

INITIAL DECISION

OAL DKT. NO. MVH 3605-14

AGENCY DKT. NO. J10752

**NEW JERSEY MOTOR VEHICLE
COMMISSION,**

Petitioner,

v.

ANDRE M. JOHNSON,

Respondent.

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

James R. Pastor, Esq., for respondent (Aiello Harris, attorneys)

Record Closed: November 24, 2014

Decided: May 26, 2015

BEFORE **ROBERT BINGHAM II**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Motor Vehicle Commission (the Commission) proposed suspension of respondent Andre M. Johnson's New Jersey driving privilege on January 23, 2013, for falsifying an application for a New Jersey driver's license or motor vehicle registration, and again on February 3, 2013, for three violations of driving while suspended, as well as a violation for accumulating twelve or more points. Johnson requested a fair hearing

and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on March 26, 2014, for determination as a contested case. N.J.S.A. 52:14B-1 to -15. The hearing was held on October 24, 2014, and the record remained open for post-hearing submissions. The record closed on November 24, 2014, upon receipt of post-hearing submissions. Extensions were granted, until May 25, 2015, for issuance of this initial decision.¹

FACTUAL DISCUSSION

Respondent used the personal identification of his cousin, Dontrell W. Johnson, to obtain both a New Jersey driver's license, in or about May 2004, and a motorcycle registration, on August 17, 2006. Utilizing that documentation, he drove while his actual license was suspended, and he incurred three separate violations during that time: (1) careless driving, on October 4, 2006; (2) failure to give proper signal, on March 30, 2007;² and (3) failure to observe a traffic-control device on May 19, 2007. In all, he had accumulated twelve or more points.³

On April 5, 2008, when he was arrested in Atlantic County, respondent presented the fraudulent driver's license and was subsequently charged with falsification to incriminate another, resisting arrest, and drug possession. On December 2, 2008, he was sentenced to probation through Drug Court, following a plea agreement on the two latter charges. (P-65 at 4.) On June 6, 2011, he was also indicted in Monmouth County for use of personal identifying information (to obtain a false driver's license) and for forgery (for signing the license application in his cousin's name). (P-66.) Respondent pled guilty to forgery and, pursuant to a plea agreement, was sentenced to a concurrent term of probation. (P-65 at 1; R-1.)

¹ May 25, 2015, was a holiday, making the decision due no later than May 26, 2015.

² Respondent also received an administrative violation dated that day, for failure to notify the Commission (then DMV) of an address change.

³ The parties stipulated that respondent committed these underlying offenses, that his license was suspended at various times between 1992 and 2008, including the subject dates, and that notices of suspension were issued accordingly.

By Scheduled Suspension Notice dated January 23, 2013, (P-59), the Commission notified respondent that his New Jersey driving privilege would be suspended for 730 days, effective February 16, 2013, based upon his misstatement of fact on an application to secure a New Jersey motor vehicle registration. By Scheduled Suspension Notices dated February 3, 2013, the Commission notified respondent that his New Jersey driving privilege would be suspended for: (1) 180 days, effective February 26, 2013, for driving while suspended (failure to observe a traffic-control device on May 19, 2007) (P-57); (2) 30 days, effective February 26, 2013, for the accumulation of twelve or more points (P-77); and (3) 180 days, effective February 26, 2013, for driving while suspended (careless driving on October 4, 2006) (P-56). Notably, the Commission submitted a duplicate of this latter February 3 notice, rather than a third separate suspension notice for driving while suspended, relative to the underlying charge of failure to give proper signal on March 30, 2007. (P-58.) The parties nonetheless stipulated that respondent drove while suspended in October 2006, March 2007, and May 2007; made a misstatement of fact on an application to secure a New Jersey motor vehicle registration; and committed a points violation, namely, accumulation of twelve or more points. And, as previously noted, the parties further stipulated that on February 3, 2013, suspension notices were issued for the three violations of operating while suspended and for accumulation of twelve or more points.

