



AFFIRMED
MOTOR VEHICLE COMMISSION

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

By DLA

Date 11-30-15

INITIAL DECISION

OAL DKT. NO. MVH 09662-15

AGENCY DKT. NO. GXXXXXXX06705

NEW JERSEY MOTOR VEHICLE COMMISSION,

Petitioner,

v.

GARY GERCKENS,

Respondent

Kenneth Vercammen, Esq., for petitioner, New Jersey Motor Vehicle
Commission (Kenneth Vercammen & Associates, attorneys)

Anthony Fazioli, Esq., for respondent

Record Closed: October 1, 2015

Decided: October 15, 2015

BEFORE KIMBERLY A. MOSS, ALJ

Petitioner, New Jersey Motor Vehicle Commission (MVC) alleges that respondent Gary Gerckens (Gerckens) driving privileges should be suspended for five hundred and ten days because he was involved in a fatal accident for which he received a careless driving summons. Petitioner sent a scheduled suspension notice to respondent dated April 9, 2015. Respondent contested the suspension. The matter was transmitted to the Office of Administrative Law (OAL) and filed on June 30, 2015. A hearing was held on September 17, 2015. Petitioner submitted a closing statement on

September 30, 2015. Respondent submitted a closing statement on October 1, 2015, at which time I closed the record.

FACTUAL DISCUSSION

Testimony

Edwin Rivera

Edwin Rivera (Rivera) works as a superintendent for Hill Top on Dayton Drive in Edison. Rivera testified that he was working on April 22, 2014. He observed a moving truck going in reverse and a man, Chevli N. Hansraj (Chevli), standing behind the truck. Rivera was less than twenty feet from the scene when Chevli was hit. There were two impacts and Rivera saw the second impact. Chevli was conscious after the impact. The truck was backing up into a handicapped space. The truck was not going fast. Rivera was between buildings twenty-four and twenty-two at the time. Chevli was standing in front of a retaining wall before he was hit by the truck. There was damage to the retaining wall and the railing. Rivera took pictures of the scene.

Officer Charles Crincoli

Officer Charles Crincoli (Crincoli) is an Edison police officer. He testified that he was assigned to the patrol division, fourth district on April 22, 2014. He was dispatched to the area of 20 Dayton Drive to respond to a motor vehicle accident with an injury to a pedestrian. When he arrived at the scene he saw a truck, people, and an ambulance. He observed damage to the retaining wall and the driver-side door of the truck.

Crincoli spoke to Gerckens, who stated that he was attempting to back up the truck; he looked to see if anyone was behind him and did not see anyone. The truck was not aligned properly so he moved forward to realign the truck and proceeded to back up again and struck Chevli at that time. Crincoli did not speak to Chevli or his wife. He prepared a crash report. In the crash report, Crincoli listed the severity of the injury as moderate. He later became aware that Chevli had died.

There was no evidence of criminal activity. Gerckens was issued a ticket for careless driving. A co-worker could have directed the truck to avoid the accident. The prosecutor was not involved in this case. There was no indication that Chevli had any problems with his heart.

Gary Gerckens

Gerckens owns a moving company. He is also a driver for his company. He was working for Chevli and had previously met with Chevli's wife. Chevli was in the hospital for triple bypass surgery. He was contracted to move Chevli's belongings to a nursing home.

On April 22, 2014, Gerckens met with Chevli and his wife. There was a language barrier. Chevli moved his car from the handicapped spot to allow the moving truck to park there. He asked Chevli to move three times. Gerckens initially could not line the truck up with the ramp. At this time Chevli was heading upstairs. Gerckens looked both ways before he tried to reposition the truck. Gerckens thought that he had put the truck in park, but he had put the truck in reverse. The truck hit a car. He was half in and half out of the truck. Gerckens tried to stop the truck. He tried to re-enter the truck to stop it. At that time he heard someone screaming. He then saw that Chevli was injured and called the police. Chevli was crushed between the retaining wall and the truck. Chevli was conscious and Gerckens spoke to him. Gerckens believed that Chevli sustained a leg injury. The police issued Gerckens a ticket for careless driving. He found out Chevli died a few weeks later.

Gerckens spoke to the police at the scene. The police report does not mention the car being in reverse instead of park. There was damage to the retaining wall and the rail as a result of the accident.

