



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

MOTOR VEHICLE COMMISSION,

Petitioner,

v.

NICHOLAS A. MEROLA,

Respondent.

INITIAL DECISION

OAL DKT. NO. MVH 13387-14

AGENCY DKT. NO. 02912

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

Nicholas Merola, respondent, pro se

Record Closed: December 16, 2014

Decided: December 31, 2014

BEFORE **LISA JAMES-BEAVERS**, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

Respondent Nicholas Merola appeals the ninety-day suspension of his New Jersey driving privileges. Petitioner New Jersey Motor Vehicle Commission (MVC) alleges that respondent was a persistent violator as he was charged with unsafe operation of a motor vehicle within a period of one year following the restoration of his license with a warning that he was on probation. *improper passing*

As a result of a scheduled suspension notice issued by the MVC (P-3), respondent appealed and the matter was thereafter transmitted to the Office of

Administrative Law (OAL) and filed on October 7, 2014, 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. The matter was heard on December 16, 2014, on which date the record closed.

TESTIMONY AND STATEMENT OF FACTS

Scharkner Michaud testified on behalf of the New Jersey Motor Vehicle Commission (MVC). On December 7, 2013, respondent completed a Probationary Driver Program (PDP) class and received official warning in person of a one-year probationary period. On December 10, 2013, the MVC gave notice to respondent restoring respondent's license and confirming the warning that if he commits any violation during the probationary year following restoration, his driving privilege may be suspended. (P-2.) The warning notice specifically indicated that the suspension would be for ninety days if the violation occurs within the first six months of probation. (P-2.) During the first year of receipt of his driver's license, on April 7, 2014, respondent was charged with improper passing. This was ^{four} ~~five~~ months after the MVC issued the warning. (P-1.) On April 3, 2014, the MVC sent respondent notice that respondent's license was scheduled to be suspended on April 27, 2014, for a period of ninety days. (P-3.)

return of privileges
5/8/14
6/11/14

Respondent did not dispute that the certified abstract of his driver history record dated September 25, 2014 (P-1) accurately reflected his New Jersey driving record. He admitted to having had a few tickets between 2008 and 2011, but says that he has not received any moving violations since 2011 and the abstract supports his claim. He acknowledged receipt of the warning notice (P-2) and was aware of the probationary period. Respondent stated that he knows that he did something wrong for the ticket received on April 7, 2014. He is asking for leniency because his job requires him to have a license. If he does not have a license he will lose his job. He works for a car dealership as a lot attendant where he moves cars from different locations. In his job, he drives over 90 percent of the day. His manager submitted a letter supporting his testimony that having a license is imperative for his job. He is currently in the Intense

Supervision Program, which requires him to maintain employment or he will be incarcerated. His license was initially suspended by court order for a criminal offense on June 29, 2012.

Before respondent's improper passing charge on April 7, 2014, his last moving violation was for operating while suspended or revoked on January 18, 2010. Between those dates, he was issued orders for failure to comply with a court install order, nonpayment of an insurance surcharge (3), and failure to complete the probationary driver program. Respondent further testified that he has been out of jail for over a year and has maintained employment the entire time. He aspires to be a car salesman. He asked that if he has to be suspended that it not exceed the week he will get for vacation time in January.

Based upon the testimonial and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witnesses, I **FIND** as **FACT** that respondent was placed on a one-year probation on December 7, 2013, and he received a warning notice to that effect. I further **FIND** as **FACT** that the warning notice advised respondent that his driving privileges may be suspended for ninety days if he commits any violation within the first six months of the probationary period. I also **FIND** as **FACT** that respondent committed a violation on April 7, 2014, which is within the first six months of the probationary period. In addition, I **FIND** that respondent did not have any moving violations within over three years of the present one.

LEGAL ANALYSIS AND CONCLUSIONS

Applicable is N.J.A.C. 13:19-10.6, the persistent violator regulation, which provides in pertinent part that:

- (a) Persons . . . who successfully complete a . . . Probationary Driver Program may retain their licenses upon the express condition and understanding that any subsequent violation of the Motor Vehicle and Traffic Laws

of the State of New Jersey committed within one year of the . . . official warning or warning following successful completion of a . . . Probationary Driver Program shall, except for good cause, result in suspension of driving privileges for the following periods:

1. When the subsequent violation occurs within six months of the date of the . . . official warning or warning following completion of a . . . Probationary Driver Program – 90 days

Respondent's infraction occurred approximately ^{four} five months after the start of his one-year probation period that commenced upon restoration of his driving privileges. Respondent acknowledges receipt of the warning notice advising him that he cannot have any violations.

