

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. MVH 10986-19

AGENCY DKT.NO. JXXXX XXXXX 12702

**NEW JERSEY MOTOR
VEHICLE COMMISSION,**

Petitioner,

v.

CARYL D. JAMES,

Respondent.

Cassandra Berry, Regulatory Officer 4, for petitioner pursuant to N.J.A.C. 1:1-5.4(a)(2)

Caryl D. James , respondent, pro se

Record Closed: September 25, 2019

Decided: November 8, 2019

BEFORE **JUDITH LIEBERMAN**, ALJ:

STATEMENT OF THE CASE

Caryl D. James (respondent) appeals from the decision of the petitioner, Motor Vehicle Commission (Commission), to suspend his Commercial Driver License (CDL) passenger endorsement due to a disqualifying criminal record.

PROCEDURAL HISTORY

The Commission transmitted this matter to the Office of Administrative Law (OAL), where it was filed on August 12, 2019, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to-13. A September 10, 2019, hearing was adjourned at the request of the respondent to permit him an opportunity to retain counsel. The hearing was held at the offices of the OAL in Mercerville, New Jersey, on September 25, 2019, and the record closed that day.

FACTUAL DISCUSSION AND FINDINGS

The following is undisputed and, therefore, I **FIND** the following as **FACT**:

Petitioner relied exclusively on the documents provided. (P-1 to P-17.) On December 23, 2018, respondent was served with an Order of Suspension Notice concerning his Commercial Driver License (CDL) passenger endorsement due to a disqualifying criminal arrest and/or conviction record. P-5. The notice advised that, effective December 8, 2018, his passenger endorsement was ~~suspended~~^{proposed to be} suspended indefinitely. Ibid. On January 30, 2019, respondent was informed that the basis for the proposed suspension of his CDL passenger endorsement was an arrest for a charge of a “[N.J.S.A.] 2C:5-1 Criminal Attempt Aggravated Assault, Poss of weapon for unlawful criminal attempt.” P-9. The notice advised that the arrest or offense occurred on October 6, 2018, and there had not yet been a disposition concerning the charge. Ibid.

A “Complaint Narrative Inquiry” summarized the incident that led to the charge against respondent. He “chase[d] Scott Henry on West 6th Avenue with a white handled knife swinging it at the victim during the course of an altercation, inc violation of N.J.S.A. 2C:12-1b(1), 3d degree.” P-3. Respondent was forty-seven years old at the time of the incident. P-12.

Petitioner conducted a prehearing conference with respondent on April 1, 2019. A “Conference Report” noted that respondent had been charged with offenses or crimes four times between 1994 and 2002 but was not found guilty of any of the crimes or offenses. P-11. There were no new charges against respondent since 2018. Ibid. After the prehearing

conference, petitioner lifted respondent's license suspension, which had been effective since December 8, 2018, pending the hearing in this matter.

On June 10, 2019, respondent pled guilty to one count of "simple assault-purposely/knowingly cause bod. injury" in violation of N.J.S.A. 2C:12-1a(1), a disorderly persons offense. P-4. He was sentenced to one-year probation, conditioned upon no contact with the victim and payment of fines and penalties. Ibid. The Judgment of Conviction enumerated three other charges that had been filed against respondent: "Agg. Assault-attempt/cause [bodily injury with] deadly weapon purp/know," in violation of N.J.S.A. 2C: 12-1b(2), "Poss of Weapon for unlawful purpose – other weapon," in violation of N.J.S.A. 2C:39-4d, and "Unlawful Poss Weap – other weapons," in violation of N.J.S.A. 2C:39-5d. Ibid.

Respondent's regular and commercial licenses were in good standing at the time of the hearing. His abstract of driver history record documented two points then on his license, with an annual safe driving reduction of two points on July 22, 2018. P-1.

Testimony

Caryl D. James, respondent, testified that he is not a danger to his community or to the public. The incident that led to the criminal charges involved his son-in-law, Scott Henry. Henry got involved in an argument between respondent and respondent's wife. Henry did not want to press charges against respondent but was told by police officers that it would help respondent in addressing the argument with his wife.

