

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT NO MVH 20290-15

AGENCY DKT. NO Kxxxx xxxxx 04562

**NEW JERSEY MOTOR  
VEHICLE COMMISSION,**

Petitioner,

v

**ALFRED P. KARL, III,**

Respondent

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**Scharkner Michaud**, Driver Improvement Analyst 2, for petitioner New Jersey Motor Vehicle Commission, pursuant to N.J.A.C. 1 1-5.4(a)2

**Alfred P. Karl, III**, respondent, pro se

Record Closed February 19, 2016

Decided. April 7, 2016

BEFORE ELIA A. PELIOS, ALJ.

**STATEMENT OF THE CASE**

This proceeding arises under the Accumulated Point Statute, N.J.S.A. 39 5-30, N.J.S.A. 39.5-30 8, and the implementing regulation, N.J.A.C. 13:19-10.1 et seq., which requires that the Motor Vehicle Commission (MVC, Commission) suspend the driver's

license of any person 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.

### PROCEDURAL HISTORY

On April 30, 2015, and May 7, 2015, the Commission prepared a Scheduled Suspension Notice for respondent's license for a period of thirty days each, based on the respondent's, Alfred P Karl, III (respondent, Karl), accumulation of twelve (12) or more points on his driving record. Respondent requested a hearing on the suspension, and the matter was then transmitted to the Office of Administrative Law (OAL) on December 11, 2015, for a hearing as a contested case. The hearing was held at the offices of the OAL in Mercerville, New Jersey on February 19, 2016, and the record closed on that date.

### FACTUAL DISCUSSION

Scharkner Michaud (Michaud) offered testimony on behalf of the MVC. He noted that the respondent accumulated seventeen points on his driving record and has been stopped for multiple violations. On January 10, 2015, he was cited for speeding in Pennsylvania, and received two points bringing his total to fifteen motor vehicle points. On February 1, 2015, he was stopped for speeding in Wall Township, and received two points, which brought his total to seventeen. The Commission is seeking two thirty-day suspensions.

Michaud acknowledged that respondent's current driver's abstract shows attempts to improve his driving record, including having taken a driving course, and having just received an annual safe driving reduction, resulting in a two- and three-point reduction in his points respectively. The respondent's point total currently is at twelve. See, Exhibits P-1 through P-4.

The respondent testified on his own behalf. Karl owns a car service called Big Al's Transportation. He described eight or nine years ago, having been in a Veterans

Administration rehabilitation facility, and understands the severity of his driving record. He stated that law enforcement has been more than fair with him

Karl indicated that he has not had an alcoholic drink in eighteen years, and not taken any drugs in nine years. In 2009, he was living in a church, but after attempting to get his life in order in 2010, he bought his first Cadillac and started his car service. The respondent is able to feed himself, pay his bills, and help with his children's costs. He notes that his insurance has lapsed due to his driving record, and he is trying to be better, but needs to drive to make a living. Karl is willing to take any tests, do any sort of coursework, or anything that could result in some sort of consideration, and appears to be very contrite.

No facts appear to be in dispute, and the testimony of each witness is hereby **ADOPTED** and **FOUND** as **FACT**

### LEGAL ANALYSIS AND CONCLUSIONS

N.J.S.A. 39:5-30.8 provides that except for good cause, the director shall suspend the license to operate a motor vehicle of any person 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. The proposed suspensions for thirty days were triggered in this case by two speeding violations in separate incidents in 2015.

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. "The 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. "Each 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 at 549 Need alone cannot be the deciding factor, 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).

In the present matter, there is no question that respondent has accumulated a total of seventeen motor vehicle points, and the agency has demonstrated that a suspension is appropriate. Reviewing respondent's driving record, it is clear that prior to the two incidents described above, he last accumulated points in 2012, and the most recent incident for which he accumulated points prior to that was 2007 Respondent has a high point total for infractions occurring many years ago, well prior to what he described as getting his life together in 2010 He also has demonstrated need in that he, more than merely commuting, relies on his driving to meet his expenses, and help with those of his children He also appeared very contrite, and has demonstrated taking steps, by way of a driver safety course and a recent annual safe driving credit, to demonstrate responsibility in dealing with his driving record

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.

#### **ORDER**

Based upon the foregoing, I therefore **ORDER** that the Commission's decision to suspend respondent's license for a total period of sixty 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

April 7, 2016

DATE

Date Received at Agency.