Based on the testimonial and documentary evidence presented, and having had the opportunity to observe the demeanor of the witnesses and to assess their credibility, I make the following **FINDINGS of FACT**:

On April 22, 2014, Gerckens was operating a moving truck. Chevli hired Gerckens to move his belongings into a nursing home. Chevli had previously had triple bypass surgery. At approximately 8:55 a.m. Gerckens was trying to align the truck in front of 20 Dayton Drive in Edison. While attempting to align the truck with the ramp, Gerckens thought that he had put the truck in park when he actually put the truck in reverse. The truck struck Chevli who was standing on the sidewalk in front of a retaining wall at 20 Dayton Drive. The retaining wall was damaged from the impact. Chevli was conscious after the impact. Gerckens spoke to the police at the scene and was issued a ticket for careless driving. Gerckens pled guilty to an amended charge of unsafe driving and received a fine.

Chevli died in the hospital on April 22, 2014, at 7:49 pm. His cause of death was cardiac arrhythmia due to atherosclerotic coronary artery disease. The autopsy also lists blunt-force trauma of lower extremities due to auto/pedestrian accident as "other significant condition." The death certificate lists blunt-force trauma of lower extremities due to auto/pedestrian accident as other significant conditions contributing to death but not resulting in underlying cause. The autopsy revealed that Chevli sustained a right-shin tibia fracture, a left-shin tibia fracture, and a left-upper-thigh hemorrhage. There was no medical testimony.

LEGAL ANALYSIS AND CONCLUSION

The Commission is empowered to suspend a motorist's driving privileges for a violation of any provision of the motor vehicle statutes or for any other "reasonable grounds." N.J.S.A. 39:5-30. The Legislature has vested the authority in the Commission, subject to prompt review, to impose a driver license suspension as a preliminary matter prior to a plenary proceeding in a motor vehicle fatality case. N.J.S.A. 39:5-30(e)(3). Where the Commission proposes suspension of driving privileges under N.J.S.A. 39:5-30 as an administrative enforcement of the motor vehicle regulations, it bears the burden of proof by the preponderance of the competent and credible evidence of facts essential to such suspension. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

The primary object of a suspension or revocation of a driver's license "is to foster safety on the highway and not to impose criminal punishment to vindicate public justice." Atkinson, supra, 37 N.J. at 155; see also David v. Strelecki, 51 N.J. 563 (1968). The determination rests on a finding that "a law of the highway has been violated and that the highway would be a safer place for the public if the violator were removed as a driver for some period of time." Ibid. Suspensions must be imposed only for the purpose of reforming the particular motorist and are not to be imposed administratively for the purpose of deterring others. This matter involves a proposed suspension of respondent's license for a substantial period due to the death of another motorist during an accident in which it is alleged that respondent failed to keep right and careless driving.

The collision occurred when Gerckens, believing that he had put the truck in park, put the truck in reverse, and the truck stuck Chevli who was standing in front of the retaining wall.

N.J.S.A. 39:5-30(a)(e) provides:

a. Every registration certificate, every license certificate, every privilege to drive motor vehicles, including commercial motor vehicles as defined in P.L. 1990, c. 103 (C. 39:3-10.9 et al.), every endorsement, class of license, and commercial driver's license, may be suspended or revoked, and any person may be prohibited from obtaining a driver's license or a registration certificate, or disqualified from obtaining any class of or endorsement on a commercial driver's license, and the reciprocity privilege of any nonresident may be suspended or revoked by the director for a violation of any of the provisions of this Title or on any other reasonable grounds, after due notice in writing of such proposed suspension, revocation, disqualification or prohibition and the ground thereof

(e) Whenever a matter is presented to the director involving an alleged violation of

(1) R.S. 39:4-98, where an excess of 20 miles per hour over the authorized speed limit is alleged, and which has resulted in the death or serious bodily injury of another;

(2) R.S. 39:4-50, which has resulted in the death or serious bodily injury of another;

(3) R.S. 39:4-96 or R.S. 39:4-97, which has resulted in the death or serious bodily injury of another; or

(4) R.S. 39:4-129, wherein the death or serious bodily injury of another has occurred, the director for good cause may, without hearing, immediately issue a preliminary suspension of any license certificate or any nonresident reciprocity privilege to operate any motor vehicle or motorized bicycle held by an individual charged or temporary order prohibiting the individual from obtaining any license to operate any motor vehicle or motorized bicycle in this State. For purposes of this subsection, "serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. Along with the notice of preliminary suspension, the director shall issue a notice of proposed final suspension, revocation or other final agency action, and shall afford the individual the right to a preliminary hearing to contest the preliminary suspension and a plenary hearing to contest the proposed final agency action.

