

*Date of mailing: October 1, 2020

STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
AGENCY DKT. NO. MXXXX XXXXX 07522
OAL DKT. NO. MVH 08383-19

IN THE MATTER OF :
ROBERT W. MOSER : **FINAL DECISION**

The Motor Vehicle Commission (Commission) hereby determines the matter of the proposed suspension of the New Jersey driving privilege of **ROBERT W. MOSER**, respondent, for his involvement in a motor vehicle accident which resulted in the death of Christine A. McConnachie. Pursuant to N.J.S.A. 39:5-30, the Commission proposed a suspension of respondent's New Jersey driving privilege for a period of one thousand fifty (1,050) days (thirty-five (35) months).

In this administrative matter, Respondent's driving actions during that fatal motor vehicle collision with a pedestrian are to be evaluated in light of the following "Title 39" motor vehicle moving violation charges: N.J.S.A. 39:4-36 – failure to yield the right of way to a pedestrian; N.J.S.A. 39:4-123b – improper turn; N.J.S.A. 39:4-96 – reckless driving; and N.J.S.A. 39:4-86 – crossing an appropriately marked no passing line. It is noted that, in the separate and independent municipal court matter arising from this fatal collision for which police summonses were issued, respondent had pled guilty to the failure to yield the right of way "Title 39" quasi-criminal charge (39:4-36), with the improper turn (39:4-123b) and reckless driving (39:4-96) quasi-criminal charges being dismissed.

Prior to this final agency determination, I have reviewed and considered the Initial Decision of the Administrative Law Judge (ALJ) that has been issued based on the

administrative plenary hearing record here, as well as the July 10, 2020 letter of exceptions to the Initial Decision, which was filed with the Commission by counsel for respondent. A reply to respondent's letter of exceptions has not been submitted on behalf of petitioner. Based upon a de novo review of the record presented, I shall accept and adopt in full the findings and conclusions contained in the Initial Decision, except for the finding of a reckless driving violation on this record, and I shall modify the recommended sanction of the ALJ, as noted herein. Additionally, I explicitly confirm the statutory requirement that respondent successfully complete a driver re-examination as a condition of restoration of his driving privileges.

In the Initial Decision, the ALJ concluded, after a thorough and careful examination of the evidence and analysis of the applicable legal principles, that the Commission met its burden of proof regarding the charges filed against the respondent. The ALJ further found that

respondent's actions caused the death of another individual. His disregard for the obvious presence of decedent in the crosswalk on a dry and sunny day calls out for a lengthy suspension. Yet in mitigation of the term proposed by the Commission, it must be noted that respondent was not impaired, has a long and almost uneventful driving record and is gainfully employed.

[Initial Decision at 6].

The ALJ recommended that respondent's New Jersey driving privilege be suspended for a reduced period of seven hundred fifty (750) days. Ibid.

Respondent's letter of exceptions to the ALJ's Initial Decision only challenges the ALJ's finding that respondent's driving was reckless in violation of N.J.S.A. 39:4-96. Respondent's exceptions do not raise any challenge as to the ALJ's findings that the Commission met its burden of proof with respect to the other Title 39 motor vehicle

violations, namely the violation of N.J.S.A. 39:4-36, failure to yield the right of way to a pedestrian and the violation of N.J.S.A. 39:4-86, crossing an appropriately marked no passing line. The ALJ found both violations to be supported by the competent evidence in the administrative hearing record (noting that the supporting evidence included the video, the photographs from the scene, and the responding officer's testimony). Initial Decision at 5. Respondent urges the Commission to reduce the term of suspension imposed here to "time served" in conjunction with his argument that his actions were negligent rather than reckless. Supporting this contention, respondent cites to State v. Moran, 202 N.J. 311, 323 (2010), wherein the Court found that "[i]n the reckless-driving statute, the word 'willful' bespeaks a determined and intentional disregard of the lives and property of others in the manner in which a driver operates a vehicle." (emphasis in original). The respondent contends that the record here does not therefore support a finding of a reckless driving violation under the legal standard set forth in the governing caselaw.