Date Mailed to Parties

nd



ELIA A. PELIOS, ALJ

April 7, 2016

4/1/16

**APPENDIX**

**WITNESSES**

**For Petitioner:**

Scharkner Michaud

**For Respondent:**

Alfred P Karl, III

**EXHIBITS**

**For Petitioner:**

- P-1 Certified Abstract
- P-2 Copy of Scheduled Suspension Notice, dated May 7, 2015
- P-3 Copy of Scheduled Suspension Notice, dated April 30, 2015
- P-4 Copy of Conference Report

**For Respondent:**

None

**STATE OF NEW JERSEY  
MOTOR VEHICLE COMMISSION  
CASE FILE NUMBER: RXXXX XXXXX 10534  
OAL DOCKET NUMBER: MVH 09558-15**

**IN THE MATTER OF** :  
**GERARD J. REDMOND** : **FINAL DECISION**

The Motor Vehicle Commission (MVC or Commission) hereby determines the matter of the proposed suspension of the New Jersey driving privilege of **GERARD J. REDMOND**, respondent, for his involvement in a motor vehicle accident which resulted in the death of Paul S. Nekrasov. 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 sixteen (16) months.

Respondent has been administratively charged with N.J.S.A. 39:4-81 – failure to observe a traffic control device. Prior to this final agency determination, I have reviewed and considered the Initial Decision of the Administrative Law Judge (ALJ) and the letter of exceptions to the Initial Decision, which has been filed with the Commission by counsel for respondent. Based upon a de novo review of the record presented, I shall accept and adopt in full the findings and conclusions contained in the Initial Decision and shall affirm the recommendation of the ALJ.

In the Initial Decision, the ALJ concluded, after a thorough and careful examination of the evidence and a comprehensive analysis of the applicable legal principles, that the Commission met its burden of proof with regard to the charge of failure to observe a traffic control device. However, in consideration of the facts set

forth in the record, the ALJ ultimately concluded that “a suspension period less than the sixteen months originally proposed by the Commission” was warranted. Initial Decision at 9. The ALJ recommended that respondent’s New Jersey driving privilege be suspended for a reduced period of six months.

Counsel for respondent filed a letter of exceptions to the ALJ’s Initial Decision.

The Uniform Administrative Procedure Rules require that

[t]he exceptions shall:

1. Specify the findings of fact, conclusions of law or dispositions to which exception is taken;
2. Set out specific findings of fact, conclusions of law or dispositions proposed in lieu of or in addition to those reached by the judge;
3. Set forth supporting reasons. Exceptions to factual findings shall describe the witnesses’ testimony or documentary or other evidence relied upon. Exceptions to conclusions of law shall set forth the authorities relied upon.

[N.J.A.C. 1:1-18.4b.]

Respondent’s letter failed to comply with these requirements. The letter did not identify any specific findings of fact or conclusions of law, or propose any findings of fact or conclusions of law omitted by the judge. Respondent also failed to set forth any evidence to support an exception to the judge’s factual findings or any authority to support an exception to the judge’s conclusions of law. While the Commission could, therefore, disregard the exception, I will address the issue raised.

Respondent’s exception was that the decedent’s daughter, Katherine Nekrasov, disrupted the hearing, whispered to the Commission’s counsel, and was silenced by the judge. Notably, respondent does not allege that the hearing was conducted improperly



or that the judge erred in any of his findings of fact or conclusions of law. Indeed, silencing a disruptive person in the courtroom is a proper function of a judge. N.J.A.C. 1:1-14.6.

According to the Initial Decision, the ALJ denied the motion to intervene by Ms. Nekrasov pursuant to N.J.A.C. 1:1-16.4. Initial Decision at 2. Despite that, the judge allowed Ms. Nekrasov to read and file an impact statement, which she did at the hearing. Additionally, the judge permitted Ms. Nekrasov to file exceptions to the Initial Decision with the Commission, although she did not do so. The Initial Decision does not indicate that Ms. Nekrasov's conduct at the hearing factored into the ALJ's findings of fact or conclusions of law. Additionally, the Initial Decision does not refer specifically to her impact statement as the basis of any of his rulings. In fact, the ALJ decreased the suspension period originally proposed by the Commission.

Accordingly, I hereby determine that: (a) respondent was involved in a motor vehicle accident resulting in the death of another; and (b) respondent's failure to observe a traffic control device was a contributing cause of the accident.