The preliminary suspension shall remain in effect pending a final agency decision on the proposed final agency action, unless a request for a preliminary hearing is received by the division no later than the 10th day from the date on which the notice was mailed. The proposed final agency action shall take effect on the date specified in the notice unless a request for a plenary hearing is received by the division no later than the 10th day from the date on which the notice was mailed.

Upon timely request by the individual, a preliminary hearing shall be held by an administrative law judge, no later than the 15th day from the date on which the division receives the request. The preliminary hearing shall be for the purpose of determining whether, pending a final agency decision on the matter, the preliminary suspension issued by the director shall remain in effect. Adjournment of the hearing shall be given only for good cause shown. If the preliminary hearing is otherwise postponed or delayed solely at the instance of someone other than the individual charged, the judge shall

immediately order that the individual's license certificate or any nonresident reciprocity privilege be restored pending the rescheduled preliminary hearing.

At the preliminary hearing, the parties shall proceed on the papers submitted to the judge, including the summons, the police reports and the charged individual's prior driving record submitted by the division, and any brief affidavits permitted by the judge from persons who shall be witnesses at the final hearing, and the parties may present oral arguments. Based on the papers, on any oral argument, on the individual's prior driving record, and on the circumstances of the alleged violation presented in the papers, the judge shall immediately determine whether the individual was properly charged with a violation of the law and a death occurred; and, if so, whether in the interest of public safety, the preliminary suspension shall be continued pending the final agency decision on the matter. The administrative law judge shall transmit his findings to the director.

Any plenary hearing to contest the proposed final agency action shall conform to the requirements for a plenary hearing contained in subsection b. of this section.

In this matter Chevli's death was caused by cardiac arrhythmia due to atherosclerotic coronary artery disease. No testimony was given that the blunt-force trauma was the cause of the cardiac arrhythmia. The autopsy lists blunt-force trauma of lower extremities due to auto/pedestrian accident; however, it does not list the blunt-force trauma as the cause of death. There was no medical testimony that the shin fractures were injuries that created a substantial risk of death or which cause serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. In other words, there was no medical testimony at all.

I **CONCLUDE** that petitioner has not proved by a preponderance of the evidence that the automobile accident of April 22, 2014, was the cause of death of Chevli or that the injuries that he sustained were serious bodily injuries.

ORDER

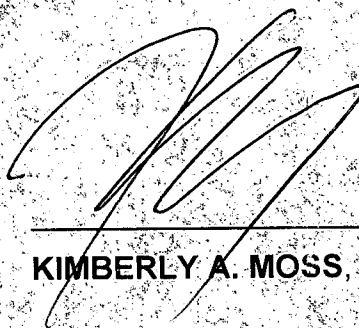
I **ORDER** that petitioner's proposed suspension of respondent's New Jersey driving privileges is hereby **REVERSED**.

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

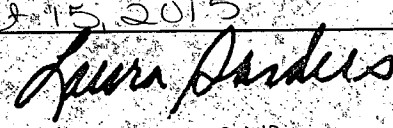
This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, P.O. 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.

10-15-15
DATE


KIMBERLY A. MOSS, ALJ

Date Received at Agency:

Oct 15, 2015


Date Mailed to Parties:

OCT 16 2015

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

ljb

APPENDIX

WITNESSES

For Petitioner:

Edwin Rivera
Officer Charles Crincoli

For Respondent:

None

EXHIBITS

For Petitioner:

- P-1 Photo
- P-2 Photo
- P-3 Photo
- P-4 Photo
- P-5 Photo
- P-6 Photo
- P-7 Photo
- P-8 Photo
- P-9 Photo
- P-10 Photo
- P-11 Police Crash Investigation Report dated April 22, 2014
- P-12 Death Certificate of Hansraj Chevli
- P-13 Autopsy report of Hansraj Chevli
- P-14 Fatal Accident Investigation Unit –Fatal Accident Report
- P-15 Certified Motor Vehicle Abstract of Gary Gerckens
- P-16 Disposition from Edison Municipal Court

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 OCT 16 2019**



OFFICE OF ADMINISTRATIVE LAW

**NEW JERSEY MOTOR
VEHICLE COMMISSION,**

Petitioner,

v

MICHAEL F. TEDESCO,

Respondent.

