



State of New Jersey
Office of Administrative Law

AFFIRMED
N. J. MOTOR VEHICLE COMMISSION
By O.L.R.A Date 12-21-20

INITIAL DECISION
SUMMARY DECISION

OAL DKT. NO. MVH 06065-20
AGENCY DKT. NO. PXXXX XXXXX
03842

MOTOR VEHICLE COMMISSION,

Petitioner,

v.

YANCEY A. PUERTA,

Respondent.

Motor Vehicle Commission, petitioner, appearing pursuant to N.J.A.C. 1:1-5.6(a)

Yancey A. Puerta, Respondent, appearing pro se

BEFORE: KIMBERLY A. MOSS, ALJ

Record Closed: October 27, 2020

Decided November 5, 2020

STATEMENT OF THE CASE

On or about November 17, 2020, the New Jersey Motor Vehicle Commission (petitioner) issued a Scheduled Suspension Notice to Yancey A. Puerta (respondent), proposing to suspend his driving privileges for 30 days because of the accumulation of 12 or more points.

PROCEDURAL HISTORY

Respondent requested a hearing, on or about December 6, 2019, and petitioner transmitted the matter to the Office of Administrative Law on June 19, 2020, for determination as a contested case pursuant to N.J.S.A. 52:14F-1 to -13. A hearing was scheduled for August 11, 2020. This was adjourned for petitioner to supply documents. The matter was next scheduled for October 1, 2020. At that time petitioner stated that the only issue was whether the points are counted when the violation or when it is posted to his driving record. Respondent filed moving papers on October 5, 2020. Petitioner filed a response on October 27, 2020 at which time I closed the record.

FINDINGS OF FACT

Having reviewed submissions in support of and in opposition to respondent's suspension, I **FIND** the following **FACTS**:

Respondent only contests whether points are accumulated when a violation occurs or when it was posted to his driving record. On December 3, 2017, respondent received a summons for speeding. That violation was posted to his driving record on November 15, 2019. Respondent concedes that if the points are assessed at the time, they were accumulated he would have had twelve points on his license at that time. Respondent had a significant history for having points assessed against his license. However, respondent has not received a point carrying violation since April 2018. He successfully completed a Driver Improvement Program course on September 15, 2018. Petitioner acknowledges that a reduction from the proposed thirty-day suspension term would be justified and appropriate in this matter.

DISCUSSION

Petitioner, which is "allocated" to the State Department of Transportation, has all the functions, powers, and duties of the prior Division of Motor Vehicles (DMV), except as otherwise provided. Regulations promulgated by the DMV "continue with full force and effect", unless amended or repealed. N.J.S.A. 39:2A-4a & d.

Petitioner is empowered to suspend a motorist's driving privileges for a violation of any provision of the motor vehicle statutes or for any other "reasonable grounds." N.J.S.A. 39:5-30. Petitioner also has specific authority to suspend a motorist's driving privileges for the accumulation of 12 or more points in certain specified time periods. N.J.S.A. 39:30-8.

N.J.S.A. 39:5-30.9 provides:

Points recorded against a licensee shall be reduced at the rate of three points for each 12 consecutive months in which the licensee has not committed any violation either resulting in the assessment of points or in the suspension of driving privileges. Points recorded against a licensee shall also be reduced by three points, where the licensee attends and satisfactorily completes an approved license improvement course; provided, however, that no licensee may receive point reduction credits for completion of the same or a similar course within two years of having completed the original course. Points recorded against a licensee shall also be reduced by two points if the licensee attends and satisfactorily completes an approved motor vehicle defensive driving course pursuant to section 55 of P.L. 1990,c.8 (C.17.33B-45), except that no licensee may receive point reduction credits for completion of an approved motor vehicle defensive driving course within five years of having completed a previously approved motor vehicle defensive driving course. No point totals shall be reduced below zero. **Computation of the time periods used in granting point reduction credits shall in all cases be based upon the respective dates of commission of the offenses for which the licensee was convicted and assessed points.**

It is clear, that for the reduction of points the computation of the time period is based on the date of the offense. It stands to reason that the accumulation of points is also accumulated on the date of the offense. The computation for reduction of points and accumulation of points should be consistent.

Respondent provided a letter from Motor vehicles regarding the assessment of surcharges. N.J.S.A. 17:29A-35(b)1(a) states:

There is created a Motor Vehicle Violations Surcharge System which shall apply to all drivers and shall include, but not be limited to, the following provisions:
(1)
(a) Surcharges shall be levied, beginning on or after January 1, 1984 but before the first day of the first month next following the date the written notification required pursuant to subsection b. of section 2 of P.L. 2019, c.301 (C.52:9S-3.1)

is transmitted to the State Treasurer and the Chief Administrator of the New Jersey Motor Vehicle Commission, by the commission established by section 4 of P.L. 2003, c13 (C.39:2A P.L. 2003. c.13 (C:39:2A-4) on any driver who, in the preceding 36-month period, has accumulated six or more motor vehicle points, as provided in Title 39 of the Revised Statutes; except that the allowance for a reduction of points in Title 39 of the Revised Statutes shall not apply for the purpose of determining surcharges under this paragraph. The accumulation of points shall be calculated as of the date the point violation is posted to the driver history record and shall be levied pursuant to rules promulgated by the commission. Surcharges assessed pursuant to this paragraph shall be \$150.00 for six points, and \$25.00 for each additional point. No offense shall be selected for billing which occurred prior to February 10, 1983. No offense shall be considered for billing in more than three annual assessments.

The commission shall not select any offense for billing which occurred on or after the first day of the first month next following the date the written notification required pursuant to subsection b. of section 2 of P.L. 2019, c. 301 (C.52:9S-3.1) is transmitted to the State Treasurer and the Chief Administrator of the New Jersey Motor Vehicle Commission, and shall have no legal authority to collect any surcharge, together with any interest and administrative fees, that have been billed but remain unpaid, or that may be billed and required to be paid, on or after the that date.

The surcharges assessments are addressed in Title 17 relating to insurance matters and is governed by N.J.S.A. 17:29A-35. The suspension of driver's licenses for excessive points is governed by N.J.S.A. 39:5-30.8 in Title 39. These are two distinct regulations that address different areas. Surcharges posting of points is for the purpose of surcharge liability, not whether excessive points should result in the suspension of a driver's license.

I **CONCLUDE** that points on a driver's license are accumulated on the date the offense occurred.

In this matter, although respondent has a significant history for having points accessed against his drivers record, He has improved since 2017. He has completed a driver's improvement program on September 15, 2018. I am persuaded that his driving privileges should be suspended only for fifteen days.

ORDER

It is **ORDERED** that the licensee's driving privileges be suspended for a period of fifteen days. The effective date of this suspension shall be set forth in an Order of Suspension which shall be sent to the respondent by the Commission under separate cover.

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 5, 2020



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

November 5, 2020

Date Mailed to Parties:

November 5, 2020

ljb

DOCUMENTS RELIED ON

- Respondent's Submissions
- Petitioner's response to submissions