

Date of mailing: March 28, 2022

**STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
CASE FILE NUMBER: DXXXX XXXXX 02656
OAL DOCKET NUMBER: MVH 07590-21**

IN THE MATTER OF :
JUAN C. CAICEDO : **FINAL DECISION**

The Motor Vehicle Commission (MVC or Commission) hereby determines the matter of the proposed indefinite suspension of the passenger endorsement to the New Jersey Commercial Driver's License (CDL) of **JUAN C. CAICEDO**, respondent, pursuant to N.J.S.A. 39:3-10.1, 39:5-30, and N.J.A.C. 13:21-14.5(c)(13), based on notification of his arrest under a then-pending charge of criminal sexual contact. Based upon review of the hearing record presented, the Administrative Law Judge's (ALJ) recommended disposition here will be accepted as set forth in the Initial Decision – no suspension of the passenger endorsement in this particular matter -- noting that this involved the driver having been granted by the prosecutor entry into a Pre-Trial Intervention Program which he later completed, and without admissions of guilt or entry of plea to the charge or to a reduced charge, and with subsequent dismissal of charge. This Final Decision, however, is written here to clarify and correct certain imprecise statements concerning the procedure and applicable standards as set out in the Initial Decision, since with respect to future matters involving serious criminal charges/arrests this outcome should be viewed as narrowly limited to the particulars of how this hearing record developed. This is especially so, as indicated below, in light of the statutory burden/requirement, pursuant to N.J.S.A. 39:3-10.1, upon a passenger-carrying CDL driver to "furnish to the chief

administrator satisfactory evidence of continuing . . . good character . . . at the time of application renewal or such other time as the chief administrator may require, and in such form as the chief administrator may require.” (emphasis added).

In the Initial Decision at page 2, the ALJ states that “[a]lthough the Pre-Hearing Conference did take place, there was no actual hearing conducted by the Commission.” The ALJ also makes reference on page 2 to asking about the status of the “Commission’s hearing”. As a point of clarification it is noted that: the agency pre-hearing conference is an informal conference and is not meant to be a hearing because the designated purpose of the pre-hearing “conference” by the “driver improvement analyst” agency designee, as set out explicitly in the applicable regulation is:

to clarify disputed material facts and legal issues raised in the hearing request; to review the evidence upon which the licensee bases his or her claim; to ascertain the discovery needs of the licensee; to supply the licensee with any discovery to which the licensee may be entitled under the Uniform Administrative Procedure Rules; and to attempt to resolve the administrative action to be taken.

[N.J.A.C. 13:19-1.8(a)].

Such conferences conducted pre-transmittal by the agency designee: “driver improvement analyst”, pursuant to N.J.A.C. 1:13-4.1 and N.J.A.C. 13:19-1.3 through -1.8, are not held as trial-type formal evidentiary hearings, with testimony under oath and documentary evidence submitted to the record, as will be the plenary hearing to be conducted at the Office of Administrative Law hearing before the administrative law judge. Such ALJ acts as a neutral fact-finder for the matter, with the matter having been transmitted to the OAL as a “contested case” under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to 25. See also, Office of the Attorney General of State of N.J., Formal

Opinion No. 22-1979; 1979 N.J. AG LEXIS 6 (Oct. 11, 1979) (containing instructive discussion/analysis concerning pre-hearing conferences and “contested case” hearings held for license suspension type matters).

In addressing this matter at the OAL plenary hearing on this “contested case” matter, it is important to note, as indicated in the implementing regulations for N.J.S.A. 39:3-10.1 that:

[i]n 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)(13)].

Thus it is clear that a criminal conviction is not necessary for the Chief Administrator to exercise the authority to suspend a passenger endorsement of a driver that the Chief Administrator may determine, in weighing the totality of the evidence presented into the record at the contested case hearing, is appropriately found to be “of bad character” or “a potential danger to others”, while a serious criminal charge has been made. This is in conjunction with the statutory authority provided specifically in N.J.S.A. 39:3-10.1 which sets the “continuing” burden/requirement upon the passenger-carrying commercial driver to provide “satisfactory evidence” of “good character” at whichever applicable time that the Chief Administrator is calling upon the driver to address this public safety-related concern. Such applicable time is at the OAL plenary hearing conducted in the context of the Scheduled Suspension Notice here which cites to this implementing

regulation and notes that there is indication of a criminal arrest(s) and/or conviction(s) which may fit within the criteria of disqualifying as the issue of bad character and/or potential danger to passengers or other motorists is implicated by such arrest/charge and/or conviction. Thus, a plenary OAL hearing provides the forum for receiving and assessing such relevant evidence of “good character” that the driver may be able to provide for assessment under oath and in light of the totality of the circumstances as to the arrest/charges and subsequent developments.