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). It is impossible to construct a "definitive catalogue" of all circumstances to be considered in determining the existence of good cause, and "[e]ach case must be decided upon its own facts." Ullmann v. Hartford Fire Ins. Co., 87 N.J. Super. 409, 414 (App. Div. 1965). 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, supra, 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).

Respondent is correct that the majority of posts on his driving abstract are for failure to pay surcharges, not for moving violations. He has virtually no points on his license other than the one that caused the current proposed suspension. Respondent has shown that his need for his vehicle goes beyond the usual daily tasks of living. He drives for a living rather than just driving to get to a job. In addition to being out of a job without a license, he will be incarcerated under the Intensive Supervision Program if he does not maintain employment. Based on the foregoing, I **CONCLUDE** that respondent has met his burden of proving "good cause" for a special exception to the usual suspension imposed in similar cases.

It remains for me to impose the appropriate remedial sanction in this case. When I consider the totality of the circumstances, including respondent's personal situation and his driving record, I **CONCLUDE** that ninety days is too harsh. I must balance the competing interests of respondent and the public. In the present case, respondent has extraordinary interest in keeping his job whereas the public interest in suspending his license is limited because his driving record is not so bad that he is a danger on the road. He has had no moving violations in over three years preceding the present one. He admitted his mistake and has asked for leniency in order to continue on the path to being a productive member of society rather than an inmate.

Having considered respondent's personal situation and his driving record, I **CONCLUDE** that the appropriate remedial sanction to be imposed, one to drive home to respondent the absolute necessity that he obey all motor vehicle and traffic laws,

including the requirement to pay surcharges, would be a seven-day suspension of the New Jersey driving privileges of respondent. The suspension would allow him to maintain his job, but force him to use his vacation time to do so. It is **SO ORDERED**. The effective date of this suspension shall be set forth in an Order of Suspension that petitioner shall send to respondent under separate cover.

ORDER

Based on the foregoing, I **ORDER** that the Commission's action suspending respondent's New Jersey Driver's License for ninety days is **MODIFIED** to a period of seven days. ✓

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 31, 2014
DATE


LISA JAMES-BEAVERS, ALJ

Date Received at Agency:

12/31/14

Date Mailed to Parties:

1-2-15

mph

EXHIBITS

For petitioner:

- P-1 Certified Driver Abstract
- P-2 Notice of Restored Privileges dated December 10, 2013
- P-3 Scheduled Suspension Notice dated May 8, 2014

For respondent:

- R-1 Letter from respondent's manager
- R-2 Respondent's appeal to the MVC



MOTOR VEHICLE COMMISSION,

Petitioner,

v.

DAVID P. TROJAN,

Respondent.

INITIAL DECISION

OAL DKT. NO. MVH 11921-14

AGENCY DKT. NO. 08832

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

David P. Trojan, respondent, pro se

Record Closed: December 16, 2014

Decided: December 31, 2014

BEFORE **LISA JAMES-BEAVERS**, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

Respondent David P. Trojan appeals the ninety-day suspension of his New Jersey driving privileges. Petitioner New Jersey Motor Vehicle Commission (MVC) alleges that respondent was a persistent violator as he was charged with unsafe operation of a motor vehicle within a period of one year following the restoration of his license with a warning that he was on probation.

As a result of a scheduled suspension notice issued by the MVC (P-3), respondent appealed and the matter was thereafter transmitted to the Office of Administrative Law (OAL) and filed on September 17, 2014, 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. The matter was heard on December 16, 2014, on which date the record closed.

TESTIMONY AND STATEMENT OF FACTS

Scharkner Michaud testified on behalf of the New Jersey Motor Vehicle Commission (MVC). The MVC restored respondent's license with a warning that if he commits any violation during the probationary year, his driving privilege may be suspended. (P-2.) The warning notice specifically indicated that the suspension would be for ninety days if the violation occurs within the first six months of probation. (P-2.) During the first year of receipt of his driver's license, respondent was charged with unsafe operation of a motor vehicle. This was on January 30, 2014, four months after the MVC issued the warning. (P-1.) On April 3, 2014, the MVC sent respondent notice that respondent's license was scheduled to be suspended on April 27, 2014, for a period of ninety days. (P-3.) In addition, Mr. Michaud testified, the certified abstract shows two prior persistent violator orders on August 1, 2013 and February 27, 2008.