On August 14, 2013, the Commission conducted an in-person conference and each of the above-stipulated violations is documented in the conference report, reflecting proposed periods of suspension totaling 1,300 days.⁴ (P-60.) During the conference, respondent admitted that he had obtained a motor vehicle license using his cousin's name. According to the conference report, he was motivated by the need to drive, he satisfied his criminal penalty, and now he requires his license for employment and for his children.

Johnson's New Jersey Driver Abstract (Exhibit P-1), which dates back to 1991, reflects a total of twenty-three motor vehicle violations, including eight violations for operating while suspended, as of September 25, 2000, and numerous other moving

⁴ The total proposed period of suspension was also stipulated.

violations as well. His last violation, unlicensed driver, occurred in May 2012. He had four prior periods of suspension, including for operating while suspended.

I **FIND** as **FACT** all of the above uncontested material facts.

Respondent credibly testified and I further **FIND** as follows: Three of respondent's children (ages twenty, fourteen and thirteen) and his mother, who has a medical condition, reside with him. He has joint custody, but primary residential care, of his children. (R-3.)⁵ He occasionally transports his mother for medical care and regularly takes his younger son to football practice. He also supports his son's football team that travels for tournaments and has won a national championship, and on occasion he takes his children to Maryland. Respondent's place of employment of more than seven years is twenty minutes from his residence and requires him to drive to assigned locations, including out-of-state sites that are eight to ten hours away. He is a valued employee whose salary has increased over the years. Finally, respondent's license was temporarily suspended, from December 2, 2008, to March 24, 2009, as a part of his probationary sentence. (P-65 at 4.) Though his concurrent probationary sentence in 2012 extended his drug-court participation by six months, he successfully completed the program, which has positively affected his life. (P-74.) He is thirty-nine years of age and feels that, for the first time, he is on the right track.

According to respondent, any loss of his driver's license would be devastating because it would result in a loss of his best job ever. He believes that he would have to move his family to an unknown destination, and cannot imagine what he would do.

LEGAL ANALYSIS AND CONCLUSION

Pursuant to N.J.S.A. 39:5-30(a), the Commission may suspend driving privileges for a violation of any Title 39 provision or on any other reasonable grounds. Pursuant to N.J.S.A. 39:3-37, the Commission "shall . . . revoke the registration of the motor vehicle

⁵ The oldest of the three children that reside with respondent is in college. The children's mother has regular visitation. A fourth child, age twenty-two, lives on his own.

or driver's license . . . for a period of not less than six months or more than two years" of any person who makes an intentional misstatement of a material fact in an application for registration of a motor vehicle. Ibid. Further, operation of a motor vehicle while suspended is proscribed by N.J.S.A. 39:3-40, and, in pertinent part, N.J.A.C. 13:19-10.8 provides 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.

Additionally, the chief administrator shall suspend the license of any driver who accumulates twelve or more points in a period of two years or less, or fifteen or more points in a period greater than two years, except for good cause. N.J.S.A. 39:5-30.8. The period of suspension based on point accumulation is established under N.J.A.C. 13:19-10.2. An accumulation of twelve to fifteen points in a period of two years or less requires a suspension of 30 days (N.J.A.C. 13:19-10.2(a)(1)). In this matter, the respondent has accumulated twelve points within two years, and the Commission seeks to suspend his license for 30 days for that violation.

The Commission has broad discretion in determining penalties for motor vehicle violations, and each case must be weighed in terms of the circumstances of the offense, the motorist's background and driving history, as well as any aggravating or mitigating circumstances. Cresse v. Parsekian, 81 N.J. Super. 536 (App. Div. 1963), aff'd, 43 N.J. 326 (1964). 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); Cresse, supra, 81 N.J. Super. at 549. 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, but "[t]he very 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). Need alone cannot be the deciding factor in determining the length of a suspension, 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).

