

**STATE OF NEW JERSEY  
MOTOR VEHICLE COMMISSION  
CASE FILE NUMBER: JXXXX XXXXX 06802  
OAL DOCKET NUMBER: MVH 07119-19**

**IN THE MATTER OF** :  
**DWAYNE J. JONES** : **FINAL DECISION**

The Motor Vehicle Commission (“Commission”) hereby determines the matter of the proposed suspension of the New Jersey driving privilege of **DWAYNE J. JONES**, respondent, for accumulation of an excessive number of points in violation of N.J.S.A. 39:5-30.8 and N.J.A.C. 13:19-10.1 to -10.8. Pursuant to N.J.A.C. 13:19-10.2(a), respondent’s New Jersey driving privilege is subject to suspension for a period of 60 days for having accumulated nineteen points in a period greater than two years. Prior to this final agency determination, I have reviewed and considered the Initial Decision rendered by the Administrative Law Judge (“ALJ”) in this matter. Neither party filed a letter of exceptions. Based on the record presented, I shall accept the findings and recommendation of the ALJ substantially for the reasons stated herein; however, I will reject the ALJ’s reasoning and conclusions as specified.

**I. Findings of Fact**

First, I accept and adopt the ALJ’s findings of fact on pages 2 through 3 of the Initial Decision, which summarizes respondent’s driving history.

In summery (sic) [respondent] has received twenty-four points, less five credits for safe driving, for a total of nineteen points in the last twenty years. He has several periods where he did not accumulate additional points, but due to his failure to pay surcharges resulting in suspensions, he did not receive the safe driving credit. For example, between August 14, 2013 and November 28, 2017, he did not receive any moving violations or points, but did not

receive any annual safe driving credits. He again had no points between January 1, 2002 and March 19, 2006.

[Initial Decision, p. 3]

## II. Legal Analysis and Conclusion

Next, I shall consider the Legal Analysis and Conclusion of the ALJ. The ALJ observed that “the respondent had his license suspended many times due to non-payment of surcharges, that he failed to receive any safe driver credits during several periods of time when he did not in fact receive any moving violations.” Id. at 7. The Initial Decision holds that “[i]t would contravene those laws as well as the principles of repose to allow the Commission to tag four points accumulated over a twenty-year period, and none accumulated in a ‘two-year period.’” Id. at 8.

The ALJ concludes that

[w]hile I am cognizant of the fact that respondent has mostly himself to blame for the accumulation of points over such a long history in the sense that his delinquencies with respect to the insurance surcharges is the reason he never earned the annual good driving credits, I nevertheless remain convinced that some limitation on suspensions for points is encompassed within the law. Accordingly, I **CONCLUDE** that the Commission is restricted from applying N.J.A.C. 13:19-10.2 to points that are (well) over ten years old.

[bid.]

The main sentiment behind the ALJ’s mention of the principle of repose in connection with this point system suspension matter is the ALJ’s apparent disagreement with the legislative policy embodied in the “point system” statutory construct enacted at N.J.S.A. 39:5-30.5 to -30.11. Ultimately, the ALJ expresses her view that the point system’s time frame of greater than two years should not be considered to extend indefinitely through the entire history of a driver’s record but

instead must be delimited by some reasonable cut-off. This, however, is not supported by the clear wording used by the legislature in the point system statutory provisions, nor by the legislative history for these statutes, and, finally, not by the long-standing and consistent interpretation of these statutes by the Commission (the agency charged with implementing and enforcing these statutes). The ALJ's stated conclusion, which would effectively create a ten-year limitation on when points in a driver history could be considered for point suspension purposes, would represent a wholesale departure from how the points suspension statutes have been enforced since their enactment.

In the points suspension statute, N.J.S.A. 39:5-30.8b and -30.8c, the legislature's use of the phrase "in a period greater than two years" without also including any language that would set a maximum time period for when points should not be considered gives a clear and unambiguous direction that the time frame for such consideration is not limited. Instead, the legislature chose to provide in the statutory framework, in a corresponding provision – N.J.S.A. 39:5-30.9 -- the ability to earn point reduction credits, such that if the licensee obeys the State's traffic laws by not committing any violation either resulting in points or in the suspension of driving privileges, the licensee's points accumulation can be reduced at a rate of three point-credits for each compliant twelve-consecutive-month period, and for each five years the licensee can additionally reduce the point-total by two credits for completing a defensive driving course. Thus, the legislature established a clear-cut path in which to reduce point-totals by at least 17 (if not 20 or more<sup>1</sup>) points over a five-year period and by 34 (if

---

<sup>1</sup> The overall reduction may amount to 20 or more point-credits over five years, or 37 or more point-credits over ten years, in the case that a licensee additionally completes a

not 37 or more) points over a ten-year period. Consequently, it is left entirely in the hands of the licensee, by his own actions in complying with the law, to avail himself of the “repose” from the effect of “old” points that is the subject of the ALJ’s concern.

To be sure, the legislature could have chosen to include a maximum time limit for considering points within its point-system construct, simply by inserting even a short phrase such as “in a period greater than two years, *but less than X years.*”<sup>2</sup> That the legislature did not include such phrasing is a clear indication that the legislature did not intend for such a maximum time limit or “cut-off”. Indeed, the legislative history also confirms this. When the current point system statute was enacted in 1982 it repealed the prior statute governing the point system, N.J.S.A. 39:5-30.3, but in doing so:

“provided, however, that any points accumulated by a licensee prior to the effective date of this act and pursuant to the authority granted by section 2 of P.L. 1969, c. 261 (C. 39:5-30.3), shall remain in full force and effect, and shall be computed along with points assessed pursuant to the authority contained in this act, in initiating or proceeding with any administrative action authorized herein.”