As a general matter, it is also noted that the Commission is not required to prove the underlying charge under N.J.A.C. 13:21-14.5(c)(13), in conjunction with the assessment of the evidence of “good character” which the statute indicates shall be furnished by the driver. The Commission did not conduct a criminal investigation, does not have access to all the evidence produced in a criminal case, and would not have access to all documentary and testimonial evidence. The administrative action being taken is not a substitute for an underlying criminal prosecution. The driver may introduce the evidence as it relates to the subsequent developments as to the original charge(s), but should also present evidence that would satisfy the statutory requirement of continuing good character as set forth in N.J.S.A. 39:3-10.1.

The ALJ errs in the assumption that the MVC is required to prove that respondent committed a particular crime. As I recently found in In re DeBrito, OAL Docket No. MVH 05612-21 (Final Decision Dec. 13, 2021),

the relevant inquiry under N.J.A.C. 13:21-14.5(c)(13) is whether the licensee 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,” not whether the respondent is guilty of the underlying charge.

[Id. at 6.]

To that end, once the Commission provides evidence of the arrest and charge, the respondent is responsible for providing evidence demonstrating that he is of good character and not a potential danger, given the serious charge that was raised against him, in addition to addressing the developments related to that charge. The plenary formal hearing should address that: holders and applicants for passenger endorsements are required to “furnish to the chief administrator satisfactory evidence of continuing physical fitness . . . , good character, and experience at the time of application renewal or such other time as the chief administrator may require, and in such form as the chief administrator may require.” N.J.S.A. 39:3-10.1.

While the burden of establishing a fact is generally placed “on the person relying thereon,” the burden of production shifts where knowledge of the information pertinent to the fact to be proven is within the possession of a particular party. State v. Wright, 410 N.J. Super. 142, 151, 155-56 (Law Div. 2008) (internal citations omitted). Here, any evidence showing good character resides with the respondent, not the Commission. Therefore, the burden shifts to the respondent to provide such evidence. This conclusion is consistent with public policy, as well as statute and caselaw. Public policy dictates that individuals holding passenger endorsements are entrusted with the safe transportation of the public and must not be a potential danger or threat to those passengers.

Other jurisdictions have come to similar conclusions regarding suspensions in the absence of a conviction and the requirement to prove criminal misconduct. In New York, the Second Circuit has held that suspensions of taxi drivers’ licenses based upon arrests without proof of guilt of the criminal charges did not violate the taxi drivers’ due process

rights. Nnebe v. Daus, 931 F.3d 66, 83 (2d Cir. 2019). The court held that, instead, due process requires that the drivers be afforded “an opportunity to show that his or her particular licensure does not cause a threat to public safety.” Ibid. As to proof of criminal charges, the court stated that it should be left “to be resolved in the criminal courts, with the burden on the prosecution to prove guilt beyond a reasonable doubt.” Id. at 90.

As the Initial Decision sets forth, the Chief Administrator’s authority to suspend a passenger endorsement is discretionary. N.J.A.C. 13:21-14.5(c) sets out thirteen circumstances in which the Chief Administrator “may revoke or suspend the passenger endorsement of any person.” Ibid. Because the disciplinary authority is discretionary, the ALJ draws the erroneous conclusion that the Chief Administrator somehow lacks the authority to suspend the endorsement since it is the permissive “may” and not the mandatory “shall” that forms the basis of authority. Initial Decision at 6 – 7. Instead, properly read, the permissive “may” indicates that the Chief Administrator’s authority extends to imposition of suspension or revocation of the passenger endorsement.

Another area on which the Initial Decision needs clarification is the ALJ’s footnote where the ALJ writes:

This court is not ruling that the commissioner does not have the authority to revoke or suspend a passenger endorsement when there is no conviction provided if he or she determines based upon reliable discernable evidence that such person is a 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 motorist or to himself or herself. The way to do this is to conduct a hearing where testimony and evidence can be provided and considered.

[Initial Decision at 8, n.2.]

The main goal of administrative proceedings is to ensure safety to the public on the highway. Atkinson v. Parsekian, 37 N.J. 143, 155 (1962). 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). In light of this, and the statutory requirement concerning satisfactory evidence of “continuing” good character, the OAL plenary hearing for such contested case, where it is a formal trial-type evidentiary proceeding, is the proper forum for having the record developed to assess whether the passenger-carrying commercial driver has met this standard, in light of the potentially disqualifying criminal arrest/conviction information indicated.

DISPOSITION/ORDER

As indicated above, the ALJ’s recommended disposition is accepted here, the proposed suspension of the passenger endorsement is dismissed on this 25th day of March, 2022.



B. Sue Fulton
Chair and Chief Administrator

cc: W. Scott Murphy, Esq.
John Lowenberg, DAG