INITIAL DECISION

OAL DKT. NO. MVH 12823-14

AGENCY DKT. NO.

TXXXX XXXXX 08574

Anthony J. Apicelli, Esq., for petitioner New Jersey Motor Vehicle Commission

John E. Riehl, Jr., Esq., for respondent Michael F. Tedesco

Record Closed: April 15, 2015

Decided: October 15, 2015

BEFORE **ELIA A. PELIOS, ALJ.**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Michael F. Tedesco (Tedesco, respondent) appeals from the decision of the Motor Vehicle Commission (Commission) to suspend his license for a period of fifteen months due to his involvement in an accident resulting in the death of an individual. By letter of July 15, 2014, the Commission notified Tedesco of its action to suspend his license pursuant to N.J.S.A. 39:5-30, and he appealed that decision. On October 3, 2014, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case. The hearing was held at the offices of the OAL in Mercerville, New Jersey, on November 24, 2014

and March 4, 2015. The record remained open for post-hearing submissions. The record closed on April 15, 2015. Orders were entered to extend the time for filing the initial decision in this matter.

FACTUAL DISCUSSION

Many of the material facts in this matter are not in dispute. The accident that led to the fatality in this matter took place October 29, 2013. Respondent was driving his work vehicle, a 1995 Mack dump truck in a construction zone on the Garden State Parkway in Bass River Township in Burlington County. As he was backing his truck up to receive material from a street sweeper, he struck Donald Tomaio, who was operating a milling machine in the construction zone as well. Mr. Tomaio died as a result of the collision. According to a State Police Fatal Accident Report, both respondent and decedent tested negative for both alcohol and drugs. No motor vehicle summonses were issued to respondent as a result of the accident.

Douglas Menzer testified on behalf of the Motor Vehicle Commission. At the time of the accident he was working for a construction company at the site on the Garden State Parkway where the accident occurred. He noted that the site was somewhere between mile marker 40 and 50. He was operating a street sweeper. The job at hand was milling the Parkway. Menzer was performing cleanup behind the milling machine. He testified that he was a couple hundred feet behind the accident facing it. He was in the shoulder while the vehicles involved were in the traveling lanes. He observed the accident in progress. He noted that the decedent was a ground man working on the side of the milling machine, where he operated the box to adjust its grade. He described the vehicle driven by respondent as a tri-axle Mack dump truck. The dump truck was hauling millings, though Menzer did not know where the millings were being taken.

Menzer called to offload his sweeper truck's millings into the dump truck. He radioed respondent but the respondent's truck drove by and began backing up. He looked up and saw that a good percentage of the victim was already under the truck operated by

respondent. Menzer did not see how the decedent got caught in the wheels of the truck. He radioed respondent to stop. Other coworkers were on the scene. He noted there were four to five dump trucks ahead of the accident waiting to be loaded. Menzer exited his vehicle and ran up to the respondent's truck and told respondent to shut off and stop the motor, which he did. Menzer then went to see the victim. The State police arrived within minutes. Menzer noted that the truck backed up and ran over the victim. He noted that normally the victim would have been working on the curbside of the truck which is on the opposite side of the milling machine from where he was. He would not be behind the path of respondent's truck, and Menzer does not know how or why the victim came to be there. He is not aware of any rule or procedure that respondent failed to follow.

Sgt. James Dever of the New Jersey State Police testified next on behalf of the petitioning agency. He has worked for the New Jersey State Police for eighteen years and has served on the Garden State Parkway for twelve of those years. Part of his job duties are to coordinate construction plans on the Garden State Parkway. He would meet with contractors daily during construction projects to plan lane closings. At the time of the incident he was a supervisor. He recalls the accident in question. He recalls being further south on the Parkway, twenty-five to thirty miles away near the Avalon substation. He noted that the accident occurred at milepost 50 near Bass River station. Although there was no lane closing at the time the accident was still considered construction-related.