Here, respondent first argues that the proceedings to suspend his driving privilege should be dismissed because an inordinate delay between the offenses and the scheduled suspensions resulted in a prejudicial denial of due process, citing In re Arndt, 67 N.J. 432 (1975). He asserts that the Commission should have known of the fraudulent license (2004) and registration (2006) as early as April 5, 2008 (Atlantic County arrest), or as late as June 6, 2011 (Monmouth County indictment); yet, the first proposed suspension was not issued until January 2013, a delay of at least nineteen to twenty months. The Commission asserts that the proposed suspensions were not inordinately delayed, and their timing has neither prejudiced respondent nor violated his due-process rights. First, it did not discover respondent's misstatement until May 8, 2012, when a match between photographs on two separate records was detected during "Operation Facial Scrub."⁶ The subsequent investigation, and verification of the fraud in January 2013, resulted in the Commission's recording of the violations and issuance of the proposed suspensions. Arndt is inapposite because here, unlike in Arndt: (1) the statute(s) violated did not require notice to the Commissioner,⁷ and the Commission reasonably issued suspensions once respondent's fraud was discovered and verified; and (2) there has been no demonstrated prejudice or unfairness to respondent's defense. Further, respondent's unclean hands in concealing his misrepresentation, rather than reporting his conduct and true identity to the Commission, contributed to any delay and preclude the relief he requests.

⁶ The Commission's brief indicates that the program, begun in December 2011, utilized new technology and consisted of a comparison of all digital photographs contained in the Commission's database. However, though the Commission argues this point, it did not submit in evidence documentation relative to image retrieval and comparison.

⁷ The criminal statute, N.J.S.A. 2C:21-1(a), does not require that the Commission be notified of the underlying offense or a potential violation of N.J.S.A. 39:3-37.

Respondent's second argument is that he has demonstrated total rehabilitation, thus no suspension should issue because it would be punitive in nature. The Commission argues that the suspension would be rehabilitative, not punitive. It now suggests the minimum potential period of suspension for each violation: 180 days for the violation of N.J.S.A. 39:3-37; 30 days for each of the three violations of N.J.S.A. 39:3-40, totaling 90 days; and 30 days for point accumulation in violation of N.J.S.A. 39:5-30.8, all totaling 300 days.

Under the facts and circumstances presented, respondent does indeed have unclean hands in concealing his misrepresentation, rather than reporting his conduct and true identity to the Commission, despite his assertion that he reasonably believed "the matter" relative to his license "was resolved" (in court) and the Commission should have been aware of his indictment and the related fraud. Further, he has demonstrated no actual prejudice resulting from any period of delay. Indeed, he has stipulated to, rather than challenged, the underlying offenses, as well as his commission of the administrative violations. Accordingly, he has not been denied procedural due process by the timing of the proposed suspensions, and I therefore **CONCLUDE** that respondent is not entitled to dismissal.

As for imposition of any period of suspension, it is inescapable that respondent deliberately misrepresented his identity to the Commission in order to obtain a driver's license and motor vehicle registration, and did so when his actual license was suspended. He then incurred several motor vehicle infractions within two years, clearly operating while suspended and accumulating at least twelve points. His New Jersey driver history, dating back to 1991, reflects a total of twenty-three motor vehicle violations, with four prior periods of suspension, including for operating while suspended, and his last violation, unlicensed driver, occurred in May 2012. Respondent is thirty-nine years of age, and his mother, who has a medical condition, and three dependent children reside with him and partially rely upon him for transportation. He needs his license for his employment of over seven years, where he is a valued employee and is assigned to travel to remote locations. Finally, his appearance and demeanor suggest a degree of maturity over time. It appears evident that his criminal

convictions and the related rehabilitation, particularly through Drug Court, have undoubtedly had some remedial impact.

Accordingly, based upon the totality of the circumstances, including the circumstances of the offense; petitioner's driving record; his personal background, including his family and employment situation; and his criminal conviction and sentence, I **CONCLUDE** that petitioner's driving privileges should be suspended, for rehabilitative purposes only, and only for the following minimum periods: 180 days, pursuant to N.J.S.A. 39:3-37; 30 days for the *combined* violations of N.J.S.A. 39:3-40; and 30 days for point accumulation in violation of N.J.S.A. 39:5-30.8, for a total period of suspension of 240 days.

