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AFFIRMED
N. J. MOTOR VEHICLE COMMISSION

ORLA
State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

Date 3-8-18

INITIAL DECISION

OAL DKT NO MVH 7731-17

AGENCY DKT NO. 09752

NEW JERSEY MOTOR VEHICLE

COMMISSION,

Petitioner,

v

MATTHEW C. LEWELLEN,

Respondent

Cassandra Berry, Regulatory Officer 4, for petitioner pursuant to N J A.C. 1:1-5 6(a)

Matthew C. Lewellen, respondent, pro se

Record Closed December 8, 2017

Decided January 22, 2018

BEFORE **MARY ANN BOGAN**, ALJ

STATEMENT OF THE CASE

This proceeding is brought under N J S A 39 3-10 1 and N J A C 13 21-14 5(a) and (c) The Motor Vehicle Commission ("MVC") seeks to indefinitely suspend the passenger endorsement on the Commercial Driver License (CDL) held by respondent,

Matthew C Lewellen The issue is whether respondent has committed a disqualifying crime or offense within the meaning of N J A C. 13 21-14 5(c)(12).

PROCEDURAL HISTORY

MVC transmitted this matter to the Office of Administrative Law (OAL) on May 25, 2017, for determination as a contested case pursuant to N J S A. 52-14B-1 to B-15 and N J S A. 52 14F-1 to F-13 A hearing was conducted on December 8, 2017, at which time the record closed

FINDINGS OF FACT

The relevant facts are not in dispute Based upon a review of the testimony and the documentary evidence presented, I **FIND** the following **FACTS**

The MVC submitted documents that confirm that respondent has a disqualifying criminal record (P-1) Respondent does not dispute the criminal history presented by the MVC He was arrested and found guilty in Missouri of a violation of Statutory Sodomy and was registered as a sex offender

The incident occurred on January 1, 2005 Respondent turned himself into the police in 2007 At the court hearing on September 20, 2007, respondent pled guilty, and he was sentenced to ten years in prison for two counts of statutory sodomy, with two five-year terms of probation At that time, the respondent's sentence was suspended, and he was ordered to serve a five-year probationary term

Respondent urged that he needs the passenger endorsement of his license to continue in his present employment as a commercial bus driver for a motor coach company registered in Kansas City, Missouri where he has worked for four years. He has been employed as a bus driver for over eight years He stressed that he successfully completed Sexual Offender Treatment, and has been entirely rehabilitated as of April 30, 2012

Respondent's duties are mainly performed out-of-state. He is responsible for the safe transport of passengers, generally tourists, on interstate trips from New York to Los Angeles, as a tour bus driver. When he is not conducting cross country trips, the respondent transports elementary school children on field trips, and high school students to sporting events, along with adult chaperones, and for six years he has transported children in youth programs. The respondent travels on the New Jersey Turnpike, for work, when driving from New York to Philadelphia, and from Philadelphia to Canada.

Respondent urges that he is fully rehabilitated. His sentence was suspended, and he successfully served a five-year probationary term. He also successfully completed an extensive two year treatment program, and was discharged with a low risk of reoccurrence. Documentary evidence indicates that his counselor opines that respondent successfully demonstrated that he has all of the tools and resources to continue to be successful in the community, and scored low-moderate on the Static 99 risk assessment.

Documentary evidence also includes a recommendation letter from respondent's current employer who is fully aware of respondent's criminal history.

Respondent was a polite witness who appeared contrite, and anxious to resolve this matter so that he could continue in his current employment.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

The MVC has the authority and the obligation to impose reasonable restrictions on the issuance of licenses for various occupations in order to protect the public health and safety. Sanders v. Division of Motor Vehicles, 131 N.J. Super. 95, 97 (App. Div. 1974). The primary duty of the MVC "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 directs that an applicant for such a license present satisfactory evidence of his or her "previous experience," "good character" and "physical fitness." Ibid. The statute authorizes the chief administrator of the MVC to suspend or revoke a bus driver 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 " ibid.

Here, the MVC urges that respondent is not fit to hold the passenger endorsement or special license which would permit him to drive a bus because he has a disqualifying criminal record as defined by N J A.C. 13 21-14 5(c)(12) N J A C. 13 21-14 5(c)(12)(i)(2) provides that a criminal record is disqualifying when a driver has been convicted of "a crime or other offenses involving deviate or illicit social behavior such as rape, incest, sodomy or carnal abuse " I **CONCLUDE** that respondent's conviction clearly falls under the ambit of the regulation, and affords me no discretion to grant him the passenger endorsement on the licensure he seeks

