



AFFIRMED
N. J. MOTOR VEHICLE COMMISSION
 By OLA Date 4/24/23

State of New Jersey
 OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. MVH 03566-22
 AGENCY DKT. NO. RXXXX-XXXXX-07665

NEW JERSEY MOTOR VEHICLE COMMISSION,
 Petitioner,
 v.
GLENN P. ROSSI,
 Respondent.

Morgan Rice, Deputy Attorney General, for petitioner, New Jersey Motor Vehicle Commission (Matthew Platkin, Attorney General of New Jersey, attorney)

Seth D. Levine, Esq., for respondent

Record Closed: January 25, 2023 Decided: March 10, 2023

BEFORE **EVELYN J. MAROSE**, ALJ/Ret., on recall:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On June 9, 2021, the New Jersey Motor Vehicle Commission ("NJMVC") issued a Scheduled Suspension Notice ("Notice") to Glenn P. Rossi ("Rossi"). The Notice advised Rossi that his driving privileges were scheduled to be suspended for 360 days, as a result

of having 12 or more points on his driving record. (P-1.) After reviewing the Notice, on June 29, 2021, Rossi filed a letter disputing the suspension. (P-2.)

The NJMVC held a conference on March 10, 2022, to address the proposed suspension. Rossi did not dispute the ticket for speeding, issued to him on April 29, 2021, that resulted in an additional 4 points against his license. Rossi also did not dispute that, with the additional points, he had 54 points against his license. However, Rossi opposed receiving any suspension of his driving privileges. (P-3.) Rossi requested a Hearing at the Office of Administrative Law. The matter was transmitted to the OAL on May 3, 2022, for determination as a contested case pursuant to N.J.S.A. 52:14f-1 to -13.

In accordance with the N.J.A.C. 1:13-10.1(a), the NJMVC had mailed all the documents that it intended to use at the Hearing, relating to Rossi's accumulated points, to Rossi on April 25, 2022. The discovery provided included a Certified Abstract of his Rossi's driving license, the scheduled suspension notice dated June 9, 2021, Rossi's Hearing Request received by NJMVC on July 6, 2021, and the Conference Report dated March 10, 2022. (P-1 through P-5.)

The matter was initially scheduled for a telephonic hearing on June 21, 2022. The telephonic hearing started with several unsuccessful "time-outs," wherein Rossi and the NJMVC representative attempted to reach a settlement agreement without any judicial presence. Shortly thereafter, Rossi advised the undersigned that he wished to obtain a lawyer. Accordingly, a new hearing date of July 21, 2022, was scheduled in order to give petitioner 30 days to obtain counsel.

On July 21, 2022, the day of the re-scheduled Hearing, counsel obtained by Rossi stated that he would be appearing on Rossi's behalf but was not ready to appear that day. Counsel stated that he had vacation plans for August, and a personal matter from September 25, 2022 until October 5, 2022. He requested that another hearing date be scheduled late in October.

Since the Initial Hearing date for this matter was June 2022, with consideration of counsel's vacation plans and in order to avoid further delay, another Hearing date was

scheduled for September 19, 2022, prior to counsel's late September/early October commitment. On September 15, 2022, counsel for Rossi advised the undersigned that he had contracted Covid and was too ill to represent Rossi at a Hearing on September 19, 2022. Counsel requested a third adjournment, and Rossi's Hearing was re-scheduled to October 20, 2022.

Four days prior to the fourth scheduled Hearing date of October 20, 2022, on October 16, 2022, Rossi's counsel filed a Motion to Compel Discovery. The Motion was filed "out of time" and was denied in a letter dated October 18, 2022. In that letter, it was further noted that the NJMVC had provided discovery to Rossi in April 2022, six months earlier, in accordance with N.J.A.C. 1:13-10.1(a).