DECISION AND ORDER

I therefore **ORDER** that the Commission's decision to suspend Johnson's license for a total period of 1,300 days should be and is hereby **MODIFIED** to a period of 240 days effective on such date as shall be set forth in an Order of Suspension, which the Commission will send to respondent.

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.

May 26, 2015
DATE


ROBERT BINGHAM II, ALJ

Date Received at Agency:

5/26/15

Date Mailed to Parties:

5-27-15

/lam

APPENDIX

WITNESSES

For Petitioner:

None

For Respondent:

Andre M. Johnson

EXHIBITS

For Petitioner:

- P-1 Certified Abstract
- P-2 Certified copy of Confirmation of Suspension by Court, dated February 19, 2007
- P-3 Certified copy of Order of Suspension, dated June 23, 2006 (2 pages)
- P-4 Certified copy of Notice of Proposed Suspension by Court, dated June 15, 2006 (4 pages)
- P-5 Certified copy of Confirmation of Suspension by Court, dated June 21, 2006
- P-6 Certified copy of Order of Suspension, dated July 17, 2005 (2 pages)
- P-7 Certified copy of Notice of Proposed Suspension, dated June 9, 2005 (4 pages)
- P-8 Certified copy of Order of Suspension, dated September 19, 2004 (2 pages)
- P-9 Certified copy of Notice of Proposed Suspension, dated August 12, 2004 (4 pages)
- P-56 Copy of Scheduled Suspension Notice, dated February 3, 2013
- P-57 Copy of Scheduled Suspension Notice, dated February 3, 2013
- P-58 Copy of Scheduled Suspension Notice, dated February 3, 2013
- P-59 Copy of Scheduled Suspension notice, dated January 23, 2013

- P-60 Copy of Prehearing Conference Report, dated August 14, 2013
- P-63 Copy of Statement from Dontrell W. Johnson, dated January 4, 2013 (2 pages)
- P-65 Copy of Judgment of Conviction: Monmouth County, filed January 31, 2012 (3 pages), and Atlantic County, filed December 2, 2008 (2 pages)
- P-66 Copy of Indictment, Superior Court of New Jersey, filed June 6, 2011 (3 pages)
- P-67 Copy of Order of Venue, Superior Court of New Jersey, filed June 6, 2011
- P-70 Copy of New Jersey MVC Application for Driver License, dated May 9, 2004
- P-71 Copy of New Jersey MVC Driver Examination Permit Application, dated July 14, 2006
- P-72 Copy of New Jersey MVC Application for Driver License, dated August 17, 2006
- P-73 Copy of New Jersey MVC License Review Questionnaire, dated January 9, 2013 (2 pages)
- P-74 Copy of Graduation from Monmouth County Drug Court, dated July 16, 2012
- P-75 Copy of Proclamation, Manalapan Township Office of the Mayor, dated December 19, 2012
- P-76 Copy of Commencement, Monmouth County Drug Court, dated August 16, 2010
- P-77 Copy of Scheduled Suspension Notice, dated February 3, 2013

For Respondent:

- R-1 Judgment of Conviction, New Jersey Superior Court, Law Division, Criminal, Monmouth County, filed January 31, 2012
- R-2 Letter from Picone Contracting, dated June 7, 2013
- R-3 Order, Superior Court of New Jersey, Chancery Division, Family Part, Somerset County

STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
CASE FILE NUMBER: DXXXX XXXXX 09724
OAL DOCKET NUMBER: M.V.H. 12468-13

IN THE MATTER OF :

RICHARD S. DAWSON :

FINAL DECISION

The Motor Vehicle Commission (“Commission”) hereby determines the matter of the proposed suspension of the New Jersey driving privilege of **RICHARD S. DAWSON**, respondent, for his involvement in a motor vehicle accident which resulted in the death of Ronald Hicks. Pursuant to N.J.S.A. 39:5-30, the Commission proposed a suspension of respondent’s New Jersey driving privilege for a period of 16 (sixteen) months.

Respondent has been administratively charged with a violation of N.J.S.A. 39:4-97, careless driving. Prior to this final agency determination, I have reviewed and considered the Initial Decision rendered by the Administrative Law Judge (“ALJ”) in this matter. No exceptions were filed. Based upon the record presented, I shall affirm the recommendation of the ALJ that respondent’s New Jersey driving privilege not be suspended given the particular circumstances in this matter.

