from within the tractor, using the side-view mirror (R-5). A pink mark on the rendering indicated the location of the glad-hand lock. The rendering indicated that neither of the driver's two side-view mirrors enabled a driver to see the location of the lock. Czepiel agreed with this assessment.

mirrors. A driver could possibly see, with the side-view mirrors, a person removing the lock, depending upon where that person was standing.

Czepiel was questioned about photographs taken of Detective Ford, who recreated the movement of a person walking between a tractor and trailer. Jacoby took photos from within the tractor, in the driver's seat, using the driver's side view mirror. Ford was fully visible when standing adjacent to the side of the tractor-trailer. He was partially visible when standing between the tractor and trailer (P-4, 5). Czepiel testified that Ford was able to reach the glad hand lock from the latter position.

Upon further questioning, Czepiel acknowledged that the respondent said he looked in his mirrors before he started backing up the tractor. Czepiel did not know where the forklift operator was positioned at that time. It was possible that the respondent could have checked his mirrors and not seen the forklift operator when he started to back up the tractor.

Czepiel acknowledged on cross-examination that the IP protocol documents he reviewed (R-1, 2) do not require drivers to retrieve paperwork from the IP office before backing up the tractor to connect it to the trailer. He further acknowledged that the respondent did not violate trailer securement requirements. Czepiel did not know what dispatch staff told the respondent when they called him. He could have been told that he was free to leave the site.

After being shown a report, which was written by Jacoby, to refresh his recollection, Czepiel acknowledged that the forklift operator violated IP protocol by leaving his radio in his forklift and not calling dispatch after unlocking the lock. This violation of IP protocol could have contributed to the cause of the collision.² However, Czepiel could not say that the accident would not have occurred but for the forklift operator's actions.

² Respondent's counsel also referred to email correspondence between a Florence Township Police Captain and an Assistant Burlington County Prosecutor, dated September 7, 2016, to refresh Czepiel's recollection. The Captain wrote, "Our investigation revealed that the forklift operator was attempting to remove a safety lock from the brake line on the trailer so that the tractor could hook up to the trailer. The driver then received a phone call from his dispatch advising that the trailer was empty and that he was authorized to take the trailer. The forklift operator never advised the tractor trailer driver that he was removing the safety and the driver assumed the safety was already off and backed his truck to connect the fifth wheel." The assistant prosecutor replied that the tractor-trailer no longer needed to be impounded (R-4). Czepiel was unaware of the email exchange but testified that he did not disagree with the account of

Respondent, **Stelian I. Rosu**, testified that he had driven tractor-trailers to the IP site on numerous occasions over a period of years. On the day of the collision, when he arrived at IP, he disconnected the trailer from the tractor and the glad-hand lock was installed. He could not reconnect the tractor and trailer until the lock was removed. He was in the tractor when he received a phone call and was told the trailer had been unloaded and he was ready to leave. Based on his past experience at IP, receipt of the phone call indicated he was ready to leave, and he believed the trailer had been emptied and the lock had been removed before he received the phone call. Relying upon the phone call, he did not get out of the tractor to check the status of the lock or confirm that the trailer had been fully unloaded before he started the tractor and attempted to reconnect it to the trailer. He intended to confirm that the trailer had been unloaded after he connected the tractor and trailer. He conducted himself in the same manner as he had during his prior times at IP.

The respondent signed in and out of IP the previous times he was there. On the day of the collision, he intended to sign out and get the required paperwork after he reconnected the tractor and trailer. He was not required to get the paperwork before then. Rather, he was required to get the paperwork before he left the IP site. He had never previously gotten the paperwork before he reconnected the tractor and trailer and his actions were consistent with how he proceeded during his prior trips to IP.

After he started the trailer, he looked in his mirrors. As he attempted to move, he felt something "holding him." He exited the trailer and discovered his tractor had struck the forklift operator.