[L., 1982, c. 43, § 9 (emphasis added); See also Historical and Statutory Notes to N.J.S.A. 39:5-30.3].

Thus, it is seen that, in 1982, the legislature explicitly provided for the carry-over and addition to the accumulated point-total of prior points including those that reached back as far as 1969 – spanning a period of up to 13 years. The legislature in its

---

Commission-approved Driving Improvement Program, resulting in additional three-point credits which may be earned every two years. N.J.S.A. 39:5-30.9.

<sup>2</sup> Indeed, other states have enacted point systems which provide maximum time periods, or “rolling window” constructs for considering points. For example, compare such point systems as Colorado’s, C.R.S. 42-2-127; California’s, Cal. Veh. Code § 12810.5; Texas’s, Tex. Transp. Code § 521.292; and Florida’s, Fla. Stat. § 322.27.

enactment of the new point system statute, with its attention focused squarely on its desire to provide for a carrying-over of prior points, pointedly did not put any time restriction as to what points would and would not be carried over and “computed along with” newly assessed points for the particularly stated purpose of point suspension administrative actions. In all the years since the 1982 enactment of the current point system statute, N.J.S.A. 39:5-30.5 to -30.11, there has been no amendment by the legislature to include any “cut-off” or maximum time frame for the accumulation of points which are to be considered for point system suspension purposes. The legislature is presumed to know how the administrative agency has been implementing and enforcing this statute, and in light of this has not taken any steps to direct a change to the Commission’s long-standing and consistent enforcement of the point system. For all of these reasons, the ALJ’s conclusion that the Commission should be prevented from applying N.J.A.C. 13:19-10.2 to points that are over ten years old is rejected. The Commission concludes that the point system suspension notice in this matter was properly issued for the accumulation of nineteen points in a period greater than two years.

### **III. Sanction**

I now turn to a consideration of the appropriate remedial sanction. N.J.A.C. 13:19-10.2(a)(8) mandates that the Chief Administrator suspend respondent’s driving privilege for a period of 60 days, “except for good cause.” Generally, the schedule of suspensions set forth in the Commission’s Point System rules should be followed in the interest of uniformity, unless an individual licensee is able to demonstrate extraordinary circumstances justifying a reduction or waiver. Respondent has the burden of proving

“good cause” for a special exception to the presumptive suspension imposed in similar cases.

Good cause is a flexible concept which appears in many statutes and rules. “The very essence of the phrase is its ability to afford relief in exceptional situations.” Hovland v. Director, Div. of Taxation, 204 N.J.Super. 595, 600 (App. Div. 1985). It is impossible to construct a “definitive catalogue” of all circumstances to be considered in determining the existence of good cause. “Each case must be decided upon its own facts.” Ullmann v. Hartford Fire Ins. Co., 87 N.J. Super. 409, 414 (App. Div. 1965). Need alone cannot be the deciding factor, since in today’s motorized society virtually everyone needs a driver’s license to earn a living and perform normal daily activities. See Division of Motor Vehicles v. Morton, 4 N.J.A.R. 95 (1982).

Reviewing the totality of the circumstances here, with particular attention to respondent’s overall driving history, I agree with the ALJ that the fact that the majority of respondent’s points violations were committed well in the past provides significant mitigation in determining the appropriate remedial sanction to impose. This significant mitigating factor, however, is tempered by notable aggravating factors that are also present. I cannot overlook that respondent’s record reveals repeated instances of his having driven while suspended, which is a most serious offense. The seriousness of this offense, a violation of N.J.S.A. 39:3-40, is underscored by the legislature’s use of mandatory incarceration as a penalty for a second conviction of such offense, with increasing periods of imprisonment for further offenses. Therefore, I shall impose a five-day suspension of respondent’s New Jersey driving privilege as was also indicated by the ALJ in the Initial Decision as the appropriate sanction. Initial Decision at 8.

While I am cognizant of the hardship that the respondent may suffer as a result of his New Jersey driving privilege being suspended, respondent must nevertheless appreciate the responsibility that he owes to the public under the motor vehicle laws. Motor vehicle license suspensions are primarily intended to protect the safety of the public by temporarily removing offenders from the highways of New Jersey. David v. Strelecki, 51 N.J. 563, 566 (1968); Cresse v. Parsekian, 43 N.J. 326, 328-29 (1964). Moreover, the respondent is reminded that the operation of a motor vehicle on New Jersey roads is a privilege, not a right. State v. Nunez, 139 N.J. Super. 28, 30 (Law Div. 1976); State v. Kabayama, 94 N.J. Super. 78, 82-83 (Law Div.), aff'd, 98 N.J. Super. 85 (App. Div. 1967), aff'd, 52 N.J. 507 (1968). A suspension of 5 days is both warranted and reasonable in the present case when public safety is balanced against respondent's need to maintain his driving privilege. The Commission notes that respondent's proposed suspension is intended to be rehabilitative rather than punitive in nature.

It is, therefore, on this 18th day of October, 2019, **ORDERED** that the New Jersey driving privilege of **DWAYNE J. JONES** be suspended for a period of five (5) days.

**NOTE:** The **effective date** of this suspension is set forth in the "**Order of Suspension**" which the Commission has included in this mailing.



B. Sue Fulton  
Chair and Chief Administrator

**Enclosure: Order of Suspension**