Sergeant Dever recalled arriving at the scene. He met with his supervisor who was already on the scene. He was then tasked with conducting the investigation into the matter. After speaking with his supervisor he waited for the fatal accident unit to arrive. Procedure required that he not touch anything and so he took preliminary statements. He assisted the fatal unit once they arrived, working to ascertain what the decedent did to be in the position that he was in. He noted that the accident occurred in a closed off area which is not open to traffic.

Dever described that the construction crew was performing a milling operation in preparation for a paving job. He described that a milling machine would grind up two

inches of asphalt which was then cleared onto a conveyor belt and offloaded into a dump truck in front of it. The vehicles were heading south. While he noted that the control boxes are at the rear of milling machines, the ground men don't necessarily stay there. He noted two dump trucks at the scene, including one in front of the milling machine. The other truck, the one involved in the accident, was off to the left and to the rear. The respondent's truck was empty. Dever described that when the dump truck is filled it will drive off and another truck would move into position to receive millings. In the present matter Menzer radioed that the sweeper truck was full and needed to offload into a new truck. Respondent's truck was to come to the left side of the sweeper to receive millings.

Dever did speak to Menzer after the accident. He did not speak to any witnesses at the scene nor did he take any photographs. He does not recall if he took any notes. Dever then proceeded to Bass River Station to conduct his investigation which included the preparation of a report (P-3).

Dever indicated that Menzer saw the decedent pulled into the tires of the dump truck though he did not know where the decedent came from. Dever noted that Menzer was the most direct witness to the events as they occurred. Menzer did not know what the decedent was doing at the time of the accident. Dever did not speak with the respondent. Formal statements were provided after Dever completed his preliminary report. He was not present for the taking of the statements. He did not issue any summons at the scene. It was determined that there was not an audible alarm on the truck for driving in reverse. Dever concluded that there was culpable negligence on the part of both parties with no witness to the actual events. Dever stated his belief that the mere fact that someone died in the incident means that the respondent did not exercise due care.

Respondent testified on his own behalf in these proceedings. He stated that he has an eighth grade education level and while he is divorced, his wife still lives with him. He is employed as a truck driver for the construction company conducting the milling project. He holds a commercial driver's license. He does not believe he has any points on his license. He has no other income beyond his work for the construction company.

and he owns his own home where he has lived for twenty years. He makes \$36,000 per year and does not pay alimony.

Respondent remembers the accident of October 29, 2013. He noted that the construction crew was conducting paving and milling at the same time. He was on the job site from 6:00 in the morning on that date. He did not hear the sweeper radio him as he was right next to the milling machine, right against the barrier. Another individual radioed respondent telling him that Menzer needed him. Respondent put his truck in reverse and started backing up. He felt a bump. He looked to the left and saw nothing. He looked to the right and saw that he had struck the decedent. He was very distraught by the events and was taken from the scene in an ambulance.

Respondent thinks about the accident all the time. He is currently seeing a psychiatrist two times per week. He describes tearing up still when he thinks about the accident. He wishes he knew why the decedent was standing where he was standing at the time of the accident. He believes his treatment is helping.

LEGAL ANALYSIS AND CONCLUSIONS

The Commission is empowered to suspend a motorist's driving privileges for a violation of any provision of the motor vehicle statutes or for any other "reasonable grounds." N.J.S.A. 39:5-30(a). The Legislature has vested authority in the Commission to impose a driver's license suspension as a preliminary matter prior to a plenary proceeding in a motor vehicle fatality case. N.J.S.A. 39:5-30(e)(3). Where the Commission proposes suspension of driving privileges under N.J.S.A. 39:5-30 as an administrative enforcement of the motor vehicle regulations, it bears the burden of proof by the preponderance of the competent and credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

The primary object of a suspension or revocation of a driver's license "is to foster safety on the highway and not to impose criminal punishment to vindicate public justice." Id. at 155; see also, David v. Strelecki, 51 N.J. 563 (1968). A decision to suspend rests on

a finding that "a law of the highway has been violated and that the highway would be a safer place for the public if the violator were removed as a driver for some period of time."

Ibid. Suspensions must be imposed only for the purpose of reforming the particular motorist and are not to be imposed administratively for the purpose of deterring others.