Respondent did not dispute that the certified abstract of his driver history record dated September 9, 2014 (P-1) accurately reflected his New Jersey driving record. He acknowledged receipt of the warning notice dated August 27, 2013 (P-2) and was aware of the probationary period. However, he thought that his license would be suspended only for motor vehicle violations with points, not a no-point violation. Respondent stated that the charge he received on January 30, 2014, was for failure to signal a turn. The prosecutor at that time reviewed his driving records and said that he could plea to unsafe operation of a motor vehicle and it would be a no-point ticket. The prosecutor told him that he would have to pay a higher fine. He pled down to unsafe operation of the vehicle so that he would not have points, but when he saw his abstract, the charge was listed as a four-point offense. He was told that after two no-point violations, he had to have no points for five years in order to have another no-point offense. He missed the five-year mark by two months.

Respondent testified that he has been on probation for eight years, but he has gone over a year several times with no violations. Most of his violations are for failure to pay a surcharge or a ticket. Each of the violations keeps resetting the time that he is on probation. He submits that none of his suspensions have to do with driving. He had a motor vehicle violation on March 26, 2009, for unsafe operation of a motor vehicle and did not have another one until October 9, 2011, for speeding. He does not feel that it is fair that he has been on probation for eight years.

Respondent's moving violations are: unsafe operation of a motor vehicle (January 30, 2014); careless driving (involved in an accident December 13, 2012); obstructing passage of other vehicle (July 22, 2012); improper passing (November 17, 2011); speeding (October 9, 2011); unsafe operation of a motor vehicle (March 26, 2009); delaying traffic (January 30, 2009). When he pled guilty to unsafe driving on August 17, 2014, that was the only other violation he had received since July 2012. Mr. Michaud stated that the warning notice advised that the suspension may be imposed if any violation is committed, not a violation that carries points. Respondent said that he understands that now, but did not at the time or else he would have gone to trial on the violation or paid \$75 for the charge of failing to signal.

Respondent testified that he works full-time to support himself. Suspension of his license will cause him to lose his job and cause him to become homeless because he has no money saved and will be unable to pay his rent.

Based upon the testimonial and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witnesses, I **FIND** as **FACT** that respondent was placed on a one-year probation on August 26, 2013, and he received a warning notice to that effect. I further **FIND** as **FACT** that the warning notice advised respondent that his driving privileges may be suspended for ninety days if he commits any violation within the first six months of the probationary period. I also **FIND** as **FACT** that respondent committed a violation on January 30, 2013, which is within the first six months of the probationary period. In addition, I **FIND** that respondent received two prior persistent violator orders.

LEGAL ANALYSIS AND CONCLUSIONS

Applicable is N.J.A.C. 13:19-10.6, the persistent violator regulation, which provides in pertinent part that:

(a) Person whose licenses are restored after a suspension imposed under N.J.A.C. 13:19-10.2 or after a suspension imposed under this section . . . may retain their licenses upon the express condition and understanding that any subsequent violation of the Motor Vehicle and Traffic Laws of the State of New Jersey committed within one year of the restoration, official warning or warning following successful completion of a . . . Probationary Driver Program shall, except for good cause, result in suspension of driving privileges for the following periods:

1. When the subsequent violation occurs within six months of the date of the restoration, official warning or warning following completion of a . . . Probationary Driver Program – 90 days

Respondent's infraction occurred approximately four months after the start of his one-year probation period that commenced upon restoration of his driving privileges. Respondent acknowledges receipt of the warning notice advising of the probation period on August 27, 2013.

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). It is impossible to construct a "definitive catalogue" of all circumstances to be considered in determining the existence of good cause, and "[e]ach case must be decided upon its own facts." Ullmann v. Hartford Fire Ins. Co., 87 N.J. Super. 409, 414 (App. Div. 1965). 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, supra, 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).

While respondent's driving record is less than stellar, he is correct that the majority of posts on his driving abstract are for failure to pay fines and surcharges, not for moving violations. He has virtually no points on his license and had seven moving violations in approximately six years since January 2009. Although his need for his vehicle does not go beyond the need of most people for his ability to earn a living and perform his normal duties, it is significant that he lives alone and has no one else to rely upon for rides to work. Based on the foregoing, I **CONCLUDE** that respondent has met his burden of proving "good cause" for a special exception to the usual suspension imposed in similar cases. It remains for me to impose the appropriate remedial sanction in this case. When I consider the totality of the circumstances, including respondent's personal situation and his driving record, I **CONCLUDE** that ninety days is too harsh. I must balance the competing interests of respondent and the public.