Respondent and his wife had an argument on the day at issue. However, it had not escalated to the point that a third person needed to intervene. He also acknowledged past communication problems between him and his wife. He testified that he "finds himself lacking in a certain area" and that he "wants to rectify it." Recognizing that he did not know how to communicate verbally and that he and his wife argue "it is not a happy time in our house," he wanted to actively address their issues so as to prevent similar situations from occurring again. Approximately one week after the incident, and before he received any suspension notices from the petitioner or notices concerning the criminal charges from the Superior Court, he sought out counseling for him and his wife. He produced an April 9, 2019, letter

from a marriage counselor who wrote that he had been working with respondent and his wife since 2018. "They wanted help with communication issues in their relationship. I am currently working with them to help them connect with each other through quality time spent together. Both seem motivated during the counseling process." R-1.

Respondent produced an undated but notarized letter from Henry, his son-in-law, addressed "To whom it may concern." He wrote:

[O]n or about October 6th [I] had a verbal altercation with my father in law outside of his residence[.] It then got a little physical and was resolved before the cops arrived. I explained to the cops that I didn't feel threatened and we both had a lot to drink. I didn't want to press charges but the cops convinced me that he wouldn't get in trouble [and] that it would help him get some help like counseling. Since then Mr. James has received counseling and our family is doing much better! I also came to Mr. James' first court appearance to speak on his behalf[.] I was told by his public defender that an investigator would contact me which the investigator did but I missed his call. I returned his call and left a message but never received a call back[.] [T]hat is the reason I am writing this letter! I don't wish to move forward on these charges and I am doing so under my free will. I have not been threatened or asked to write this letter.
P-14.

Respondent testified that in son-in-law wrote the letter in late December 2018 and that it was intended to be given to the judge and prosecutor. He explained that Henry accompanied him to court to say that he did not want to press charges. Respondent was advised, however, that the only way to get the charges dismissed was to plead guilty to one charge.

Respondent has not been in trouble in over twenty years. He needs his passenger endorsement to support his family. He previously drove commercial vehicles, which required him to travel far from home. He sought work closer to home after he had a heart attack in 2006. His passenger endorsement permits him to work closer to home; he is not aware of commercial driver jobs that would enable him to stay close to home.

On April 9, 2019, respondent's employer, ETA Worldwide Transportation Services, for which he drives a limousine, wrote a letter concerning his work performance. The letter

explained that he worked an average of forty hours per week, during which he drove groups of clients to and from their destinations, and was responsible for ensuring that the vehicle was clean. Respondent was in good standing with his employer. R-2.

Respondent is in full compliance with his probation. He checks in with his probation office each week and pays his fines on time. He had not missed a deadline and only \$80 remains of his debt.

Veronica Jamison James, respondent's wife, testified on his behalf. On the day of the incident, they had "verbal words." Respondent told their son-in-law to not get involved with their argument, which dissipated before the police arrived. They since sought counseling to improve their communication. They did not have a physical altercation; their problems were limited to communication.

Counseling has been beneficial for them both. They have undertaken projects that enable them to share mutually important things with each other. They are better able to look directly at each other and communicate; they feel good about each other.

The loss of respondent's license would cause him to no longer be able to support his family. This was of utmost importance to respondent.

Additional Findings

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or

with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

As the fact finder, I had the ability to observe the demeanor, tone, and physical actions of respondent and his wife during the hearing. Respondent spoke in a direct, straightforward manner. He did not hide his shame over the prospect of losing his livelihood and being unable to support his family. He was contrite when he discussed his marital problems and evidenced a sincere desire to improve his relationship through continued effort and concentration. Mrs. James was similarly candid as she discussed the dynamics of her relationship and efforts to improve it. I find both witnesses were credible.