Additional Findings

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy

the incident in the document. Counsel for the Commission objected to the characterization of the email exchange as evidence of the County Prosecutor's determination concerning whether to proceed with a criminal prosecution. Czepiel was not involved with the decision concerning whether to prosecute and did not opine concerning the determination.

of belief "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N J 514, 522 (1950). To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v Pura-Tex Stone Corp., 53 N J Super 282, 287 (App Div 1958).

As the fact finder, I had the ability to observe the demeanor, tone, and physical actions of the witnesses during the hearing. The respondent remained calm and consistent in his testimony. He asserted confidently that he understood and complied with the protocols governing his work at IP. He was consistent in his recitation of the protocols. I find his testimony to be credible.

Officer Czepiel also testified credibly. He acknowledged that he did not conduct all aspects of the investigation about which he testified. Upon reviewing another officer's report, he acknowledged that the forklift operator violated IP protocols and contributed to the cause of the collision. He acknowledged that he did not know where the victim was positioned when the respondent began to back up the tractor. He testified it was possible that the respondent could have checked his mirrors and not seen the forklift operator.

Based on the documentary and testimonial evidence, and having had the opportunity to observe the witnesses' demeanor and assess their credibility, I **FIND** the following **FACTS**:

- 1 The forklift operator was responsible for installing and later removing the glad-hand lock on the trailer driven to the IP site by the respondent.
- 2 The respondent knew he could not reconnect his tractor to the trailer until the lock was removed.

- 3 IP protocol required IP staff to advise the respondent when his tractor could be reconnected to the trailer
- 4 The respondent was advised by IP staff that his tractor-trailer was ready to be moved
- 5 There is not a written requirement that, after the respondent was advised that his truck was ready, he must report first to the IP office and retrieve paperwork before he reconnected his tractor to the trailer
- 6 No other evidence was presented to demonstrate the respondent was obligated to report to the office and retrieve paperwork before he reconnected the tractor to the trailer
- 7 No evidence in the record documented where the forklift operator was positioned prior to the collision and whether he was visible through the side-view mirrors

LEGAL ANALYSIS AND CONCLUSION

The Commission is empowered to suspend a motorist's driving privileges for a violation of any provision of the motor vehicle statutes or for any other "reasonable grounds" N J S A 39 5-30(a) 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) Preponderance is the greater weight of the credible evidence in the case, not necessarily dependent on the number of witnesses or exhibits but having the greater convincing power State v Lewis, 67 N J 47 (1975)

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 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

The present matter involves a proposed suspension of respondent's license due to the death of an individual in an accident where it is alleged by the Commission that respondent operated his vehicle in a careless manner. N J S A 39 4-97 provides, "[a] person who drives a vehicle carelessly, or without due caution and circumspection, in a manner so as to endanger, or be likely to endanger, a person or property, shall be guilty of careless driving." Events that contributed to an incident should be considered when evaluating the nature of the incident. In State v. Tuccillo, 76 N J Super 584, 590-91 (App Div 1962), the Appellate Division found

The vehicle was solely under defendant's control, no independent or intervening force or agency interfered with exercise of such control, and the otherwise unexplained driving of the car off the roadway, over the curb and onto the traffic island justifiably gave rise to an inference that defendant was not operating the vehicle with adequate attention or control -- in other words, that he was driving carelessly within the intent of N J S A 39 4-97. While the mere occurrence of an accident does not of itself necessarily bespeak negligence or careless driving, this court has stated that it is a matter of common knowledge that when proper care is exercised an automobile ordinarily does not leave the highway, cross to the opposite side of the road and collide with a pole
(citations omitted)

In Cresse v. Parsekian, 81 N J Super 536 (App Div 1963), affirmed, 43 N J 326 (1964), the MVC is asked to consider the following