This conclusion is consistent with the requirements of the Rehabilitated Convicted Offenders Act, N J S.A. 2A 168A-1, which 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 " N J S.A. 2A 168A-2 sets forth a variety of factors to consider in determining if an offense adversely affects licensure for a given trade Among these factors are the "nature and duties" of the trade and the "nature and seriousness of the crime " ibid Bus and limousine drivers are first and foremost entrusted with the duty to safely transport members of the public A history of illicit behavior with a minor is plainly inconsistent with the safe discharge of those duties. If respondent is issued a passenger endorsement, he is qualified to transport children at any time Moreover, it is quite concerning that his own counselor recently concluded that respondent's risk assessment is low up to moderate when at the time of discharge from the treatment program, his risk level was low

Accordingly, I **CONCLUDE** that respondent is disqualified from holding a passenger endorsement on his bus/commercial driver's license under the provisions of N J A C 13 21-14 5(c)(12)

APPENDIX

WITNESSES

For petitioner:

Cassandra Berry, Regulatory Officer 4

For respondent:

Matthew C Lewellen, respondent

EXHIBITS

For petitioner:

- P-1 Abstract of Driver History
- P-2 Scheduled Suspension Notice, dated January 31, 2017
- P-3 Correspondence to MVC from respondent, dated February 23, 2017
- P-4 New Jersey State Police Fingerprint Identification System
- P-5 N J A C. 13 21-14 5
- P-6 MVC Supplemental Specifications
- P-7 MVC Mitigating Factors and Evidence of Rehabilitation
- P-8 Reference Letter from Arrow Stage Lines, dated February 14, 2017
- P-9 NJ Sex Offender Form, dated September 14, 2016
- P-10 MVC Conference Report, dated April 17, 2017

For respondent:

- R-1 Email letter from Brenda K Ulmer, LCSW, dated December 8, 2017
- R-2 Criminal Records from Circuit Court of Jackson County, Missouri
- R-3 Reference Letter from Arrow Stage Lines
- R-4 Reference Letter from Brenda K Ulmer, MSW, LCSW, LLC, dated June 2, 2017
- R-5 Successful Termination Summary from Brenda K Ulmer, LCSW, dated April 30, 2012

ORDER

Based on the foregoing, I **ORDER** that the MVC's action suspending respondent's New Jersey passenger endorsement indefinitely be and the same hereby is **AFFIRMED**

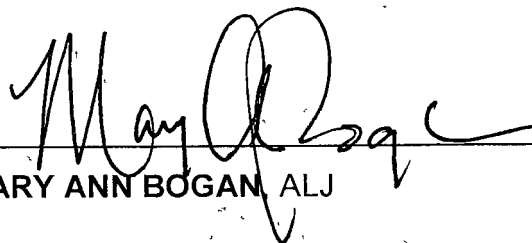
I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration

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

January 22, 2018

DATE



MARY ANN BOGAM, ALJ

Date Received at Agency

January 22, 2018

Date Mailed to Parties

1/23/18

MAB/cb

**STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
CASE FILE NUMBER: KXXXX XXXXX 05432
OAL DOCKET NUMBER: MVH 14205-17**

IN THE MATTER OF :
STEPHEN KOO : **FINAL DECISION**

The Motor Vehicle Commission (Commission) hereby determines this consolidated matter comprised of three separate proposed suspension notices issued to respondent **STEPHEN KOO**. First, is a determination concerning two proposed suspension actions as to respondent's New Jersey driving privilege for the 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 et seq. Pursuant to N.J.A.C. 13:19-10.2(a)(1), respondent's New Jersey driving privilege is subject to two 30-day suspension periods. Next, is a determination concerning the proposed indefinite suspension of the New Jersey Commercial Driver License (CDL) **passenger-carrying endorsement (passenger endorsement)** of respondent, because he has twelve or more current points under the point system on his driving record, pursuant to N.J.S.A. 39:3-10.1 and N.J.A.C. 13:21-14.5(c)2. Prior to this consolidated final agency determination, I have reviewed and considered the Initial Decision of the Administrative Law Judge (ALJ). No exceptions were filed. Based upon the record presented, I shall affirm in part and modify in part the recommendation of the ALJ for the reasons stated herein.

In her Initial Decision, the ALJ finds that in light of the respondent's overall driving record and "[p]ursuant to the pertinent regulation, [] two 30-day suspension[s] would apply

in this case”, but further concludes and recommends based on mitigation noted in her decision that the suspension term “should be reduced to a total of fifteen-day suspension.” The ALJ notes that this suspension would be a suspension of respondent’s basic driving privilege (and, therefore, would apply to both his “personal” and CDL license). Initial Decision at 3.