In her Initial Decision, the ALJ recommended that no action be taken on the proposed suspension of respondent’s New Jersey driving privilege. I agree with the ALJ’s recommendation based on consideration of the totality of the circumstances in this case, including the testimony of Police Officer Jose Resau. As stated by the ALJ, the purpose of suspension is to reform the particular motorist and to foster safety on the

highway. In this case, the record did not establish that respondent committed the moving violation of careless driving. Thus, and in light of the specific and unique facts present in this case and the other mitigating factors presented by respondent, I concur with the ALJ's conclusion that a period of suspension is not needed at this time to achieve the purposes of reforming this motorist or fostering safety on the highway.

However, I find it necessary to correct certain findings of the ALJ. First, although not necessary to the analysis, as the ALJ had already found that respondent did not commit a Title 39 moving violation, the ALJ stated that the Commission "failed to establish by a preponderance of the credible evidence that the respondent's conduct was the proximate cause of the decedent's injury and subsequent demise." Initial Decision at 9. To the contrary, it is well established that the Commission need not prove that respondent was the proximate cause of the accident or resulting injuries or death. The Commission need only prove, by a preponderance of the evidence, that respondent need only be a contributing cause in connection with the accident and resulting injuries or death. See Cresse v. Parsekian, 81 N.J. Super. 536, 544 (App. Div. 1963), aff'd, 43 N.J. 326 (1964) (permitting, but not requiring, Cresse's license to be suspended for failure to make observation as he crossed a road, despite the fact that the negligence of the oncoming driver was the chief cause of the accident), and Division of Motor Vehicles v. Scheps, 95. N.J.A.R. 2d (MVH) 34 (1994).

With respect to the ALJ's finding that the decedent's failure to wear a seatbelt was the cause of his death (Initial Decision at 9), and not the actions of respondent, it is noted that, even if an individual's actions could have contributed to his or her injuries or death, this would be a mitigating factor as to what length of suspension would be

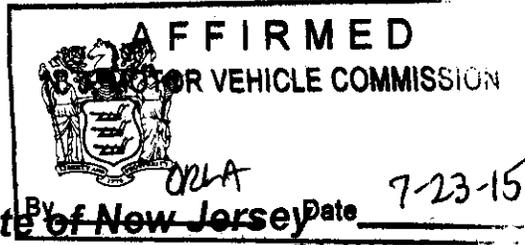
imposed, not a basis to impose no suspension at all. As stated above, if the Commission were to have proven that respondent committed a Title 39 violation and that violation was a contributing cause of the accident, that is sufficient for an administrative suspension under N.J.S.A. 39:5-30, even if the other party's actions contributed to his or her injuries or death. See Cresse, supra. In addition, the Commission's statutory authority to suspend driving privileges is not limited to fatal accidents; it also applies where there is serious bodily injury. See N.J.S.A. 39:5-30.

Based on all of the foregoing, it is, therefore, on this 2nd day of July, 2015, **ORDERED** that no action be taken on the proposed suspension of the New Jersey driving privilege of **RICHARD S. DAWSON**, for his involvement in a motor vehicle accident which resulted in the death of Ronald Hicks.



Raymond P. Martinez
Chairman and Chief Administrator

RPM:kjw
cc: Jay Gebauer, Esq.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. MVH 3447-15

AGENCY DKT. NO. B XXX06862

**NEW JERSEY MOTOR VEHICLE
COMMISSION,**

Petitioner,

v.

RONALD H. BAUM,

Respondent.

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

Justin J. Yost, Esq., for respondent (Saponaro & Sitzler, attorneys)

Record Closed: April 23, 2015

Decided: June 8, 2015

BEFORE **ROBERT BINGHAM II**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, the Motor Vehicle Commission (the Commission), proposed suspension of respondent Ronald H. Baum's New Jersey driving privilege on August 13, 2014, for accumulating twelve or more points. Respondent requested a fair hearing and the Commission transmitted the matter to the Office of Administrative Law (OAL), where

it was filed on March 12, 2015. N.J.S.A. 52:14B-1 et seq.; N.J.S.A. 52:14F-1 et seq. The hearing was held on April 23, 2015, and the record closed at the conclusion of the proceedings.