Having considered respondent's personal situation and his driving record, I **CONCLUDE** that the appropriate remedial sanction to be imposed, one to drive home to respondent the absolute necessity that he obey all our motor vehicle and traffic laws and that he is responsible for the suspensions that he received, not the MVC, would be a forty-five-day suspension of the New Jersey driving privileges of respondent. It is **SO ORDERED**. The effective date of this suspension shall be set forth in an Order of Suspension that petitioner shall send to respondent under separate cover.

ORDER

Based on the foregoing, I **ORDER** that the Commission's action suspending respondent's New Jersey Driver's License for ninety days is **MODIFIED** to a period of forty-five days.

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 31, 2014
DATE


LISA JAMES-BEAVERS, ALJ

Date Received at Agency:

12/31/14

Date Mailed to Parties:

12-31-14

mph

EXHIBITS

For petitioner:

- P-1 Certified Driver Abstract
- P-2 Notice of Restored Privileges dated August 27, 2013
- P-3 Scheduled Suspension Notice dated April 3, 2014

For respondent:

- R-1 Respondent's appeal to the MVC



A F F I R M E D

N. J. MOTOR VEHICLE COMMISSION

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

By *ORA*

Date

2-26-15

INITIAL DECISION

GRANTING SUMMARY DECISION

OAL DKT. NO. MVH 12469-13

AGENCY DKT. NO. LXXXX XXXXX 10461

MOTOR VEHICLE COMMISSION,

Petitioner,

v.

NOSHIR LANGRANA,

Respondent.

Joel M. Miklacki, Esq., for petitioner

Zarnosh N. Maneckshaw, Esq., for respondent (

Record Closed: March 10, 2014

Decided: January 12, 2015

BEFORE IRENE JONES, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

By notice dated April 9, 2013, petitioner, the New Jersey Motor Vehicle Commission, notified the respondent, Noshir A. Langrana, that his driving privileges were scheduled to be suspended, effective May 4, 2013 for eight months because he

was involved in a fatal accident on December 20, 2012. Further, respondent was cited with violating N.J.S.A. 39:3-4, having an unregistered vehicle. On April 16, 2013, respondent contested the above suspension and requested that the charges be dismissed. On August 19, 2013, the matter was transmitted to the Office of Administrative Law for hearing as a contested case. Thereafter, the matter was conferenced with the parties. On February 24, 2014, the respondent filed a Motion for Summary Judgment. Petitioner filed a brief in opposition to the Motion for Summary Decision. A rebuttal was filed on March 13, 2014 at which time the record closed. Due to a voluminous caseload, the time for issuing this Initial Decision was extended to December 11, 2014.

FACTS

The facts of this matter are for the most part, undisputed. On December 20, 2012, at approximately 6:00 pm, respondent, Noshir Langrana, ("Respondent" or "Langrana") struck a pedestrian, decedent Joel Melo-Mena. ("Decedent"). R-A, the police report herein, indicates that respondent was driving southbound on Route 130, a four lane highway. Although, Route 130 is lit by street lights, the immediate vicinity of the crash was minimally lit. The reporting officer noted the lighting can cause "complications with night vision." (R-A). The posted speed limit of that part of Route 130 is fifty-five mph. Respondent's claim that he was driving approximately forty mph at the time of the crash was undisputed.

Two witnesses gave similar statements to the police officer. They observed respondent's vehicle, a 2002 Honda Civic, strike the decedent. The decedent was thrown over the median, into a northbound lane of Route 130. A second car, a green Honda Accord, then swerved to avoid the decedent in the roadway, but nevertheless drove over the decedent. The driver of the green Honda Accord, a woman, initially pulled over and approached the decedent and witnesses, who were trying to assist the decedent. However, shortly thereafter, the witnesses heard police sirens approaching, and noticed the woman and the green Honda Accord were gone. Though the police attempted to locate the woman or the green Honda Accord, they were unsuccessful.

Respondent was cooperative and voluntarily submitted to a drug and alcohol test immediately after the crash. The tests revealed no drugs or alcohol in respondent's system. The following day, respondent's Honda Civic was inspected by a mechanic, but the inspection revealed no mechanical defects.