Accordingly, I **FIND** the respondent pled guilty to a charge that arose from a family matter. While Mr. Henry's letter is hearsay, there is sufficient credible evidence in the record to support a finding that the incident began as an argument between respondent and his wife, which escalated in an unfortunate, and public, manner. The incident did not result in injuries. I further **FIND** respondent does not have a prior criminal record and his driver record is unblemished, with the exception of two points. Since his license was restored in April 2019, he has driven a limousine without incident and is an employee in good standing with a transportation company. He has not committed or been involved in any infraction involving operation of a motor vehicle or criminal activity since October 6, 2018, the date of the incident at issue.

LEGAL ANALYSIS AND CONCLUSION

The issues presented here are whether the respondent's guilty plea to the charge of simple assault, purposely/knowingly causing bodily injury, in violation of N.J.S.A. 2C:12-1A(1), is a disqualifying offense per the controlling regulation, and if so, whether respondent has demonstrated rehabilitation pursuant to the Rehabilitated Convicted Offenders Act (RCOA), N.J.S.A. 2A:168a-1 et seq., sufficient to justify a waiver under N.J.A.C. 13:21-14.5.

Under the police authority of the State, the Administrator of the Commission has the right to impose reasonable restrictions on the issuance of licenses for various

occupations in order to protect the public health and safety. Sanders v. Div. of Motor Vehicles, 131 N.J. Super. 95, 97 (App. Div. 1974). The primary objective of such administrative proceedings "is to foster safety on the highway." Atkinson v. Parsekian, 37 N.J. 143, 155 (1962).

The Commission is authorized to withhold, revoke or suspend a passenger endorsement pursuant to N.J.A.C. 13:21-14, et seq.. N.J.A.C. 13:21-14.5 provides, in pertinent part, that the Chief Administrator of the Commission:

may not issue a passenger endorsement, or may revoke or suspend the passenger endorsement of any person when it is determined that the applicant or holder of such passenger endorsement has:

...

12. A criminal record that is disqualifying. The phrase "crime or other offense" as used hereinafter shall include crimes, disorderly persons offenses or petty disorderly persons offenses as defined in the "New Jersey Code of Criminal Justice" and any offenses defined by any other statute of this State. A driver has a disqualifying record if:

- i. He or she has been convicted of, or forfeited bond or collateral upon, any of the following:
 - (1) An offense involving the manufacture, transportation, possession, sale or habitual use of a "controlled dangerous substance" as defined in the "New Jersey Controlled Substance Act";
 - (2) A crime or other offense involving deviate or illicit social behavior such as rape, incest, sodomy or carnal abuse;
 - (3) A crime or other offense involving the use of force or the threat of force to or upon a person or property, such as armed robbery, assault and arson;
 - (4) Any crime or other offense indicative of bad moral character[.]

N.J.A.C. 13:21-14.5(c).

Also, N.J.A.C. 13:21-14.5(a), requires that “Applicants [for passenger endorsements] shall . . . be of good character and physically fit and possess a valid New Jersey driver license.”

The Chief Administrator also has the authority to waive any portion of the disqualifying regulation “[i]f sufficient and reasonable grounds are established either upon initial review or at a hearing[.]” N.J.A.C. 13:21-14.5(d). Proof of rehabilitation establishes grounds to waive the regulation. Id.; see also Sanders, 131 N.J. Super. at 98.

In this case, where the MVC claims that a license endorsement should be revoked, the agency bears the burden of proof, by a preponderance of the competent and credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

It is undisputed that respondent plead guilty to a charge involving assault,¹ which renders him subject to the potential revocation of his license, pursuant to N.J.A.C. 13:21-14.5(c)(3). The Rehabilitated Convicted Offenders Act (RCOA), N.J.S.A. 2A:168A-1 to -3, provides guidance concerning an evaluation of whether the proofs are sufficient to justify a waiver of a license revocation. As a matter of policy, “it is in the public interest to assist the rehabilitation of convicted offenders by removing impediments and restrictions upon their ability to obtain employment or to participate in vocational or educational rehabilitation programs based solely on the existence of a criminal record.” N.J.S.A. 2A:168A-1.