FACTUAL DISCUSSION

On February 11, 2014, respondent received two citations in Pemberton, New Jersey that triggered a points suspension: improper operation of a motor vehicle (two points) and reckless driving (five points). On August 9, 2013, he had been cited for using a hand-held device while driving, as well as failure to comply with police instruction, and received two points for the latter violation. Respondent's abstract of driver history record (P-1) and the Commission's conference report (P-4) indicate that on January 7, 2014, he had been cited in New York, for improper operation on a highway (two points) and failure to comply with police instruction (two points). The Commission thus determined that on February 11, 2014, respondent had accumulated thirteen points in six months. On August 13, 2014, the Commission issued a notice of proposed suspension of respondent's driving privilege for thirty days, effective September 6, 2014, for accumulating twelve or more points.

On November 13, 2014, respondent attended a conference at the Commission, and explained that the New York tickets resulted after he pulled into the right lane and then onto the shoulder after a police siren was activated, and the Pemberton infractions resulted from a plea agreement. Nonetheless, he paid the New York tickets for the sake of convenience. He further explained that he was a single father with sole custody of an eight-year-old daughter and he supports his mother who was disabled. He also reported that his license is required for his work as a driver for a production company. According to the conference report, since February 2014 he has completed a defensive driving course, "currently has eleven points on his record," and he "has been ticket-free for 8 months and nothing pending on ATS."

I **FIND** as **FACT** the above undisputed facts.

Respondent testified that on January 7, 2014, he received traffic citations in New York for two incidents. First, he was pulled over at the Midtown Tunnel after an officer saw a GPS device in his hand, and he was cited for failure to comply with the police instruction. The second incident occurred when a police siren was activated behind the respondent's tractor-trailer that was stopped at a traffic light. Respondent pulled to the right as soon as possible but still received the citation (improper operation). He paid each of the fines. He was unaware that the points would carry over to New Jersey, despite the fact that he had a similar offense on August 9, 2013, and the union with which he worked regularly reviewed his driver abstract.

Based upon the testimony and documents in evidence, I further **FIND** that respondent did in fact accumulate thirteen points in approximately six months.

By way of mitigation, respondent credibly testified, and I further **FIND**, that he has two children and is solely responsible for the care of his nine-year-old daughter. He is employed as a tractor-trailer driver in the entertainment industry, through a local union. For four years now, he has worked by way of referrals to production companies that need drivers and that routinely check the drivers' driving records and license status. A suspension would jeopardize his employment. He has voluntarily completed a safe driving course and he has had no traffic violations since February 2014. The Commission's conference report corroborates that he "has been ticket-free for 8 months [February to November 2014] and nothing pending on ATS," despite the driver abstract indicating a non-point violation for "obstructing passage of other vehicle" on August 26, 2014, a potentially erroneous entry. Respondent is willing to accept any punishment other than suspension.

Respondent's driver history since November 2003, which I further **FIND** as **FACT**, reflects a total of twenty-three violations. The number of the particular violations are as follows: failure to wear seat belt (four); speeding (three); unsafe operation of a motor vehicle (three); improper operation on a highway with marked lanes (two); failure to comply with police instruction (two); use of handheld device while driving (two); obstructing passage of other vehicle (two); reckless driving (one); failure to give proper signal (one); failure to observe traffic to full device (one); unlicensed driver (one); and

maintenance of lamps (one). As noted above, one of the non-point violations, obstructing passage of other vehicle on August 26, 2014, may be in error. Respondent's driving privilege was suspended from December 15, 2006, to February 13, 2007, and again from April 24, 2008, to June 10, 2008. On August 30, 2014, he received two-point credits for completion of a defensive driving program. Also, on February 11, 2015, he received three-point credits for annual safe driving.