Based on an independent and de novo review of the record, I concur and will not disturb that recommendation with respect to the two proposed “points” suspension actions. There is certainly a need for a rehabilitative suspension period to reform this driver’s driving behavior, as it is manifested in the twelve separate traffic violations (amassing 16 additional penalty-points to his cumulative point-total) which he committed in the less-than-two-year period between August 12, 2015 and June 26, 2017. See Certified Abstract of Driver History Record (Exhibit P-1). However, respondent has shown some recent improvement since that time period, in that he has not been convicted of another offense since that June 26, 2017 date. Thus, on balance, taking into consideration respondent’s need for his driving privileges weighed against the public interest in having drivers who obey the governing traffic laws at all times to ensure safety, I will accept the fifteen-day suspension period recommended by the ALJ as warranted and appropriate.

While I concur with the ALJ’s recommendation that the proposed suspensions for the accumulation of excessive points be reduced to a total fifteen-day suspension, I must modify the ALJ’s recommendation concerning the proposed indefinite suspension of respondent’s **passenger endorsement** on his commercial driver license (CDL), for having a cumulative point-total of twelve or more points. First, I will note that the ALJ’s

Initial Decision imprecisely refers to the Commission's proposed suspension action as one for his "commercial endorsement". Initial Decision at 2. This reference shall be clarified and re-stated: as it is a "passenger endorsement" on the commercial privilege (and not the underlying CDL itself) that is the subject of this proposed indefinite suspension.

Respondent's current point-total as of the date of this final agency decision stands at nineteen (19); it had been fifteen (15) at the time the Scheduled Suspension Notice for the passenger endorsement (BUS S CPPT; 05/26/217) indefinite suspension had been issued, but two additional traffic offense convictions were reported to the Commission since that date. Thus, pursuant to N.J.A.C. 13:21-14.5(c)(2), respondent was not at the time of the subject scheduled suspension notice, and still is not, qualified to hold a passenger-carrying endorsement on his CDL. The Chief Administrator may suspend the passenger-carrying endorsement on a CDL once the holder of the CDL has twelve or more points on his driving record and may keep that motorist's CDL passenger-carrying endorsement suspended until his point-total is below twelve. Gabe S. Barrentine v. New Jersey Division of Motor Vehicles, A-1055-94T1 (App. Div., February 29, 1996) (unpublished); Division of Motor Vehicles v. Anthony Profita, A-5073-92T2 (App. Div., August 24, 1994) (unpublished).

I have considered respondent's need for a passenger-carrying endorsement on his CDL. However, in addition to maintaining safety on the roads and highways of New Jersey, the Commission must always be concerned about the safety of bus/limousine passengers when it makes decisions concerning the granting, suspending or restoring of the passenger-carrying endorsement on a commercial driving privilege. I shall, therefore,

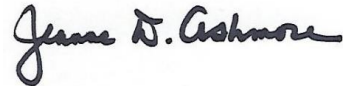
suspend respondent's passenger-carrying endorsement on his CDL indefinitely. He may seek restoration of his passenger-carrying endorsement on his CDL when his point-total on his driving record is below twelve points.

While I am sympathetic regarding 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 period of suspension of fifteen (15) 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 5th day of March, 2018, **ORDERED** that the New Jersey driving privilege of **STEPHEN KOO** be suspended for a total period of fifteen (15) days for accumulating an excessive number of points in a period less than two years in connection with the two separate proposed "points" suspension actions herein.

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

Additionally, it is, on this 5th day of March, 2018, **ORDERED** that the passenger-carrying endorsement on the New Jersey Commercial Driver License of **STEPHEN KOO** be suspended indefinitely, as stated above.

A handwritten signature in black ink that reads "James D. Ashmore". The signature is written in a cursive style with a large, looped initial "J".

Deputy Chief Administrator

Enclosure: Order of Suspension (effective date- March 29, 2018)
JDA: kw



A F F I R M E D
MOTOR VEHICLE COMMISSION

By

OPJA

Date 3-12-18 (ext)

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NO. MVH 14197-2017

AGENCY DKT.NO.WXXXX XXXXX 11932

**NEW JERSEY MOTOR
VEHICLE COMMISSION,**

Petitioner,

v.

KEON A. WHITE,

Respondent

Courtney Davison, Driver Improvement Analyst 3, for petitioner pursuant to N J A C
1.1-5.4(a)2

Keon A. White, respondent, pro se

Record Closed: October 26, 2017

Decided: December 11, 2017

BEFORE JUDITH LIEBERMAN, ALJ

STATEMENT OF THE CASE

Keon A White, (White or respondent), appeals an order of suspension issued by the Motor Vehicle Commission (Commission) for operating a vehicle while suspended. The Commission proposed to suspend respondent's driving privilege for 180 days

PROCEDURAL HISTORY

The Commission issued a notice of scheduled suspension, dated September 22, 2016 Respondent submitted a timely request for a hearing. The Commission transmitted this matter to the Office of Administrative Law (OAL), where it was filed on September 22, 2017, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to-13. The hearing was conducted October 26, 2017, and the record closed that day

FACTUAL DISCUSSION AND FINDINGS

Having considered the documentary evidence and testimony, which is not disputed, and considering the credibility of the witnesses, I **FIND** the following **FACTS**

Respondent is twenty-three years old and a full-time college student. He has been driving approximately six years. On April 25, 2016, he was cited for using a hand-held cell phone while driving (P-1.) On or about May 14, 2016, he appeared for a scheduled court date concerning the ticket but was told he was not listed on the court's docket. Although he was told he would receive a notice for another court date, he did not receive one. He did not pay the fine associated with the ticket.