When the decedent was struck, he was wearing dark clothing, specifically, black pants, black shoes, and a black jacket. An autopsy of the decedent revealed the presence of both alcohol and marijuana in his system. (R-C). Critically, the police report concluded that the following:

- Respondent is not at fault in this crash as a result of the following because;
- Respondent's rate of travel being within/under the posted speed limit
- Melo-Mena's cause of death most likely caused by the second vehicle
- Melo-Mena crossing mid block rather than at a designated crosswalk; while under the influence of alcohol and drugs
- Melo-Mena's dark colored clothing
- The lack of overhead street lighting

(R-A)

Nevertheless, respondent was issued a ticket, because his vehicle was unregistered at the time of the crash. (R-A). On December 21, 2012, the day after the accident, respondent properly registered his vehicle. (R- B)

On April 9, 2013, petitioner, advised respondent that his license was scheduled to be suspended for having an unregistered vehicle in violation of N.J.S.A. 39:5-30. On April 16, 2013, respondent filed an appeal, and on July 23, 2013, the matter was transmitted to the Office of Administrative Law as a contested case.

ARGUMENTS

The parties agree that respondent was not at fault for the fatal accident, and further agree that Respondent's sole violation was his expired registration. Petitioner argues that "N.J.S.A. 39:5-30 permits a suspension to be issued to any driver involved in "a fatal accident and a motor vehicle violation." Respondent raises four arguments in opposition to the suspension: a suspension would not protect the public safety; the statute did not contemplate this type of violation, respondent's failure to renew his registration was not the "proximate cause" of the accident and expired registration is a de minimis violation.

DISCUSSION FINDINGS AND CONCLUSIONS

N.J.S.A. 39:5-30(a) provides that "every privilege to drive motor vehicles . . . may be suspended . . . for a violation of any of the provisions of this Title or on any other reasonable grounds, after due notice in writing of such proposed suspension . . ." N.J.S.A. 39:3-4. The registration statute provides that "every resident of this State . . . shall, before using such vehicle on the public highways, register the same, and no automobile or motorcycle shall be driven unless so registered." The penalty for violation of the registration statute may not exceed a maximum fine of \$100.

Our Supreme Court has recognized that "[a]lthough the suspension or revocation of a driver's license by the Director may appear to be punishment to the wrongdoer, this is not enough to characterize the statutory grant of power as criminal in nature." Atkinson v. Parsekian, 37 N.J. 143, 155 (1962). Rather, "[t]he primary object of the statute is to foster safety on the highway and not to impose criminal punishment to vindicate public justice." Ibid. Accordingly, "[w]hen the Director exercises his administrative authority under N.J.S.A. 39:5-30, he determines that a law of the highway has been violated and that the highway would be a safer place for the public if the violator were removed as a driver for some period of time." Ibid.

N.J.S.A. 39:5-30 “contains no limitation on the length of the suspension which the Director may impose, and no fixed standards to control the exercise of this power.” As In Cresse v. Parsekian, 81 N.J. Super. 536, 548 (App. Div. 1963), the Court held that while a judge may only revoke a license if a willful violation is established beyond a reasonable doubt, the Director may suspend or revoke a license if any violation (willful or merely negligent) is established by a preponderance of the credible evidence. Ibid. As the Director’s are quite broad, the legislature’s intent was “not to authorize [the Director] to punish a motorist for what he did in the past, but to enable [the Director] to make sure that, whenever necessary, the motorist be kept off the highway until he can be expected to operate a motor vehicle with safety to himself and to others.” Id. at 549. Thus, the Director’s role is “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.” Ibid. Indeed, “[t]o impose sanctions beyond what is needed to reform the individual, in order to frighten others, is a function of punishment, beyond the power of the Director.” Ibid.

Accordingly, the Cresse Court noted that “[t]he Director must weigh each case individually, to determine whether a suspension is required at all for the purposes above mentioned, and, if so, for how long.” Factors to consider include

the facts which constitute the particular violation; whether the motorist was willful or reckless, or merely negligent, and, if merely negligent, how negligent; how long the motorist has been driving; whether this is his first offense; whether he has been involved in any accidents; his age and physical condition; whether there were any aggravating circumstances, such as drinking, or, on the other hand, whether there were extenuating circumstances.

[Ibid.]

After considering such facts, the Director “should determine whether it reasonably appears, as a matter of prophylaxis and not of punishment, that the motorist should be kept off the highway, and, if so, for how long.” Ibid.