LEGAL ANALYSIS AND CONCLUSION

The issues are whether respondent accumulated twelve or more points and, if so, whether the circumstances warrant a reduction in the scheduled suspensions.

Pursuant to N.J.S.A. 39:5-30(a), the Commission may suspend driving privileges for a violation of any Title 39 provision or on any other reasonable grounds. Additionally, the chief administrator shall suspend the license of any driver who accumulates twelve or more points in a period of two years or less, or fifteen or more points in a period greater than two years, except for good cause. N.J.S.A. 39:5-30.8. The period of suspension based on point accumulation is established under N.J.A.C. 13:19-10.2. An accumulation of twelve to fifteen points in a period of two years or less requires a suspension of thirty days (N.J.A.C. 13:19-10.2(a)(1)). In this matter, the respondent has accumulated at least twelve points within two years, a violation for which the Commission seeks to suspend his license for thirty days.

The Commission has broad discretion in determining penalties for motor vehicle violations, and each case must be weighed in terms of the circumstances of the offense, the motorist's background and driving history, as well as any aggravating or mitigating circumstances. Cresse v. Parsekian, 81 N.J. Super. 536 (App. Div. 1963), aff'd, 43 N.J. 326 (1964). 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); Cresse, supra, 81 N.J. Super. at 549. 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, but "[t]he very 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). Factors that may be relevant in determining the appropriateness of any suspension include the individual's past driving record, length of time licensed, receipt of proper 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 in determining the length of a suspension, 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).

Here, respondent initially argued that the New York infractions "were part of the same transaction" from which "he received 4 motor vehicle points in New Jersey," and "this is legally improper." (R-2.) He further argues that his driving history, including the February 2014 Pemberton violations, "significantly overstates his actual record of safety." (Ibid.) Respondent's arguments in this regard are unpersuasive. Respondent's own testimony indicated that he received traffic citations in New York for two incidents. He paid the fines for the sake of convenience but did not then realize that the points would be reflected on his New Jersey driving record. Additionally, he entered a voluntary plea regarding the February 2014 Pemberton infractions as well. He clearly accumulated thirteen points in just over six months.

As for imposition of any period of suspension, the triggering offenses that catapulted respondent over twelve points in February 2014 were improper operation of a motor vehicle (two points) and reckless driving (five points). Respondent's New Jersey driver history, dating back to 2003, reflects a total of twenty-three motor vehicle violations, with two prior periods of suspension. His last point violations were the above February 2014 infractions. On August 30, 2014, he received two-point credits for completion of a defensive driving program, and on February 11, 2015, he received a three-point credit for annual safe driving.

Respondent is a young father of two children who is solely responsible for the care of his nine-year-old daughter. He needs his license for his employment of over four years, where he drives tractor-trailers in the entertainment industry, through union

referral. Respondent did seem to exhibit a positive attitude and a satisfactory maturity level, particularly considering that he voluntarily attended a driver improvement program in or about August 2014. Additionally, there is evidence of recent improvement, as he has received no subsequent point violations and, on February 11, 2015, he received a three-point credit for annual safe driving.

Accordingly, based upon the totality of the circumstances, including the respondent's driving record, his efforts and progress toward improvement, and his personal background, including his family and employment situation, I **CONCLUDE** that respondent's driving privileges should be suspended, for remediation purposes only, for ten days, for point accumulation in violation of N.J.S.A. 39:5-30.8.

DECISION AND ORDER

Based upon the foregoing, I therefore **ORDER** that the Commission's decision to suspend Baum's license for a total period of thirty days should be and is hereby **MODIFIED** to a period of ten days effective on such date as shall be set forth in an Order of Suspension, which the Commission will send to respondent.