The ALJ, after considering the circumstances of this case, concluded that a six-month suspension would be justified in this matter. In making his recommended decision in this case, the ALJ correctly and thoroughly considered the factors set forth by the Appellate Division in Cresse v. Parsekian, 81 N.J. Super. 536, 549 (App. Div. 1963). Based on an independent review of the record and evaluation of these factors, I concur with each of the ALJ's assessments concerning aggravating and mitigating factors as detailed in the Initial Decision at 8 - 9. In light of my concurrence with the ALJ's assessment of all relevant factors and the balancing of such on this record, I shall

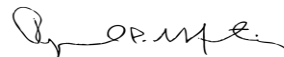
not disturb the ALJ's recommendation with respect to the period of suspension being reduced to six (6) months. The Commission notes that respondent's proposed suspension is intended to be rehabilitative rather than punitive in nature.

As a condition of restoration, respondent shall submit to a Commission Driver Re-examination pursuant to N.J.S.A. 39:5-30(f).

It is, therefore, on this 27<sup>th</sup> day of May, 2016, **ORDERED** that the New Jersey driving privilege of **GERARD J. REDMOND** be suspended for a period of six (6) months; and it is further

**ORDERED** that Gerard J. Redmond submit to a Commission Driver Re-examination pursuant to N.J.S.A. 39:5-30(f) and N.J.A.C. 13:20-12.2.

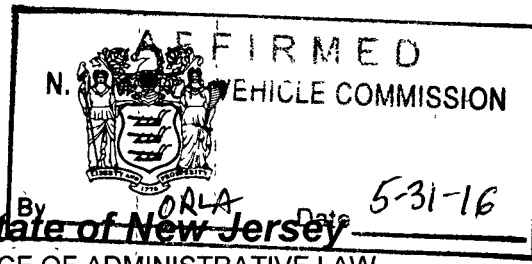
**NOTE:** The **effective date** of this suspension is set forth in the "Order of Suspension" which the Commission will send in a separate mailing.



Raymond P. Martinez  
Chairman and Chief Administrator

RPM: rdd

cc: James N. Butler, Jr., Esq.  
Conrad M. Olear, Esq.



OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. MVH 02666-16  
AGENCY DKT NO. CXXXXX  
XXXX 02642

**MOTOR VEHICLE COMMISSION,**

Petitioner,

v.

**JOHN D. CROSBY, JR.,**

Respondent

**Motor Vehicle Commission,** petitioner, appearing pursuant to N.J.A.C. 1:1-5.6(a)

**John D. Crosby, Jr.,** respondent, pro se

Record Closed: April 13, 2016

Decided: April 13, 2016

**BEFORE ELLEN S. BASS, ALJ**

**STATEMENT OF THE CASE**

This proceeding is brought under N.J.S.A. 39:3-10.1 and N.J.A.C. 13:21-14.5(a) and (c). The Motor Vehicle Commission ("Commission") seeks to indefinitely suspend the passenger endorsement on the Commercial Driver License (CDL) held by respondent, John D. Crosby. The issue is whether respondent has committed a disqualifying crime or offense within the meaning of N.J.A.C. 13:21-14.5(c)(12).

**PROCEDURAL HISTORY**

By notice dated August 28, 2014, the Commission proposed to suspend respondent's passenger endorsement indefinitely; on the basis that respondent has a disqualifying criminal arrest and/or conviction. Respondent requested a hearing by letter dated September 18, 2014. The matter was transmitted to the Office of Administrative Law (OAL) as a contested case on February 12, 2016. A hearing was conducted on April 13, 2016, at which time the record closed.

**FINDINGS OF FACT**

The relevant facts are not in dispute. Based upon a review of the testimony and the documentary evidence presented, I **FIND** the following **FACTS**:

The Commission submitted documents that confirm that respondent has a disqualifying criminal record. (P-1) Respondent does not dispute the criminal history presented by the Commission. He has twice been arrested and found guilty of a violation of N.J.S.A. 2C.33-2 1(b), which provides that

[a] person, whether on foot or in a motor vehicle, commits a disorderly persons offense if (1) he wanders, remains or prowls in a public place with the purpose of unlawfully obtaining or distributing a controlled dangerous substance or controlled substance analog; and (2) engages in conduct that, under the circumstances, manifests a purpose to obtain or distribute a controlled dangerous substance or controlled substance analog.

Respondent's first arrest took place in August 2012 in East Orange, New Jersey. The second arrest took place in June 2014 in Newark, New Jersey. As to the conviction in 2014, the documentary evidence reflects that no plea was entered, and that respondent was found guilty. As to the 2012 incident, a plea of guilty was entered by respondent.

