



OFFICE OF ADMINISTRATIVE LAW

**AMENDED**

**INITIAL DECISION**

OAL DKT. NO MVH 02670-16

AGENCY DKT NO CXXXX XXXXX 09722

**MOTOR VEHICLE COMMISSION,**

Petitioner,

v.

**ERNEST L. COOPER, II,**

Respondent.

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**Motor Vehicle Commission**, for petitioner pursuant to N.J.A.C. 1:1-5 6(a)

**Ernest L. Cooper, II**, respondent, pro se

Record Closed April 11, 2016

Decided June 1, 2016

BEFORE IRENE JONES, ALJ

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Respondent, Ernest L. Cooper, II, appeals the proposed indefinite suspension of his passenger endorsement. Petitioner alleges that respondent has a disqualifying criminal record.

**FINDINGS OF FACT**

Based upon the record, I **FIND** the following **FACTS**:

By notice dated July 22, 2015, petitioner, Motor Vehicle Commission, notified the respondent of a scheduled suspension of his passenger endorsement because he has a disqualifying criminal record. (P-1) After receipt of the notice, respondent requested and was granted a hearing on the scheduled suspension.

Respondent is forty-two years old and resides in Newark, New Jersey. He currently holds a CDL endorsement but seeks to get a passenger endorsement to further employment opportunities. As a teenager, respondent attended Weequahic and Barringer High Schools. At age sixteen, respondent left school and, by age twenty, he became enamored with the street life. He began to smoke marijuana and used divers "pills." He used drugs for some ten years. He left home and started selling cocaine. On the day that he was arrested, he was not selling drugs, but was with three other guys who were selling a controlled dangerous substance (CDS). He was accepted into PTI. Subsequently, he was arrested again for selling a CDS. He eventually served four years at Southern State Correction Facility (a/k/a Leesburg). He was released to the Intensive Supervision Program (ISP) for twenty-two months and resided with his sister.

Respondent obtained employment at one of the hotels located at Newark Airport. He has worked there for the last eleven years. He started in housekeeping and he is now a bellman driver. He does have a CDL, class B Endorsement, but seeks a passenger endorsement.

Respondent lives with his fiancée in Newark. He has four children ages, 22, 18, 12 and 10. In support of his rehabilitation, respondent provided numerous character references from his coworkers, his office manager and friends. (R-2) The letters attest to his strong work ethic, his integrity, value and reliability.

### DISCUSSIONS AND CONCLUSIONS

The Division is responsible for issuance of driver's license and/or endorsements, which are privileges and not rights. Consistent with this responsibility, the Division has promulgated regulations setting standards for the holding of various licenses and endorsements and, where necessary to protect the public health, safety and welfare, the Division may suspend driving privileges and/or remove an endorsement. N J S A 39:3-10, N J S A 39 5-30, N J A C. 13.21-1 1 et seq; Atkinson v Parsekian, 37 N J 143 (1962).

Pursuant to N.J.A.C. 13:21-14 5(c)12, the MVC may not issue a bus driver's license, or may revoke or suspend the bus driver's license of a person when the applicant or holder has a criminal record that is disqualifying. A disqualifying record is one whose record consists of possession for sale of a controlled dangerous substance (CDS), crimes involving force, such as, assault and any crime indicative of bad moral character.

Notwithstanding the above, the MVC may upon sufficient and reasonable grounds, waive any portion of the regulation upon request of the applicant/holder. See N J A C 13 21-14 5(c)12 and N J A C 13 21-14 5(d)

The Legislature has also enacted the Rehabilitated Convicted Offenders Act N J S A 2A 168A-1 to 6. It provides that it is the policy of this State to assist the rehabilitation of convicted offenders by removing impediments to their ability to obtain employment based solely upon their criminal record. N J S A 2A.168A-1. Therefore, a licensing authority may not disqualify an applicant because of a conviction for a crime, unless the conviction relates adversely to the occupation, trade, vocation, profession or business for which the license is sought. Ibid. In accordance with N J S A. 2A 168A-2, the licensing authority must consider the following factors in determining whether the crime relates adversely to the particular occupation, trade, vocation, profession or business.

- a The nature and duties of the occupation, trade, vocation, profession or business, a license or certificate for which the person is applying,
- b Nature and seriousness of the crime;
- c Circumstances under which the crime occurred,
- d. Date of the crime,
- e. Age of the person when the crime was committed;
- f Whether the crime was an isolated or repeated incident,
- g Social conditions which may have contributed to the crime
- h Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

In this case, respondent seeks a passenger endorsement. As noted, he holds a CDL and is currently working at an airport hotel as bellman driver. The passenger endorsement will allow him to transport passengers – interfacing with the public who will rely on him to get them safely to and from their destinations.

The respondent's past criminal record is serious as it involves possession of CDS, a felony conviction for possession and distribution of CDS, and eluding the police. Respondent was eighteen when he was first convicted and his trouble continued for the next six years.

Since being released from prison, respondent has established a solid foundation. He has received intensive counseling via ISP and he has a supportive family. Moreover, his employment with the hotel is indicative of good self-esteem and of his being a productive member of society.

I **FIND** that the respondent has demonstrated that he is rehabilitated and consistent with the provisions of N.J.S.A. 2A:168A-1 to 3. Thus, I **CONCLUDE** that respondent is entitled to a passenger endorsement.

**ORDER**

It is **ORDERED** that the indefinite suspension of respondent's passenger endorsement be and is hereby **REVERSED**.

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



June 1, 2016

DATE

IRENE JONES, ALJ

Date Received at Agency

June 1, 2016

Date Mailed to Parties JUN 1 2016

sej/jb



**DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE**

**APPENDIX**

**WITNESSES**

**For Petitioner**

Appearing pursuant to N.J.A.C. 1.1-5.6(a)

**For Respondent**

Ernest L. Cooper, II

**EXHIBITS**

**For Petitioner**

P-1 Packet of Documents from Motor Vehicle Commission

**For Respondent**

R-1 Character Reference Letters



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

**This decision was mailed to the parties  
on June 1, 2016**