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 8, 2015

DATE



ROBERT BINGHAM II, ALJ

Date Received at Agency:

6/8/15

Date Mailed to Parties:

6-9-15

/lam

APPENDIX

EXHIBITS

For Petitioner:

- P-1 Certified Abstract
- P-2 Copy of letter from an attorney requesting a hearing, dated September 2, 2014
- P-3 Copy of Scheduled Suspension Notice, dated August 13, 2014
- P-4 Copy of Conference Report, dated November 13, 2014

For Respondent:

None

WITNESSES

For Petitioner:

Sharken Michaud

For Respondent:

Ronald H. Baum

**STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
AGENCY DKT. NUMBER: WXXXX XXXXX 05732
OAL DOCKET NUMBER: M.V.H. 01002-15**

IN THE MATTER OF :
JERMAINE WINGATE : **FINAL DECISION**

The Motor Vehicle Commission (“Commission”) hereby determines the matter of the proposed suspension of the New Jersey driving privilege of **JERMAINE WINGATE**, respondent, for driving during a period of suspension in violation of N.J.S.A. 39:3-40, N.J.S.A. 39:5-30 and N.J.A.C. 13:19-10.8. Pursuant to N.J.A.C. 13:19-10.8, respondent’s New Jersey driving privilege is subject to suspension for a period of 180 days. Prior to this final agency determination, I have reviewed and considered the Initial Decision rendered by the Administrative Law Judge (“ALJ”) and the letter of exceptions filed on behalf of respondent in this matter. Based upon the record presented, I shall modify the ALJ’s findings of fact and conclusions as specifically indicated below, and I shall modify the recommendation of the ALJ to an order that respondent’s driving privilege not be suspended. To the extent that I have not specifically modified a finding or conclusion herein I have adopted those findings and conclusions of the ALJ and incorporate those by reference in this decision.

In his Initial Decision, the ALJ determined that the Commission had properly suspended respondent’s driving privileges on July 15, 2007 (failure to pay insurance surcharges), that at the time of the suspension respondent resided at the Lexington Kentucky Public Safety Detention Center, where he had been incarcerated from June 21, 2007, through October 3, 2007, that respondent’s driving privileges were again

suspended on December 12, 2007 (failure to pay a probationary fee due), and December 27, 2007 (failure to provide proof of motor vehicle liability insurance), that respondent received a motor vehicle violation ticket for violation of N.J.S.A 39:4-67 (obstructing traffic) on January 7, 2008, that respondent's driving privileges were restored on December 17, 2008, and that on February 6, 2014, the MVC proposed the 180-day suspension for driving while suspended on January 7, 2008. Initial Decision at 2 – 3. In his Initial Decision, the ALJ notes that respondent had testified that the incarceration in Kentucky continued into 2008, and that, on April 27, 2015, after the record closed, respondent submitted additional documentation purporting to show that respondent was incarcerated on January 7, 2008. The ALJ rejected the additional documentation submitted by respondent, on the grounds that it was submitted after the closing of the record, and the web page that was submitted was not sufficiently authenticated to be admissible as evidence of respondent's incarceration on January 7, 2008. Initial Decision at 2. The ALJ recommended that respondent's driving privilege be suspended for the full 180 days proposed by the MVC.

In his letter of exceptions, respondent argues, as he did before the ALJ, that he was indeed incarcerated on January 7, 2008, and, therefore, could not have been driving during a period of suspension. Respondent bases his argument on documentation provided by the Kentucky Department of Corrections, which provided, under cover of Department of Corrections letterhead, an "External Movements" printout showing that respondent was incarcerated in Kentucky from August 24, 2007 through August 1, 2008, first at the Fayette County Detention Center, and then at the Henderson County Jail, from which he was discharged. This documentation confirms the

representation made to the ALJ, albeit after the record closed, that respondent was incarcerated on January 7, 2008. Therefore, in the interests of justice and in these unique circumstances, I modify the ALJ's finding and conclusion that respondent was driving while suspended on January 7, 2008, and order that respondent's driving privilege not be suspended for driving on January 7, 2008. Accordingly, no action will be taken by the Commission against respondent's New Jersey driving privilege as a result of the proposed suspension dated February 6, 2014, for driving while suspended on January 7, 2008.

It is, therefore, on this 30th day of July, 2015, **ORDERED** that no action be taken on the proposed suspension of the New Jersey driving privilege of **JERMAINE WINGATE** for driving while suspended on January 7, 2008.



Raymond P. Martinez
Chairman and Chief Administrator