The documentary evidence reveals that respondent is fifty-two years of age. He urged that he needs his license to continue in his present employment as a shuttle bus driver. He stressed that the two noted convictions were the extent of his involvement with the criminal authorities, and that he has worked his whole life and has otherwise gotten into no legal trouble. Relative to the 2014 conviction, he stated that he was walking with another gentleman who was helping him to locate a mechanic, when the police stopped them. There was drug paraphernalia on the ground. Respondent urged that he does not understand his conviction, because the paraphernalia was not his and he thought he was only being convicted of loitering. But as to the 2012 conviction, he admitted possession of a controlled dangerous substance, which he informed me he was carrying to assist a lady friend.

Respondent was a soft-spoken polite witness who appeared genuinely contrite, and anxious to resolve this matter so that he could continue in his current employment.

#### **LEGAL DISCUSSION AND CONCLUSIONS OF LAW**

The Commission has the authority and the obligation to impose reasonable restrictions on the issuance of licenses for various occupations in order to protect the public health and safety. Sanders v. Division of Motor Vehicles, 131 N.J. Super. 95, 97 (App. Div. 1974). The primary duty of the Commission "is to foster safety on the highways of this state." Atkinson v. Parsekian, 37 N.J. 143, 155 (1962).

N.J.S.A. 39.3-10.1 creates a special license for bus drivers, and directs that an applicant for such a license present satisfactory evidence of his or her "previous experience," "good character" and "physical fitness." Ibid. The statute authorizes the chief administrator of the Commission to suspend or revoke a bus driver license for a violation of the motor vehicle laws "or on other reasonable grounds, or where, in his opinion, the licensee is either physically or morally unfit to retain the same." Ibid.

Here, the Commission urges that respondent is not fit to hold the passenger endorsement or special license which would permit him to drive a bus because he has a disqualifying criminal record as defined by N.J.A.C. 13-21-14 5(c)(12). N.J.A.C.

13:21-14 5(c)(12)(i) provides that a criminal record is disqualifying when a driver has been convicted of "[a]n offense involving the manufacture, transportation, possession, sale or habitual use of a 'controlled dangerous substance' as defined in the 'New Jersey Controlled Substance Act.'" I **CONCLUDE** that respondent's two convictions clearly fall under the ambit of the regulation, and afford me no discretion to grant him the licensure he seeks.

This conclusion is consistent with the requirements of the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A.168A-1, which 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." N.J.S.A. 2A.168A-2 sets forth a variety of factors to consider in determining if an offense adversely affects licensure for a given trade. Among these factors are the "nature and duties" of the trade and the "nature and seriousness of the crime." Ibid. Bus and limousine drivers are first and foremost entrusted with the duty to safely transport members of the public. Involvement with controlled dangerous substances is plainly inconsistent with the safe discharge of those duties. Moreover, it is quite concerning that the convictions at issue are quite recent, respondent cannot assert that they were youthful indiscretions. As noted, he is now, only several years later, fifty-two years of age. See N.J.S.A. 2A.168A-2(d) and (e).

Accordingly, I **CONCLUDE** that respondent is disqualified from holding a passenger endorsement on his bus/commercial driver's license under the provisions of N.J.A.C. 13:21-14 5(c)(13).

### **ORDER**

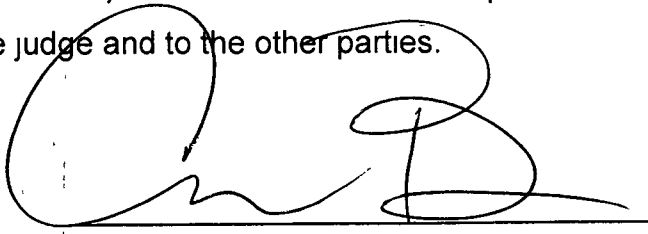
Based on the foregoing, I **ORDER** that the Commission's action suspending respondent's New Jersey passenger endorsement indefinitely be and the same hereby is **AFFIRMED**.

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.

April 13, 2016  
DATE

  
ELLEN S. BASS, ALJ

Date Received at Agency

April 13, 2016  
Laura Sanders

Date Mailed to Parties

APR 14 2016

\_\_\_\_\_  
DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

**List of Witnesses**

For Petitioner

None

For Respondent

John C/osby

**List of Exhibits**

For Petitioner:

P-1 Packet of Documents from Agency

For Respondent:

None





*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 APR 14 2016**