

**STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
CASE FILE NUMBER: AXXXX XXXXX 09924
OAL DOCKET NUMBER: M.V.H. 17356-13**

IN THE MATTER OF :
BRAD E. AMOGRETTI : **FINAL DECISION**

The Motor Vehicle Commission (“Commission” or “MVC”) hereby determines the matter of the proposed suspension of the New Jersey driving privilege of **BRAD E. AMOGRETTI** 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 recommendation of the ALJ as indicated below.

In his Initial Decision, the ALJ concluded that the MVC proved by a preponderance of the evidence that respondent committed the driving-while-suspended offense on December 18, 2011, in violation of the court-ordered suspension issued by the Atlantic City Municipal Court.¹ The ALJ found that this was established by the

¹ The Initial Decision mistakenly refers to the court-ordered suspension as having been issued by the “Asbury Park Municipal Court.” However, Exhibit P-2, the “Confirmation of Suspension by Court” notice issued by the Commission, establishes that it was, instead, the Atlantic City Municipal Court that ordered the underlying suspension. It is further noted that this court-ordered driver license suspension, made effective November 1, 2011 by the court, was based on a non-driving related matter.

respondent having received a violation (conviction²) under N.J.S.A. 39:3-29 for failing to exhibit license, registration or insurance identification card on that date. Initial Decision at 3 - 4.

The issue in this case is whether on the particular record presented in this matter the MVC has sustained its burden of proof regarding the element of operation – that is, whether the respondent was the driver/operator of the vehicle – at the time he received the triggering summons under N.J.S.A. 39:3-29, for which he was later convicted. The respondent does not contest that he was validly suspended on the date he received the summons and had received proper notice from the court of such suspension.

In his letter of exceptions, the respondent contends that, on this record, MVC did not meet its burden of proof. The respondent points out that he never disputed receiving the ticket nor pleading guilty to the ticket. Rather, he contests the allegation that he was actually operating the vehicle. He asserts that he was a passenger in his own car (and thus was issued the summons for failing to produce the registration) on that date. Respondent points out that the ALJ explicitly found him “credible” in his sworn testimony, which the ALJ specifically recounted as:

He knew of the suspension and regularly had his friend, John Halley drive him in his vehicle. He received the ticket because the vehicle’s registration is in his name. He pled guilty to the offense and received a fine. [He] testified this is the first time he was pulled over as a passenger in his vehicle. He acknowledged that he has been suspended from time to time, but denied driving the vehicle on this occasion.

[Initial Decision at 2.]

² The conviction is conclusively established by the Certified Abstract of Driver History Record, Exhibit P-1, and indeed is undisputed in this matter.

Case law instructs that “[a]n agency head reviewing an ALJ’s credibility findings relating to a lay witness may not reject or modify these findings unless the agency head explains why the ALJ’s findings are arbitrary or not supported by the record.” S.D. v. Div. of Med. Assistance & Health Servs., 349 N.J. Super. 480, 485 (App. Div. 2002); see also N.J.S.A. 52:14B-10(c) (An agency head may only reject the ALJ’s credibility findings if he or she determines “from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record.”)

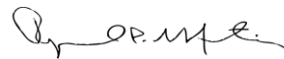
Indeed, in matters concerning credibility, I am required to give due regard to the person who had an opportunity to judge the credibility of the witnesses. Close v. Kordulak Bros., 44 N.J. 589 (1965). “[T]rial courts’ credibility findings . . . are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record.” In re Taylor, 158 N.J. 644, 660 (1999) (quoting State v. Locurto, 157 N.J. 463, 474 (1999), in the context of an administrative hearing). Moreover, as explained in Locurto, supra, 157 N.J. at 473-474, credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear.

Thus, I will defer to the ALJ’s finding that respondent’s specific testimony as to his having been the passenger on the date in question was credible as there is no indication from any other evidence offered by MVC in this particular record which contradicts this testimony.³ The police officer did not appear at the hearing to give

³ It is noted that the ALJ later in his Initial Decision makes the statement that there are “factors combined with the violations appearing on respondent’s driving abstract, [which] place this tribunal in the position of not accepting respondent’s version of the facts.”

testimony and there were no court documents or driver history records entered in this record to rebut the respondent's credible testimony. Furthermore, it is distinctly noted that this is not an instance where the respondent was also issued another Title 39 moving violation summons(es) by that same officer, nor does the record show that this N.J.S.A. 39:3-29 conviction was the result of a plea negotiation involving a downgrade from another Title 39 moving violation. On this particular record, based on the facts of this case as presented in the evidence introduced herein, the MVC's proposed suspension cannot be sustained.

It is, therefore, on this 15th day of September, 2014, **ORDERED** that no action be taken on the proposed suspension of the New Jersey driving privilege of **BRAD E. AMOGRETTI**, issued on September 27, 2012, for having driven during a period of suspension on December 18, 2011.



Raymond P. Martinez
Chairman and Chief Administrator

RPM:kw

c: Colin Burke, Esq.

However, this seemingly conflicting statement of the ALJ, must be rejected as it derives from a flawed starting point: that respondent, and not MVC, had the burden of proof as to the element of operation. It also rests on reference to prior violations which cannot be used to prove the elements of the subject administrative charge, but could be used in assessing the totality of the circumstances once an administrative charge is proven when considering the appropriate sanction to impose.