

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. MVH 00326-17

AGENCY DKT. NO 01822

**NEW JERSEY MOTOR
VEHICLE COMMISSION,**

Petitioner,

v

FAISAL M. ASLAM,

Respondent.

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

Faisal M. Aslam, respondent, pro se

Record Closed: March 7, 2017

Decided March 22, 2017

BEFORE CARL V. BUCK III, ALJ

STATEMENT OF THE CASE

Faisal M Aslam ("Aslam" or "respondent") appeals an order of suspension issued by the Motor Vehicle Commission ("MVC") for driving during a period of suspension. The suspension had an effective date of March 6, 2016 for a period of 180 days.

PROCEDURAL HISTORY

By a suspension notice dated February 11, 2016, petitioner suspended the New Jersey driving privileges of respondent for 180 days beginning March 6, 2016, pursuant to N.J.S.A. 39:3-40, N.J.S.A. 39:5-30, and N.J.A.C. 13:19-10.8. The notice cited respondent's improper passing violation on July 29, 2015, (in New York), as proof he operated a motor vehicle during a period of driving privilege suspension.

Petitioner appealed the Notice of Suspension, dated February 11, 2016 and the MVC transmitted the contested case to the Office of Administrative Law, N.J.S.A. 52:14B-1 to -15, N.J.S.A. 52:14F-1 to -13 where it was filed on January 4, 2017

Additionally, a MVC conference report relating to this issue was filed on April 18, 2016

On March 7, 2017, a hearing was held and concluded. The record closed on that date

FACTUAL DISCUSSION AND FINDINGS

Petitioner MVC placed agency documents into evidence and presented the testimony of Scharner Michaud, an MVC representative. (P-1, -6). Petitioner's driving history (dated December 23, 2016) documents four (4) driving suspensions between July 2008 and July 2015. The driving history also documents two (2) violations after April 18, 2016. They were a June 24, 2016 "Operate during suspension period" and a September 6, 2016 "Unsafe operation of a motor vehicle". The driving history documents approximately twenty-nine (29) violations between March 27, 2001 and September 6, 2016.

Respondent's abstract of driver history record and existence of at least three (3) of the suspensions were undisputed.

Petitioner testified on his own behalf. He stated that he did not realize that his license was suspended when he received an improper passing violation on July 29, 2015. The passing violation was then posted to his record on February 10, 2016.

He stated that he had not received the MVC Scheduled Suspension Notice, dated June 25, 2015 notifying him that his driving privilege was to be suspended for 180 days beginning on July 19, 2015. Respondent further stated that he did not recall receiving petitioner's Order of Suspension, dated July 29, 2015.

These documents were addressed to him at [REDACTED], Somerset, New Jersey 08873-7800. He stated that he was unaware of these suspension notices until he appeared at the Newark Department of Motor Vehicles office to "take care of a surcharge". Respondent did not dispute that he had received notices of other suspensions or other documents from MVC. Nor did respondent testify to any other delivery problem with the postal service or receiving other mail at [REDACTED], Somerset, New Jersey 08873-7800.

Respondent is approximately forty years of age and married with three children, ages eight, three and two. He testified that he is responsible for support of his wife, his children and his mother. He testified that he owns several retail stores located in New Jersey and New York. As noted in the conference report of April 18, 2016, and in his testimony, respondent requests leniency as sole provider for his family and considering his business obligations.

I FIND as a FACT that when respondent was charged with improper passing on July 29, 2015, that he operated a motor vehicle during a period of driving privilege suspension. **I FIND as a FACT** that petitioner knew that his driving privileges were suspended on that date because he knew they had been suspended for 180 days by order of the MVC on July 19, 2015.

LEGAL ANALYSIS AND CONCLUSION

Petitioner has the burden of proving, by a preponderance of the believable evidence, the truth of the charge brought against respondent. I have listened to the testimony of respondent, reviewed the exhibits provided by the petitioner, and have considered respondent's arguments. Petitioner has successfully shouldered its burden of proof.