The present matter involves a proposed suspension of respondent's license for a substantial period due to the death of an individual in an accident where it is alleged by the Commission that respondent operated his vehicle in a careless manner pursuant to N.J.S.A. 39:4-97, which provides that "[a] person who drives a vehicle carelessly, or without due caution and circumspection, in a manner so as to endanger, or be likely to endanger, a person or property, shall be guilty of careless driving."

The record reflects that the decedent was out of position, on the opposite side of the milling machine than he would normally be. The record further reflects that respondent was performing his job duty as expected and was operating his vehicle at an extremely low rate of speed. While the record does reflect that the vehicle respondent was driving did not have a working audible reverse alarm, it is not in evidence that the maintenance of such was the responsibility of respondent or that he was aware of it before the incident.

Based on the above, I **CONCLUDE** that the Commission has not met its burden in this matter of proving that respondent was the cause of this fatality by operating his vehicle in a careless manner. While unquestionably a most tragic accident, from the record before me, the collision was not the result of respondent's operating his vehicle in a careless manner.

ORDER

Accordingly, it is **ORDERED** that the Scheduled Suspension Notice issued by the Motor Vehicle Commission under date of July 15, 2014, to respondent Michael F. Tedesco is **REVERSED**.

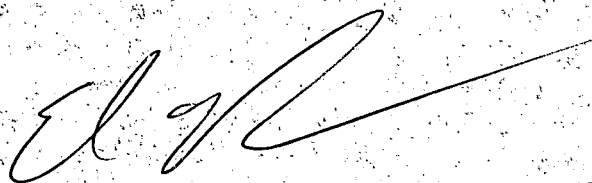
I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**; who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, PO Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 15, 2015 _____

DATE



ELIA A. PELIOS, ALJ

Date Received at Agency: _____

10/15/15

Date Mailed to Parties: _____

10/15/15

EAP/nd

WITNESSES

For Petitioner:

Douglas Menzer
Sergeant James Dever

For Respondent:

Michael Tedesco

EXHIBITS

For Petitioner:

P-1 Death Certificate
P-2 Certified Abstract of Driver History
P-3 State Police Investigation Report

For Respondent:

R-1 Supplemental Investigation Report
R-2 Toxicology Report

**STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
AGENCY DKT. NUMBER: BXXXX XXXXX 62674
OAL DOCKET NUMBER: M.V.H. 05823-15**

IN THE MATTER OF :
BEVERLY BOWSER : **FINAL DECISION**

The Motor Vehicle Commission (“Commission”) hereby determines the matter of the proposed suspension of the New Jersey driving privilege of **BEVERLY BOWSER**, 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 a de novo review of the record presented, I shall accept and adopt the findings and conclusions contained in the Initial Decision and affirm the recommendation of the ALJ.

In his Initial Decision, the ALJ recommends that respondent’s New Jersey driving privilege be suspended for one hundred eighty (180) days for having operated a motor vehicle during a period of suspension. Initial Decision at 6. The ALJ specifically found that respondent “knew her privileges were suspended” during her suspension from “April 15, 2011 until April 23, 2013” which suspension period was based on three separate underlying suspension orders for having failed to appear in three separate municipal courts and that respondent acknowledged that the pertinent facts were undisputed. Id. at 2. Moreover, the ALJ found that respondent’s testimony about

having to “go to her ‘happy place’ down the shore after being angry over her apartment” was “not a justifiable reason for operating a motor vehicle on March 30, 2013.” Id. at 3-4. The ALJ additionally found that respondent “has not demonstrated good cause for a special exception” to reduce the period of suspension and indicated his balancing of the competing interests of respondent and the public. The ALJ pointedly found, based on his assessment of respondent’s demeanor during testimony, that she and her overall driving record displayed an “utter lack of attention and overall attitude of recalcitrance.” Id. at 5.

In her letter of exceptions, respondent reasserts the financial and personal hardships that a license suspension will entail, reiterating that she will be unable to financially provide for herself and her disabled daughter who is not able to drive, and will not be able to provide the financial support she provides to her parents. She again provides explanation as to the circumstances regarding the work that was not done by the handyman at her new apartment when she was moving and the stressful situation she was in when she chose to drive on March 30, 2013. She states that she “shouldn’t have driven, however [she] needed to get away by [herself] to clear [her] head before [she] did something rash.” In essence, respondent again makes a plea for leniency in this matter.