Regardless of whether or not a finding of a reckless driving violation is established on this administrative hearing record, in light of the lack of a specific finding as to willfulness or intentionality made by the ALJ here, it is noted that the governing statute, N.J.S.A. 39:5-30, provides the Commission authority to suspend driving privileges based on a finding of any Title 39 motor vehicle violation in connection with its contributing to the cause of serious bodily injury to another or a fatality. Thus, the reckless driving violation finding is not necessary to the imposition of a prophylactic suspension of this driver based on the undisputed and unchallenged other Title 39 violations noted as established herein. Moreover, the case law in the context of fatal

accident license suspensions under N.J.S.A. 39:5-30 has held that the conduct of respondent need not have been the sole cause of the accident that took place, but that respondent's actions were a contributing cause is sufficient. See Cresse v. Parsekian, 81 N.J. Super. 536, 544 (App. Div. 1963), aff'd 43 N.J. 326 (1964) (permitting, but not requiring, Cresse's license to be suspended for failure to make observation as he crossed a road, despite the fact that the negligence of the oncoming driver was the chief cause of the accident).

Therefore, it is my judgment that it is plainly established here, on a de novo review of the totality of the record, that the Commission has ample support in this administrative record to impose a rehabilitative period of suspension pursuant to N.J.S.A. 39:5-30 in the interest of public safety and reforming the behavior of this driver.

Turning next to the weighing of mitigating and aggravating factors under the Cresse case-specific required analysis for a suspension term, I find that the driving behavior exhibited in the failure to yield to a pedestrian in a crosswalk and the improper crossing of a marked no passing line in making his turn, warrants a significant suspension period. This is especially so in light of the level of negligence which rises well above "mere negligence" and approaches the point of gross or extreme negligence (if not recklessness) here in that it was established that the conditions for this fatal collision were a clear day with a dry road and the striking of a pedestrian who was in the middle of an intersection in a marked crosswalk. This is an unacceptable and higher level of negligence, even if noting that the responding officer indicated that there had been shadows and that this is a more difficult type of busy intersection – indeed, these factors are all the more reason for the driver to have exercised greater caution in

making his left turn which was still required to have complied with a no passing line and also still to have taken into account that he was traversing a marked pedestrian crosswalk with his vehicle.

As part of the Commission's determination, I hereby determine that: (a) respondent was involved in a motor vehicle accident resulting in the death of another; (b) respondent's Title 39 motor vehicle violation of failure to stop or yield to a pedestrian was, at the very least, a contributing cause of the accident; and (c) respondent's driving actions were extremely negligent. However, I also find that the record calls for a modification somewhat of the recommended suspension period here in light of the overall good driver history and the other mitigating factors cited in the Initial Decision at 6. As noted by the ALJ, the record reflects that respondent was not impaired and has a long driving record. Review of his overall driving record supports that in his fifty-year driving record this driver had never before had a driving-related or other suspension, nor an at-fault accident, and has only had one non-point traffic conviction (which occurred twenty years prior to this incident) and no point-carrying convictions prior to this incident. The respondent's sworn testimony, as recounted by the ALJ, further indicates that he has had a job for which he drives a substantial period of the time while compiling this "almost uneventful driving record" as the ALJ has put it. Initial Decision at 3, 6. Thus, there is presented a fair amount of mitigation to weigh in the balance for determining a reasonable and warranted period of suspension needed to reform the driving behavior displayed herein.

On balance of the mitigating and aggravating circumstances noted which points to the need for significant reform of this driver's behavior, while also noting the lengthy

period of acceptable driving that had preceded this collision, the Commission finds that a period of five hundred forty (540) days is warranted on the totality of the record here. The Commission specifically notes that respondent's suspension is intended to be rehabilitative rather than punitive in nature.

Additionally, it is specifically noted that, as a condition of restoration, respondent shall submit to and successfully complete, a Commission Driver Re-examination pursuant to N.J.S.A. 39:5-30(f).