On the scheduled Hearing day of October 20, 2022, Rossi's counsel requested a fourth adjournment. Counsel again stated that he was not feeling well enough to proceed. The adjournment was granted and a Peremptory date of December 19, 2022, was mutually agreed upon by the parties. Further, counsel was asked to advise Rossi, within a reasonable period of time, prior to December 19, 2022, should he not feel well enough to go forward. Rossi's counsel stated that, should he not feel well enough to proceed on December 19th, he would assist Rossi to obtain new counsel.

On December 19, 2022, counsel appeared, without Rossi, for the Hearing. He stated, that while he did not know exactly where Rossi was, he had advised Rossi not to appear that day. Counsel stated that he told Rossi that he would represent their request for a fifth adjournment. Counsel further stated that he was in no condition to represent Rossi for a Hearing that morning, since he was again suffering Covid symptoms. The fifth adjournment was granted, and for the second time the newly scheduled hearing date for January 25, 2023, was categorized as Peremptory. The notice scheduling the new hearing date affirmed that, while hopefully Rossi's present counsel would be well and able to represent Rossi by late January, the additional adjournment was being granted to provide Rossi with time to obtain substitute counsel if necessary. No further adjournments were requested for this matter filed at the OAL in April 2022. A zoom Hearing was conducted on January 25, 2023, after which the record closed.

FINDING OF FACTS

Having had an opportunity to consider the evidence, observe the witnesses who testified via Zoom, review the documentation provided and consider the oral summations, I **FIND** the following to be pertinent **FACTS** in this case:

On April 29, 2021, Rossi was "pulled over" by East Windsor Police, who issued Rossi a ticket for speeding. The four-point ticket resulted in a total of 54 points on his driving record.

Rossi does not dispute that he was driving in excess of the speed limit on April 29, 2021, nor the accuracy of his driving Abstract, that was provided to Rossi by the NJMVC and admitted into evidence at the hearing. Analysis of Rossi' driving Abstract, among other things, indicates the following tickets resulting in points against Rossi's license:

- 1.) Receipt of speeding tickets on fifteen occasions, which resulted in points against his license, including November 24, 1984; April 17, 1985; March 21, 1988; February 24, 1989; June 29, 1992; May 4, 1993; May 13, 1993; May 28, 1993; November 11, 1994; April 12, 1996; June 27, 2003; March 28, 2007; March 5, 2009; April 13, 2010; and April 29, 2021.
- 2.) Receipt of tickets for careless driving on five occasions including February 16, 1988; August 13, 1989; September 28, 1997; August 29, 1999; and June 29, 2011.
- 3.) Receipt of tickets for disregard of stop sign regulation on three occasions including December 21, 1990; January 6, 2016; and September 8, 2016.
- 4.) Receipt of tickets for failure to give proper signal on three occasions including October 17, 1999; December 24, 1999; and January 27, 2001.
- 5.) Receipt of a ticket on one occasion for unsafe operation of a motor vehicle on September 24, 2006.
- 6.) Receipt of a ticket on one occasion for improper use of a divided highway on July 11, 2011. (P-5.)

court convictions

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The NJMVC Conference Report of March 10, 2022 also indicates that, while Rossi has received 54 points, he did receive annual point credits in 2017, 2018, 2019, and 2020, totally 27 points.

Rossi adamantly argues that, while detailing numerous moving violations, his Abstract also indicates how his driving has improved. The dramatic "change" from having a "despicable driving record" occurred after he matured, married, and had a child. Rossi asserts that his change justifies receiving no suspension of his driving privileges after receipt of his last moving violation for speeding. He argues that his next to last two point moving violation, for failing to stop at a stop sign, was settled by a NJMVC representative, without the suspension of his driving privileges.

Rossi's testimony reflects that he seeks to justify/explain his failure to comply and respect traffic rules and regulations and drive safely on his two most recent violation incidents. For example, although it is the responsibility of every driver to be aware of his speed and of the speed regulations of the road where he is driving, Rossi explains that the reason he failed to notice that he was speeding, on April 29, 2021, was because there was no other traffic "on the road" and he did not have cruise control set. Then he asserts that the reason he disregarded a stop sign, on September 8, 2016, was that his infant daughter was keeping him from sleeping at night so understandably he fell asleep at the wheel and failed to stop at the indicated sign.