Orders of suspension or confirmations of suspension always contain, among other things, the warning to the driver that he may not drive until he receives written notice of restoration from the Chief Administrator of the MVC. Respondent did not receive this notice of restoration until February 25, 2016. I note that within the time frame of the four (4) suspensions of respondent's driving privileges, four (4) citations were issued for "Operate during suspension period" - the charge in the instant matter. And, as stated, the suspension which commenced this case was the operation of a motor vehicle during a suspension period.

As discussed prior, respondent did not:

- 1 Challenge the validity of his driver's abstract,
- 2 Testify as to problems with receipt of other suspension notices or documents from MVC;
- 3 Testify as to postal or mail issues at [REDACTED], Somerset, New Jersey 08873-7800.

Orders of suspension additionally contain the following language, "If you continue to drive while suspended, you could face up to five years in jail."

Applicable is N.J.A.C. 13.19-10.8, which provides in pertinent part that.

(a) Whenever the driving privileges of an individual have been suspended or revoked for any reason, either judicially or administratively

1 The operation of a motor vehicle by the individual during the period of suspension or revocation shall be cause for extending the period of revocation or suspension for an additional six months, or for some other period determined by the Chief Administrator

Petitioner having successfully shouldered its burden of proof, it remains for me to impose the appropriate remedial sanction in this case. In doing so, I have considered the totality of the circumstances in addition to a review of respondent's driving record and a consideration of his personal situation. There are times when the passage of time may work in favor of a respondent with respect to a proposed penalty. That is in the case where, over time, an individual's driving record indicates that he has obeyed all our Motor Vehicle and Traffic Laws or shows some correction of behavior. However, that is not the case here. Respondent's record, which I have detailed, reveals a disregard on his part of his duty to obey all our Motor Vehicle and Traffic Laws and regulations. He does not contest that he was aware that his driving privileges were suspended on at least three (3) occasions. He was aware that additional penalties could accrue for violation of these suspension orders. Notwithstanding those suspensions, and the knowledge that further penalties could accrue, he continued to drive.

Respondent's driving history (updated to December 23, 2016), documents four (4) driving suspensions between July 2008 and July 2015. The driving history also documents two (2) violations after April 18, 2016. The June 24, 2016 "Operate during suspension period" and the September 6, 2016 "Unsafe operation of a motor vehicle".

The driving history documents approximately twenty-nine (29) violations between March 27, 2001 and September 6, 2016.

Further, the ability to obtain a driver's license is a privilege, not a right. A privilege to act within the regulations, boundaries and constraints and to adhere to appropriate restrictions that such licensure entails. Petitioner has testified that he is responsible for a family consisting of three small children, a wife and his mother in addition to business obligations. Petitioner's actions and driver history show that he has not acted in accord with such privilege - nor in the best interests of his personal obligations.

The applicable regulation gives me discretion to impose a period of suspension less than that which petitioner seeks. Having considered the evidence in this case, I **CONCLUDE** that the appropriate remedial sanction to be imposed and one which will satisfy the competing interests of respondent and the public would be a 120-day suspension of the New Jersey driving privileges. It is therefore **ORDERED** that the New Jersey driving privileges of respondent be **SUSPENDED** for 120 days pursuant to the scheduled suspension notice, dated February 11, 2016. The effective date of this suspension shall be set forth in an order of suspension that petitioner shall send to respondent under separate cover.

DECISION AND ORDER

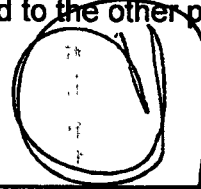
I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

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 22, 2017

DATE



CARL V. BUCK III, ALJ

Date Received at Agency

3/22/17

Date Mailed to Parties

3/23/17

/lam

LIST OF EXHIBITS

For petitioner

P-1 Abstract of Driving History Record, dates December 23, 2016

P-2 Restoration Notice, dated February 24, 2016

P-3 Order of Suspension, dated July 29, 2015

P-4 Scheduled Suspension Notice, June 25, 2015

P-5 Address Change History, dated November 4, 2016

P-6 Scheduled Suspension Notice, dated February 11, 2016

For respondent

None

LIST OF WITNESSES

For petitioner

Scharkner Michaud

For respondent

Faisal M Aslam