In his Initial Decision, the ALJ recognized that:

Respondent described a hardship if her license was suspended. She stated her twenty-one year old daughter was enrolled in the “Dream Program” at Mercer County Community College and is an individual who has “special needs.” Her daughter has driven before but the respondent does not like her to drive. Also, her father is infirm and suffers from a cardiac condition and diabetes. She stated that her mother takes her father to and from his doctor appointments, but the respondent helps.

[Initial Decision at 3.]

As specifically noted in the Initial Decision, the ALJ did take respondent's personal circumstances and the situation described into consideration when he rendered his Initial Decision and recommended the remedial sanction of a 180 day suspension as being appropriate. I wholly concur with the ALJ's findings and his balancing of respondent's interest against that of the public, in light of his assessment of respondent's demeanor at the hearing as it relates to her driving behavior and her overall driver history record. It is furthermore noted that contrary to respondent's assertions in her exceptions, there are more instances than one in her driver history record for which respondent's registration and/or license were suspended for having failed to comply with the mandatory vehicle insurance laws: specifically as shown on the Certified Abstract of Driver History Record (Exhibit P-1) in 1996, 1997, 2002 and 2008. Additionally, there are repeated failures to appear in various municipal courts in her record for which she only offers that these "aren't a good reflection on me", while noting that she "notif[fied] the courts albeit late on some of those occasions and on some [she] remembered too late about the hearing." In sum, there is nothing offered in respondent's exceptions that supports disturbing the ALJ's analysis and recommendation here. An independent de novo review, in light of the ALJ's specific credibility and demeanor determinations, fully supports that there is no mitigation on this record which would provide cause for reducing the recommended 180 day term of suspension. There is a clear indication from this record that respondent's driving behavior is in need of significant reform.

I, like the ALJ, have taken respondent's circumstances into consideration when arriving at my decision, but I also have a responsibility to impress upon

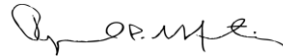
respondent that drivers of motor vehicles have an obligation to operate such vehicles with reasonable care and in accordance with the motor vehicle laws and regulations of this State. While I am sympathetic regarding the hardship that the respondent may suffer as a result of her New Jersey driving privilege being suspended, respondent must nevertheless appreciate the responsibility that she owes to the public under the motor vehicle laws. Motor vehicle license suspensions are primarily intended to protect the safety of the public by temporarily removing offenders from the highways of New Jersey. David v. Strelecki, 51 N.J. 563, 566 (1968); Cresse v. Parsekian, 43 N.J. 326, 328-29 (1964). Moreover, the respondent is reminded that the operation of a motor vehicle on New Jersey roads is a privilege, not a right. State v. Nunez, 139 N.J. Super. 28, 30 (Law Div. 1976); State v. Kabayama, 94 N.J. Super. 78, 82-83 (Law Div.), aff'd, 98 N.J. Super. 85 (App. Div. 1967), aff'd, 52 N.J. 507 (1968). A 180-day period of suspension is both warranted and reasonable in the present case when public safety is balanced against respondent's need to maintain her driving privilege. The Commission notes that respondent's proposed suspension is intended to be rehabilitative rather than punitive in nature.

As a final note, respondent points to two "date" errors contained in the Initial Decision, which upon review are clearly typographical errors concerning the year listed. The respondent's hearing request (appeal of the scheduled suspension) should be indicated as March 23, 2014, rather than March 23, 2015. Also, the scheduled suspension notice had indicated that the suspension was to have become effective

March 25, 2014, rather than March 25, 2013.¹ These minor corrections have no bearing on the substantive analysis or determination of the appropriate sanction noted above.

It is, therefore, on this 27th day of November, 2015, **ORDERED** that the New Jersey driving privilege of **BEVERLY BOWSER** be suspended for a period of one hundred eighty (180) days for driving during a period of suspension on March 30, 2013.

NOTE: The **effective date** of this suspension is set forth in the “Order of Suspension” which the Commission has included in this mailing.



Raymond P. Martinez
Chairman and Chief Administrator

RPM:kw

Enclosure: Order of Suspension

¹ Due to respondent’s hearing request, the suspension has not been put into effect pending a final agency decision.