The RCOA statute provides that “a person shall not be disqualified or discriminated against by any licensing authority because of any conviction for a crime . . . unless the conviction relates adversely to the occupation . . . for which the license or certificate is sought.” Ibid. Factors to consider in determining if a conviction relates adversely to a given occupation include: (1) the nature and duties of the occupation; (2) the nature and

¹ N.J.S.A. 2C:12-1a(1), to which respondent pled guilty, concerns simple assault: “A person is guilty of assault if he: (1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another[.]” This law was effective at the time of the incident at issue. It was amended, effective December 1, 2019.

seriousness of the crime; (3) the circumstances under which the crime occurred; (4) the date of the crime; (5) the age of the person when the crime was committed; (6) whether the crime was an isolated or repeated incident; (7) social conditions which may have contributed to the crime; and (8) any evidence of rehabilitation, including good conduct in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, or the recommendation of persons who have or have had the person under their supervision. N.J.S.A. 2A:168A-2.

Here, respondent's violation did not "relate adversely" to his occupation. There is neither an assertion nor evidence that he has acted, or is likely to act, in an adverse manner with respect to clients he transports. Rather, the incident arose out of a family interaction and respondent and his wife actively worked with a professional counselor to improve their relationship. Respondent evidenced that he now understands the issues that led to the incident and has endeavored to address those issues. Further, the incident occurred over one year ago and respondent has not been cited for any similar or other violations since then, whether criminal in nature or concerning his driving history. Respondent has complied with the terms of his probation, which will be complete in approximately six months. Finally, at the hearing, respondent's demeanor was sincere and respectful, and he presented as a person who is responsible and accountable and properly addressing his responsibilities as a law-abiding adult.

Accordingly, I **CONCLUDE** that respondent, through proof of rehabilitation, has sufficiently demonstrated reasonable grounds for waiver of the relevant CDL passenger endorsement suspension provisions and should not be disqualified from holding a passenger endorsement. Furthermore, I **CONCLUDE** that waiver of the relevant CDL passenger endorsement suspension provisions in this particular case is in keeping with the stated policy and purpose of the RCOA.

DECISION AND ORDER

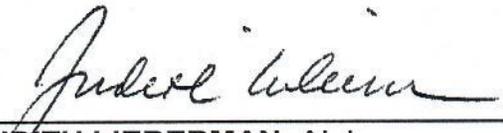
Based upon the foregoing, I **ORDER** that the scheduled suspension of respondent's passenger endorsement on his Commercial Driver License be and is hereby **DISMISSED** and that such endorsement remain in full force and effect.

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 8, 2019
DATE


JUDITH LIEBERMAN, ALJ

Date Received at Agency:

11/8/19

Date Mailed to Parties:

11/8/19

JL/vj

APPENDIX

WITNESSES

For petitioner:

Cassandra Berry, Regulatory/ Officer 4

For respondent:

Caryl D. James
Veronica Jamison James

EXHIBITS

For petitioner:

- P-1 Certified abstract
- P-2 Arrest Notification, October 6, 2018
- P-3 Complaint Narrative
- P-4 Judgment of Conviction
- P-5 Order of Suspension, December 23, 2018
- P-6 Conviction Notification
- P-7 Hearing request
- P-8 Correspondence from attorney
- P-9 Supplemental Specifications Notice, January 30, 2019
- P-10 Notice to Attend, February 27, 2019
- P-11 Conference Report, April 1, 2019
- P-12 Supplemental Specifications Notice re: Mitigating Factors
- P-13 Passenger Endorsement Warning, April 1, 2019
- P-14 Henry letter
- P-15 Automated Complaint System Defendant Detail History
- P-16 Automated Complaint System Defendant Detail History

P-17 Regulation

For respondent:

R-1 April 9, 2019, letter from Allen Summerville, LCSW

R-2 April 9, 2019, letter from Entertainment Transportation Associates, Inc.