In the instant matter, I **FIND** that the petitioner's contention that respondent's license should be suspended for eight months, simply because he was guilty of a violation, to be insufficient. Petitioner fails to explain why an eight month suspension would reform Respondent. Notably, respondent properly registered his vehicle the day after the accident. (R-B). Rather, it must be concluded that petitioner deems that any violation that is connected to a fatal accident warrants a suspension. Such an automatic result is clearly punitive, and fails to consider the individual circumstances of the individual driver. Cresse, *supra*, 81 N.J. Super. at 548.

I **FIND** the respondent's argument that the lack of registration violation was not the proximate cause of the accident irrelevant. Respondent's reliance on State v. Villanueva, No. A-3460-10 (App. Div. November 5, 2012) (slip op. at 7-17.), for the proposition that "[b]ecause the alleged violation was not the legal cause of the subject accident, a suspension of license is not warranted in this matter." The issue herein concerned the proper jury instruction, causation in a vehicular homicide case. Ibid. However, as has been observed by causation is not an element of N.J.S.A. 39:5-30. See, Div. of Motor Vehicles v. Steinfeld, MVH 9537-02, Initial Decision, (March 13, 2003), adopted, Comm. (May 2, 2003) <<http://njlaw.rutgers.edu/collections/oal/>>. There, a driver threatened with suspension for leaving the scene of a fatal vehicle accident argued that he was not the proximate cause of a pedestrian's death, because there, as here, the pedestrian was struck by multiple vehicles. Id. at 5. The driver relied on an earlier administrative case in which a driver was threatened with suspension for leaving the scene of a fatal motor vehicle accident. Ibid. (citing Div. of Motor Vehicles v. Scheps, 95 N.J.A.R.2d (MVH) 34-35.) In the earlier case, the ALJ reasoned that the Commission "must show that respondent had at least some responsibility in connection with this fatality." Scheps, *supra*, 95 N.J.A.R.2d (MVH) at 35. Notably, in Scheps, the parties stipulated that the pedestrian was already deceased when the driver hit the pedestrian. Ibid. However, there was no precedent for the proposition that a driver must bear some responsibility for the death. Ibid. However, as the ALJ noted in Steinfeld matters, even if that proposition is accurate, "Scheps does not necessitate that the Division prove that a particular respondent was the exclusive or the major cause of a highway fatality, but merely that such respondent was one of the substantially contributing causes in the resulting death." Steinfeld, *supra*, MVH 9537-

02, Initial Decision at 6. Moreover, the ALJ reasoned that "Scheps is an overly narrow reading of the broad statutory authority vested in the Director." Ibid. Although "the Director has focused his enforcement effort on vehicular accidents 'resulting in death,' responsibility for causing the death of the victim is not an essential component of the Director's suspension power." Ibid. Finally, even if Scheps was correctly decided, Steinfeld was factually distinguishable, as the driver in Steinfeld was clearly a contributing cause (if not the proximate cause) of the pedestrian's ultimate death.

Similarly, here, the parties agree that respondent struck Melo-Mena with his vehicle. While Melo-Mena's death may have been partially caused by his own intoxication and negligence, or by the negligence of the driver of the green Honda Accord, the fact that respondent struck Melo-Mena incontrovertibly contributed to his death.

Moreover, I **FIND** respondent's argument that his violation was "de minimus" is without merit. Petitioner relies on State v. Cabana, 315 N.J. Super. 84, 87 (Law Div. 1997) for support. However, I **FIND** respondent's reliance on Cabana is inappropriate herein as that matter was a criminal case, decided pursuant to a specific criminal statute. Ibid. (citing Cabana, supra, 315 N.J. Super. at 86.) Indeed, Cabana explained that the criminal code departed from the common law in creating a "de minimus" exception to the assault statute, exempting mere "offensive touching" from the criminal code. Cabana, supra, 315 N.J. Super. at 87. The Motor Vehicle statutes contain no similar "de minimus" exception. See N.J.S.A. 39:1-1 et. seq. Indeed, the provision at issue expressly empowers the Commission to suspend a driver's license "for a violation of any of the provisions of this Title or on any other reasonable grounds . . ." N.J.S.A. 39:5-30(a).