ORDER

It is, therefore, on this 1st day of October, 2020, **ORDERED** that the New Jersey driving privilege of **ROBERT W. MOSER**, which is currently suspended pursuant to the June 27, 2019 Order of Suspension (for an indefinite term pending final resolution of this matter) imposed by the ALJ as a result of the Preliminary Hearing (see Initial Decision at 2) be **CONTINUED** for a total period of five hundred forty (540) days, including credit for the time already served, and it is further

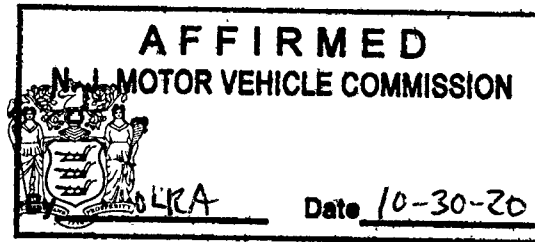
ORDERED that **ROBERT W. MOSER** shall submit to and successfully complete a Commission Driver Re-examination pursuant to N.J.S.A. 39:5-30(f) and N.J.A.C. 13:20-12.2, as a condition of restoration.



B. Sue Fulton
Chair and Chief Administrator

BSF: kw

cc: Michael T. Barrett, Esq.
Kenneth Vercammen, Esq.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW.

INITIAL DECISION

OAL DKT. NO. MVH 09396-19

AGENCY DKT. NO.

JXXXX-XXXXX-09722

**NEW JERSEY MOTOR
VEHICLE COMMISSION,**

Petitioner,

v.

KEENAN L. JONES,

Respondent.

Blondeen Bryan, Driving Improvement Analyst, for petitioner pursuant to N.J.A.C.

1:1-5.4(a)2

Anthony F. DiMento, Esq., for respondent

Record Closed: December 16, 2019

Decided: September 15, 2020

BEFORE **ELIA A. PELIOS**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Respondent Keenan Jones (respondent, Jones) appeals the 180-day suspension of his New Jersey driving privileges. Petitioner New Jersey Motor Vehicle Commission (MVC, Commission)

alleges that respondent operated a motor vehicle during a period of suspension pursuant to N.J.S.A. 39:3-40, N.J.S.A. 39:5-30, and N.J.A.C. 13:19-10.8. Respondent argues that they were not aware of the suspension at the time and that once Jones became aware of the suspension, he remedied the situation.

As a result of a scheduled suspension notice issued by the MVC, respondent appealed and the matter was thereafter transmitted to the Office of Administrative Law (OAL) and filed on July 15, 2019, as a contested case pursuant to the provisions of N.J.S.A. 52:14B-1 through 15 and N.J.S.A. 52:14F-1 through -13. A hearing was scheduled for December 16, 2019, at which time the record closed.

FACTUAL DISCUSSION

Blondeen Bryan testified on behalf of the MVC. She noted that on July 10, 2018 MVC suspended the respondent's driving privileges pursuant to a court order for nonpayment of child support. On July 13, 2018 he was involved in a car accident. This brought to light that he had been driving during the suspension. As a result, the MVC imposed a 180-day administrative suspension for his driving privilege. He claimed he had no knowledge of the incident. It was noted that the suspension was lifted when Mr. Jones provided documentation that the court ordered suspension was satisfied.

On cross-examination Bryant acknowledged that the Confirmation of Suspension (A-6) was prepared on July 12, 2018. The accident occurred on July 13, 2018. Although she indicated that the mailing list was run on September 21st and September 28th, 2018, she referred to the Scheduled Suspension Notice and Mailing list (A-10), dated September 21, 2018 as proof that the Restoration Notice (A-9) had been sent not the Confirmation of Suspension (A-6). She acknowledged that the respondent was not charged at the scene with driving while suspended even though he was involved in the accident and was technically suspended at the time.

She reviewed a Notice of Motion to Enforce Litigant's Rights (A-2), which noticed respondent to appear at a probation hearing, which was dated on June 5, 2018. It does not say that the license was revoked.

With regard to the New Jersey Uniform Support Notices (A-3) item number fourteen that it says "shall" suspend for failure to appear. She reviewed a Civil Action Order (R-1) which was a civil matter docket from February 2017. It does not suspend his license. It does say that he has a CDL license as a commercial truck driver and notes a support payment suspension for 120 days.

The New Jersey Uniform Support Notices (A-3) were issued on July 6, 2018 and item number fourteen follows from item number twenty-two on the Notice of Motion to Enforce Litigant's Rights (A-2) which was issued on June 5.