On July 5, 2016, the Commission sent respondent a notice of scheduled suspension for failing to appear in court for the cell phone summons. The notice advised respondent his driving privilege would be suspended indefinitely, effective September 2, 2016, unless he provided proof that the summons was satisfied before the suspension date and paid a \$100 restoration fee (P-2). Respondent received this notice

Respondent did not provide the Commission with information showing that he satisfied the cell-phone summons. As such, the Commission issued an order of suspension, effective September 2, 2016. (P-4). The order was prepared September 18, 2016 (P-4.) and was mailed September 26, 2016. (P-5). The suspension was for an indefinite period. The order advised that respondent was required to provide proof that he had satisfied the summons and had paid a \$100 restoration fee. (P-4) Respondent received the order of suspension and did not operate a vehicle after he received it.

On September 6, 2016, before respondent received the order of suspension, he was ticketed for obstructing passage of another vehicle. (P-1) On September 22, 2016, the Commission sent respondent a scheduled suspension notice, advising that his driving privilege was scheduled to be suspended 180 days, effective October 16, 2016, because he had operated a vehicle while suspended. (P-6).

mailed
9/30/16

On September 20, 2016, respondent appeared in municipal court to address the obstruction summons. While there, he discussed the cell phone summons with the municipal prosecutor and noted that he had not received a notice for a court date on that matter. With the prosecutor's assistance, respondent satisfied both summons.

On December 21, 2016, respondent attended a pre-suspension conference with the Commission concerning the proposed 180-day suspension. During the meeting, the Commission learned respondent had satisfied the cell phone summons. The Commission's representative explained that respondent still needed to remit the \$100 restoration fee. Respondent had not understood that he was required to pay this fee. Since he had ceased driving after he received the September 18, 2016, order, he believed he was not required to pay the fee. On December 21, 2016, he paid the fee and his driving privilege was restored that day. (P-7).

Respondent is a college senior and has a full schedule of classes. To pay his expenses, he works between eight and twelve hours per day, six days a week, starting at 6.00 A.M. His college is thirty-five minutes from his home, his job is forty minutes from his home. He relies on his car to get to college and to work and his work duties require that he use his car multiple times each week. He believes he would lose his job if he were unable to drive.

Respondent has not received a summons that resulted in motor vehicle points since December 12, 2014. He received a three-point annual safe driving credit December 12, 2015.

LEGAL ANALYSIS AND CONCLUSION

N.J.S.A. 39 3-40 provides, in part, "No person to whom a driver's license has been refused or whose driver's license or reciprocity privilege has been suspended or revoked, or who has been prohibited from obtaining a driver's license, shall personally operate a motor vehicle during the period of refusal, suspension, revocation, or prohibition." N.J.A.C. 13 19-10.8 provides for a 180-day suspension of driving privileges when it is shown that a driver has operated a vehicle during a period of suspension.

Here, the order of suspension that respondent allegedly violated was not prepared until September 18, 2016, twelve days after the moving violation that triggered the proposed suspension at issue. It was not mailed to respondent until September 26, 2016. Upon receiving the order, respondent refrained from driving. However, because the order followed the moving violation at issue, I **CONCLUDE** respondent did not commit a moving violation while he was subject to an order of suspension.

ORDER

Based upon the foregoing, I **ORDER** that the Commission's action suspending respondent's New Jersey driver's license for 180-days is hereby **REVERSED**. Respondent's appeal is hereby **GRANTED**.

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.

December 11, 2017

DATE

Date Received at Agency

Date Mailed to Parties:

/v/



JUDITH LIEBERMAN, ALJ

12/11/17

12/2/17

APPENDIX

WITNESSES

For petitioner:

Courtney Davison, Driver Improvement Analyst 3

For respondent:

Keon A White

EXHIBITS

For petitioner:

- P-1 Certified abstract
- P-2 Copy of scheduled suspension notice, dated July 5, 2016
- P-3 July 13, 2016 certification of mailing list
- P-4 Copy of order of suspension, dated September 18, 2016
- P-5 September 26, 2016, certification of mailing list
- P-6 Copy of scheduled suspension notice, dated September 22, 2016
- P-7 Copy of restoration notice, dated December 22, 2016
- P-8 September 30, 2016, certification of mailing list

For respondent:

None