Finally, I am not persuaded that the instant statute (N.J.S.A. 39:5-30) is designed for this type of case. Respondent cites sixty-four appellate cases that discuss N.J.S.A. 39:5-30, and asserts that "[e]xactly zero (0) cases exist where a non-moving violation was the sole basis for suspension." Id. at 4. Notably, these cases range from criminal prosecutions to administrative suspensions based on other statutory provisions, and do not directly address whether a non-moving violation alone can form the basis for a

suspension pursuant to N.J.S.A. 39:5-30. (See Resp't's Ex. F.) See State v. Profita, 183 N.J. Super. 425 (App. Div. 1982) (judge properly suspended the license of a driver operating a vehicle in New Jersey while her New York license was suspended, even though the Commission did not formally move to revoke her reciprocity privileges); O'Keefe v. Motor Vehicle Commission, No. A-1288-12 (App. Div. November 15, 2013) (slip. op. at 5) and I am satisfied that the plain language of the statute empowers the Commission to suspend a driver's license "for a violation of any of the provisions of this Title or on any other reasonable grounds . . ." N.J.S.A. 39:5-30(a). The statute is not restricted to "moving violations" or even violations. Ibid. Rather, the Commission is empowered to suspend a license on any "reasonable grounds . . ." Ibid.

However, I **FIND** persuasive respondent's argument that a [s]uspension herein is unwarranted because it does not protect a public safety interest. Respondent correctly asserts that:

he was not found at fault for the accident. He was driving in a safe manner, within the posted speed limit, when the decedent, who was severely intoxicated on a mixture of alcohol and marijuana, stepped out into the middle of rush hour traffic on a four lane highway with a posted speed limit of 55 mph. [Respondent] did not even cause the death of the decedent; it was caused by the decedent being run over by an unidentified white female driver who fled the scene the moment she heard sirens, while [Respondent] stayed on the scene and attempted to redirect traffic so as not to cause further injury to the decedent.

[Ibid.]

The police report clearly concluded that respondent was not at fault. Again, the legislature's intent in enacting N.J.S.A. 39:5-30 was "not to authorize [the Director] to punish a motorist for what he did in the past, but to enable [the Director] to make sure that, whenever necessary, the motorist be kept off the highway until he can be expected to operate a motor vehicle with safety to himself and to others." Id. at 549. Conversely, "[t]o impose sanctions beyond what is needed to reform the individual, in order to frighten others, is a function of punishment, beyond the power of the Director." Ibid.

As previously noted the factors to determine whether a suspension is warranted do not mandate such a conclusion herein. While respondent operated an unregistered vehicle, and does not offer any reason for his failure to properly register his vehicle. The record does not disclose whether his failure to register his vehicle was willful, reckless, or merely negligent. However, the police report clearly indicates that any negligence (or even recklessness) respondent committed did not contribute to the accident.

Respondent has held a driver's license since at least 1981 (over thirty years). He was issued five speeding tickets; in 1981, 1986, 2000, 2006, and 2012. Ibid. He was issued one ticket for improper passing, in 1988, and another ticket for improper operation, in 2001. He was involved in one other accident, in 1990, but his driver's abstract suggests he did not commit any violations in connection with that accident, and was not at fault. Notably, the police report conclusively established that respondent was not speeding when he struck Melo-Mena.

I **FIND** that Respondent's actions in connection with the accident were entirely appropriate. While the other motorist fled, and was never caught or punished, respondent stayed on the scene and tried to redirect traffic, to avoid further injury to Melo-Mena. He voluntarily submitted to a drug and alcohol test immediately after the crash, which confirmed that he was not under the influence of any drugs or alcohol. Apparently, respondent cooperated fully with authorities, and immediately rectified his sole violation by registering his unregistered vehicle.

Finally, the maximum punishment for respondent's actual violation, operating an unregistered vehicle, carries a maximum penalty of \$100. N.J.S.A. 39:3-4.

Considering all of these factors, I **FIND** and **CONCLUDE** that an eight month suspension for respondent's single violation would impermissibly "punish a motorist for what he did in the past . . ." See Cresse, supra, 81 N.J. Super. at 548. Accordingly, respondent's motion to dismiss 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.

1/12/15
DATE

Irene Jones
IRENE JONES, ALJ

Date Received at Agency:

1/12/15
Laura Sanders

Date Mailed to Parties:
sej

JAN 14 2015

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
33 Washington Street
Newark, NJ 07102
(973) 648-6008

**A copy of the administrative law
judge's decision is enclosed.**

**This decision was mailed to the parties
on JAN 14 2015.**