Respondent testified on his own behalf. He reviewed a photo of an accident scene (R-2). He acknowledged that he was present at that scene. He indicated that he broke his neck in two places as result of the accident. This was a different accident, occurring in February 2017, not the one which triggered the current matter. With regard to the July 13, 2018 accident he states he was T-boned by a drunk driver. He was not given a ticket at the scene and there was no mention of his being suspended. He states that he received the Confirmation of Suspension (A-6) two days after the accident around July 15, 2018. He had his license restored on July 19, 2018 (A-9). He went straight down to get it taken care of as soon as he became aware of it. He was never arrested for a bench warrant. He states that he had not received anything after the Notice of Motion to Enforce Litigant's Rights (A-2).

On redirect he states that he has eleven children. He has custody of four and pays support for four. He's had a CDL for eleven years and it takes it very seriously. He would never have driven a car if he knew his license was suspended.

In this matter the MVC states that it made no error and that the suspension was valid and that the petitioner drove during the suspension period. Respondent says there

was no sufficient proof of mailing. He acknowledges that he received the notice of suspension on July 15 and emphasizes that he took care of the matter by July 19 and asserts that if his license had been suspended, he would have received a ticket at the scene.

Both witnesses appear to have testified credibly and their testimony is not in conflict. The facts in this matter do not appear to be in dispute, and as such I hereby **ADOPT** and **FIND** as **FACT** the testimony presented by the witnesses.

LEGAL ANALYSIS AND CONCLUSIONS

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. The record clearly reflects that the Commission is seeking to suspend respondent's privileges for driving on July 10, 2018, and that the order suspending his privileges was issued on July 12, 2018, even though notice had been sent in June that the license would be suspended effective July 10, 2018. It is not unreasonable that respondent would not have received the notice of the ordered suspension when he drove his car one day after it was mailed. The record further reflects that once he became aware of the order of suspension, receiving it in the mail three days after it was sent, respondent addressed the issue within a matter of days. There is no evidence of additional driving during the time of suspension beyond the accident which triggered this matter.

N.J.S.A. 39:3-40 states in pertinent part that "No person . . . whose driver's license has been suspended . . . shall personally operate a motor vehicle during the period of . . . suspension . . ." While the record indicates that respondent technically drove during the period of suspension, and while the law does not require that the notice actually be received for an order of suspension to be valid, some rule of reason must govern and it is not unreasonable to expect that the respondent must be afforded the opportunity that receipt of the notice was possible. In the present matter, at one day after the notice was mailed, that possibility did not reasonably exist. Respondent does not deny receiving the notice two days

after the accident and his diligence in rectifying the matter once he became aware demonstrates that he took the matter seriously. Based on the foregoing, I **CONCLUDE** that while MVC has demonstrated that respondent technically drove during a period of suspension, it was at a time when he could not have reasonably been expected to have been aware of the suspension or yet received it in the mail. I further **CONCLUDE** that these specific circumstances warrant no further 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.



September 15, 2020
DATE

ELIA A. PELIOS, ALJ

Date Received at Agency:

September 15, 2020 (emailed)

Date Mailed to Parties:

September 15, 2020 (emailed)

EAP/mel

WITNESSES

For Petitioner:

Blondeen Bryan

For Respondent:

Keenan Jones

EXHIBITS

For Petitioner:

- A-1 Notice of Motion to Enforce Litigant's Rights
- A-2 Notice of Motion to Enforce Litigant's Rights
- A-3 New Jersey Uniform Support Notices
- A-4 Email Correspondence
- A-5 Certified Abstract
- A-6 Certified Copy of Confirmation of Suspension by Court
- A-7 Certified Copy of Confirmation of Suspension by Court
- A-8 Certified Copy of NJ Police Crash Investigation Report
- A-9 Certified Copy of Restoration Notice
- A-10 Certified Copy of Scheduled Suspension Notice and Mailing List
- A-11 Copy of Hearing Request
- A-12 Copy of "Not Guilty/Amend Driving while Sus"
- A-13 Copy of MVS Address Change History
- A-14 Copy of Conference Report

For Respondent:

R-1 Civil Action Order

R-2 Photograph