- (1) Facts that constitute the particular violation,
- (2) Whether the motorist was willful or reckless, or merely negligent,
- (3) If merely negligent, how negligent,
- (4) Length of time motorist has been driving,
- (5) Whether the offense is the first offense,
- (6) Whether the motorist has been involved in any accidents,
- (7) The age and physical condition of the motorist,
- (8) Whether there were any aggravating circumstances, such as drinking,
- (9) Whether there were extenuating circumstances,
- (10) The reasonableness of keeping the motorist off the road,
- (11) Whether suspension would be a protection or

punishment, (12) All other considerations based on the facts and circumstances

The Commission contends that, had the respondent first reported to the IP office to retrieve paperwork, he would have had an opportunity to confirm whether the lock had been removed. Had he so inquired, he would have had reason to believe the forklift driver could have been in the process of removing the lock. It, thus, argues the respondent violated the standard of care by not independently confirming it was safe for him to move the vehicle.

Here, the record reflects that the respondent relied upon a directive issued to him by IP staff. No evidence was presented that the respondent had reason to believe that the routine IP protocol had been disturbed. Rather, the evidence demonstrated that the respondent reasonably believed that the routine process that he had followed on previous occasions was being followed on the day in question. The respondent's testimony concerning his understanding was corroborated by the email from the police department captain, who wrote the day after the incident, "The driver then received a phone call from his dispatch advising that the trailer was empty and that he was authorized to take the trailer. The forklift operator never advised the tractor trailer driver that he was removing the safety and the driver assumed the safety was already off and backed his truck to connect the fifth wheel" (R-4)³. Hearsay evidence may be used to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony, when there is a residuum of legal and competent evidence in the record. Weston v State, 60 N J 36, 51 (1971), N J A C 11-15 5

While, in retrospect, it would have been prudent for the respondent to confirm that it was safe for him to connect the tractor and trailer, he neither had an obligation nor a reason to do so, given the evidence concerning operations at the IP site. There is no evidence that the forklift operator was visible or that the respondent carelessly disregarded an indication

³ Czepiel testified, based on his refreshed recollection, that the forklift operator violated IP protocol and that the violation contributed to the collision. The document used to refresh his recollection was not authored by Czepiel and was not entered into evidence. The author of the other document that referenced the forklift driver's actions (R-4), did not testify and, Czepiel, the only witness questioned about the document, did not testify to having personal knowledge of the forklift operator's actions. The forklift operator's alleged failure to comply with IP protocol has not been found as fact and, therefore, is not a basis for the conclusion in this matter.

that he was in the vicinity of the vehicle. Thus, the respondent did not operate his vehicle without due caution and circumspection and in a manner likely to endanger a person or property.

Based on the above, I **CONCLUDE** that the Commission has not met its burden of proving by a preponderance of the evidence that the respondent committed the moving violation of careless driving. While the death of the forklift driver was unquestionably a tragic accident, the preponderance of the evidence in the record does not support a finding that the collision was the result of respondent having operated his vehicle in a careless manner.

ORDER

Accordingly, it is **ORDERED** that the Scheduled Suspension Notice issued by the Motor Vehicle Commission under date of, to respondent Stelian I. Rosu 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, 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.

August 9, 2018
DATE

Judith Lieberman
JUDITH LIEBERMAN, ALJ

Date Received at Agency

8/9/18

Date Mailed to Parties

8/9/18

JL/vj

APPENDIX

WITNESSES

For petitioner:

Sgt Nicholas Czepiel

For respondent:

Stelian I Rosu

EXHIBITS

Joint

- J-1 Death certificate
- J-2 Certified driving record
- J-3 Diagram of accident (4 pages)

For petitioner:

- P-1 None
- P-2 Sign in sheet
- P-3 Tractor-trailer photo
- P-4 Side-view mirror photo
- P-5 Side-view mirror photo

For respondent:

R-1 IP trailer securement rules

R-2 IP safety notice

R-3 Accident report

R-4 September 7, 2016, email correspondence

R-5 Field of vision rendering