Rossi argues that his recent driving record does not justify even a thirty-day suspension, which would be "too much." In addition, he asserts that having his license suspended, even for a short time, will be a monumental financial hardship for him, his wife and their young daughter since he will lose his job as an "outside" sales representative. His job requires that he drive throughout the tri-state area and Pennsylvania daily.

ANALYSIS AND CONCLUSIONS OF LAW

The Motor Vehicle Commission is empowered to suspend a motorist's driving privileges for a violation of any provision of the Motor Vehicle statutes or for any "reasonable grounds." N.J.S.A. 39:5-30. Further, in today's motorized society virtually

everyone needs a driver's license to earn a living and perform normal daily activities. Need alone cannot be the deciding factor in permitting a respondent to continue driving. See Div. of Motor Vehicles v. Morton, 4 N.J.A.R. 95 (Dir. of Motor Vehicles, 1982).

It is the Director's function to impose suspensions for the purpose of reforming the particular motorist, and not for the purpose of frightening and 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.) Except for good cause, the director shall suspend for a period of no less than 30 days and no more than 180 days, except as provided in section 6 of this act, the license to operate a motor vehicle of any person who accumulates:

- a.) 12 or more points in a period of 2 years or less, or
- b.) 15 or more points in a period greater than 2 years, or
- c.) at least 12 points but fewer than 15 points in a period greater than 2 years.

Though the judge may consider other relevant evidence in considering the appropriateness of any ^{proposed} person of a suspension issued in excess of 30 days, the administrative law judge presiding at a hearing held pursuant to this section shall only consider evidence of the actual number of points assessed and the period of time during which such points were accumulated, taking into consideration any point reduction credits earned by the licensee, in issuing a suspension. N.J.S.A. 39:5-30.8.

However, generally the schedule of suggested suspension should be followed in the interest of uniformity, unless an individual licensee is able to demonstrate extraordinary circumstances justifying a reduction or waiver. Atkinson v. Parsekian, 37 N.J. 143, 145 (1962). The licensee has the burden of proving "good cause" for a special exception to the usual suspension imposed in similar cases. N.J.A.C. 13:19-10.2 (b); Cresse, supra., 81 N.J. at 549.

While I recognize that Rossi's driving abstract does reflect less violations in recent years, and while I recognize that having his driving privileges suspended for any period

of time will have a negative impact upon Rossi and perhaps his family, I am not persuaded that imposing "some" suspension of his driving privileges is not appropriate based upon the number of points against his driver's license for moving violations, including the number of speeding incidents. Accordingly, I **CONCLUDE** that Rossi's scheduled suspension of his driving privileges should be reduced from 360 days to 60 days.

ORDER

It is hereby **ORDERED** that the scheduled 360 days suspension of the driving privileges of Glen P. Rossi be **REDUCED** to a 60-day suspension.


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.

March 10, 2023

DATE



EVELYN J. MAROSE, ALJ/Ret., on recall)

OAL DKT. NO. MVH 03566-22

Date Received at Agency:

March 13, 2023

Date Mailed to Parties:

March 13, 2023

EJM/dr

APPENDIX

Witnesses

For NJMVC:

Scharkner Michaud, Transmittal Officer for NJMVC

For Rossi:

Glenn P. Rossi

Exhibits

For NJMVC:

- P-1 Scheduled Suspension Notice, dated June 9, 2021
- P-2 Rossi's Letter Request for a Hearing, dated June 29, 2021
- P-3 NJMVC Conference Report, dated March 10, 2022
- P-4 Cover Letter, Prepared April 25, 2022, with attached Discovery provided by the NJMVC
- P-5 Certified Driving Abstract
- P-6 Letter to counsel for Rossi, dated October 18, 2022, advising that Motion to Compel Discovery is untimely and will not be considered

For Rossi:

- R-1 Motion to Compel Discovery, dated October 16, 2023
- R-2 E-mail from Counsel for Rossi, submitted in lieu of Cover Letter to Discovery, dated October 16, 2022