



AFFIRMED
MOTOR VEHICLE COMMISSION

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

Date 1-6-2020

INITIAL DECISION

OAL DKT. NO. MVH 11286-19
AGENCY DKT. NO. PXXXX-
XXXXX-12772

**NEW JERSEY MOTOR VEHICLE
COMMISSION,**

Petitioner,

v.

RYAN E. PENTA,

Respondent.

Michaud Scharkner, Driver Improvement Analyst 3, for petitioner pursuant to
N.J.A.C. 1:1-5.4(a)(2)

Albert J. Rescinio, Esq, for respondent

Record Closed: October 18, 2019

Decided: November 21, 2019

BEFORE **SARAH G. CROWLEY**, ALJ:

STATEMENT OF THE CASE

Respondent, Ryan E. Penta, appeals the Motor Vehicle Commission's (Commission) action seeking to impose a 180-days suspension of his driving privileges due to his operation of a motor vehicle during a period of suspension.

PROCEDURAL HISTORY

On January 7, 2019, the Commission issued a scheduled notice of suspension for a period of 180 days for driving while on the revoked list. Respondent submitted a timely request for hearing. The Commission transmitted the matter to the Office of Administrative Law, where it was filed on August 9, 2019, 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 on October 18, 2019, and the record closed on that date. A post hearing submission was made, but not considered by the undersigned as there was no agreement to allow such submission and no motion to open the record which closed on October 18, 2019. 10/18/19

TESTIMONY AND FINDINGS OF FACT

Blondeen Bryan, testified for the Division of Motor Vehicle. She testified that respondent has a driver abstract dating back to 1994 which reflects multiple motor vehicle violations, as well as, multiple license suspensions primarily relating to non-payment of an insurance surcharge. As a result of his various traffic violations, respondent incurred insurance surcharges. As a result of a failure to appear, and/or failure to pay surcharges, a court ordered suspension was imposed on February 26, 2015. On March 30, 2015, respondent was pulled over and charged with DUI and driving while suspended. The driving while suspended was downgraded to an unlicensed driver charge. On April 18, 2015 he was pulled over again for reckless driving and was also driving while suspended. It is for this charge of driving while suspended that the Division seeks a 120-days suspension. The Division maintains that due to the close proximity of the March 30, 2015 and April 18, 2015 charges, petitioner was well aware of his suspension and continued to drive. Since, that date, the driver did pay his restoration fee, has not received any other points and received several safe driver credits. ~ fines & 5/10

Ryan E. Penta, the respondent testified that he had a substance abuse problem at the time the infraction was incurred. However, he has been sober for several years now, completed a drug court program, is employed and has two children. He also runs the AA meeting in New Hope once a week. He is employed as a plumber and is

responsible for driving others at work to their job sites. If he loses his license, he will be unable to work and could lose his job, and he is financially responsible for his children. The Division indicated that they were aware of these facts which is why they were willing to accept a 90-days suspension in lieu of the 120-days sought.

The foregoing facts are not in dispute and are FOUND as FACT.

LEGAL ANALYSIS AND CONCLUSIONS

N.J.A.C. 13:19-10.8 provides for a 180-days suspension of driving privileges when it is shown that a driver has operated a vehicle during a period of suspension. The undisputed record reflects that respondent operated a vehicle on April 15, 2015, during a period of suspension. The facts also include he was aware he was suspended due to a prior infraction in March 2015.

Generally, the schedule of suggested suspensions should be followed in the interest of uniformity, unless an individual licensee is able to demonstrate extraordinary circumstances justifying a reduction or waiver. Administrative suspensions are remedial in nature, designed to promote public safety rather than to punish wrongdoers. Atkinson v. Parsekian, 37 N.J. 143, 155 (1962). It is the Commissioner's function to impose suspensions for the purpose of reforming the particular motorist, and not for the purpose of frightening or deterring others, even though that may be an incidental result. Cresse v. Parsekian, 81 N.J. Super. 536, 549 (App. Div. 1963), aff'd 43 N.J. 326 (1964).

Respondent has the burden of proving "good cause" for a special exception to the usual suspension imposed in similar cases. Good cause is a flexible concept which appears in many statutes and rules. Our courts have held that "[t]he essence of the phrase is its ability to afford relief in exceptional situations." Hovland v. Dir., Div. of Taxation, 204 N.J. Super. 595, 600 (App. Div. 1985). Factors which may be relevant in determining the appropriateness of any suspension include the individual's past driving record, length of time licensed, receipt of prior warnings or prior attendance at driver improvement school, attitude and maturity level, evidence of recent improvement, need for a license, and other aggravating or mitigating circumstances. N.J.A.C. 13:19-10.2(b);

Cresse, 81 N.J. Super. at 549. Need alone cannot be the deciding factor, however, since in today's motorized society virtually everyone needs a driver's license to earn a living and perform normal daily activities. See Div. of Motor Vehicles v. Morton, 4 N.J.A.R. 95 (Dir. of Motor Vehicles 1982).

Here, while respondent has an extensive driving history, his moving violations do not appear to be egregious in nature. Further, since the April 18, 2015, ticket for reckless driving, respondent has not received any additional moving violations, and has paid his restoration and surcharges. In addition, the respondent has received eight safe driving credit points since this infraction. I also note that the respondent has completed drug court, has been sober for several years, is employed and is taking financial responsibility for his children. Finally, respondent advises that he is working as a plumber and he has to go to different work sites and needs to drive for his job. His work supports his family. While respondent was clearly at fault, he has gotten and remained sober, completed drug court, and is a responsible member of society, working and caring for his family. He has been licensed and received no moving violations in the last five years. If the main purpose is public safety, the respondent has demonstrated that he does not present a risk to public safety by his years of sobriety, lack of any additional infractions in the past 4 years and the safe driving points that he has received.

Accordingly, based upon the totality of the circumstances, including respondent's driving record, his apparent progress towards improvement, his employment situation, and his need to financially support his children, and most importantly they demonstrated lack of public safety risk. I **CONCLUDE** that respondent's driving privileges should be suspended for thirty days.

ORDER

Based upon the foregoing, I therefore **ORDER** that the Commission's decision to suspend respondent's driving privileges should be and is hereby **MODIFIED** to a period of **thirty days**, effective on such date as shall be set forth in an Order of Suspension, which the Commission will send to respondent.

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.

November 21, 2019
DATE


SARAH G. CROWLEY, ALJ

Date Received at Agency:

November 21, 2019

Date Mailed to Parties:

November 21, 2019

SGC/cb

APPENDIX

WITNESSES

For petitioner:

Blondine Bryan

For respondent:

Ryan E. Penta

EXHIBITS

For petitioner:

P-1 Abstract of Driver History Record

For respondent:

None