



A F F I R M E D
N. J. MOTOR VEHICLE COMMISSION
By OLR Date 12-19-22

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. MVH 07238-22

AGENCY DKT. NO.

BXXXX XXXXX 08822

**NEW JERSEY MOTOR
VEHICLE COMMISSION,**

Petitioner,

v.

ANTHONY W. BELL,

Respondent.

Scharkner Michaud, Manager and Transmitting Officer, for petitioner pursuant to
N.J.A.C. 1:1-5.4(a)2

Anthony W. Bell, respondent, pro se

Record Closed: September 22, 2022

Decided: November 4, 2022

BEFORE **KATHLEEN M. CALEMMO**, 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 (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 June 10, 2021, the Commission prepared a Scheduled Suspension Notice for respondent's license for a period of 540 days. (P-2.) On August 24, 2021, the Commission prepared a second Scheduled Suspension Notice for respondent's license for a period of 600 days. (P-3.) Both notices were based on the respondent's, Anthony W. Bell's (Bell), accumulation of twelve (12) or more points on his driving record. Respondent requested a hearing on the two suspensions, and the matter was transmitted to the Office of Administrative Law (OAL) on August 18, 2022, for a hearing as a contested case. The hearing was held telephonically on September 22, 2022, and the record closed on that date.

FACTUAL DISCUSSION

The pertinent facts from the testimony are not in dispute and I **FIND** the following as **FACT**:

Scharkner Michaud (Michaud) offered testimony on behalf of the MVC. He noted that Bell has accumulated seventy-nine points on his driving record, and has been driving on a suspended license since March 2010. (P-1.) On June 19, 2019, Bell was cited for reckless driving, and received five points. On May 3, 2021, Bell was cited for careless driving, and received two points, which brought his total to seventy-nine points. The Commission is seeking two separate suspensions, one for 540 days and the other for 600 days.

Michaud raised the concern that Bell continues to drive despite his suspension. He noted that driving while suspended is a reckless act.

The respondent testified on his own behalf. Bell offered, in his defense, that most of the points, approximately sixty of the seventy-nine points, occurred in his youth. He acknowledged and regretted his reckless behavior which has affected twenty years of his life. He claimed to understand the point system but did not agree that driving while suspended was reckless driving.

His most recent points for careless driving occurred on May 3, 2021. Bell explained that it was work related. He was driving a piece of machinery for work on a private roadway and misjudged the width of the vehicle which caused the accident. The second incident occurred on June 19, 2019, when he received five points for reckless driving. Bell claimed that he was stopped for driving under the influence, but that charge was dismissed, and he was given a reckless driving charge instead.

Bell works as a construction project manager. He does not need to drive for work because he is able to get rides to and from the construction sites. Bell has been trying to resolve his driving history and he is working to pay his court fines and surcharges. He is not eligible for a driver's license until 2029.

According to his Abstract of Driver History Record (P-1), Bell received the following citations with corresponding points:

<u>Date</u>	<u>Citation</u>	<u>Points</u>
09/19/1999	Failure to give proper signal	2
12/06/2000	Careless Driving	2
02/25/2001	Avoiding a traffic control signal	2
03/17/2001	Careless Driving	2
05/05/2001	Careless Driving	2
05/05/2001	Disregard of Stop Sign regulations	2
07/25/2001	Careless Driving	2
08/20/2001	Careless Driving	2
09/03/2001	Illegal Use of a Medial Strip	2
10/21/2001	Careless Driving	2

12/24/2001	Careless Driving	2
03/09/2002	Improper Turn Marked Course	3
01/12/2003	Speeding	4
10/16/2003	Reckless Driving	5
02/22/2004	Speeding	2
05/06/2004	Careless Driving	2
05/09/2004	Careless Driving	2
05/31/2004	Reckless Driving	5
07/31/2004	Reckless Driving	5
05/01/2005	Improper Oper – Hwys W/Marked Lanes	2
08/31/2006	Speeding	4
10/14/2009	Careless Driving	2
10/21/2009	Speeding	2
10/30/2009	Speeding	2
11/06/2009	Speeding	4
01/24/2010	Improper Oper – Hwys W/Marked Lanes	2
08/28/2012	Careless Driving	2
01/25/2015	Speeding	2
01/16/2016	Careless Driving	2
04/24/2016	Wrong Way on One Way Street	2
08/08/2017	Careless Driving	2
06/19/2019	Reckless Driving	5
05/29/2020	Improper Oper – Hwys -w/Marked Lanes	2
05/03/2021	Careless Driving	2

In summary, he has received seventy-nine points in the last twenty-two years. While sixty-eight of his points did occur before 2010, the longest he ever went without receiving any points was between August 28, 2012, and January 25, 2015. While I did not doubt Bell's sincerity and I sympathize with his difficulties, there is no dispute that Bell continued to drive and accumulate points while he was suspended.

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 were triggered in this case by two violations in separate incidents: reckless driving on June 19, 2019; and careless driving on May 3, 2021.

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). 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 seventy-nine motor vehicle points, and the Commission has demonstrated that further suspension is appropriate. Reviewing respondent's driving record, prior to these last two triggering incidents, Bell had gone almost two years without accumulating points. It is also clear that sixty-eight of his seventy-nine points were incurred by January 24, 2010. However, Bell still incurred eleven points in the last twelve years, while driving without a

license. Although his obstacles to reinstate his license are currently staggering, Bell has not taken the appropriate steps during these past twenty years to improve his driving record. More importantly, he failed to heed his suspension notices. Bell also has not demonstrated need beyond merely convenience. Fortunately, he can continue to earn a living without a license.

While I am sympathetic regarding the hardship that Bell has suffered because his New Jersey driving privilege has been suspended for most of his adult life, it does not excuse consistently driving without a license. Respondent has a responsibility 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).

Generally, the schedule of suggested suspensions should be followed in the interest of uniformity, unless an individual licensee is able to demonstrate extraordinary circumstances justifying a reduction or waiver. Here, I **CONCLUDE** that given the totality of the circumstances, Bell was not able to demonstrate sufficient mitigating factors to justify a reduction in his suspensions.

Two separate serious incidents, almost two years apart, triggered the suspension notices. The violations were serious. Bell was cited for reckless and careless driving, while suspended and with full knowledge that he did not have a valid license. The administrative actions that gave rise to the suspensions occurred on June 10, 2021, imposing a suspension of 540 days, and on August 24, 2021, imposing an additional suspension of 600 days, totaling an additional 1,140 days of suspension. I am constrained to **CONCLUDE** that Bell has not demonstrated that his suspensions should be remediated.

Petitioner 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. Apart from any sanction imposed by a court, the Commission may suspend or revoke the driving privileges of any person who violates a provision of Title

39 of the Motor Vehicle Code. N.J.S.A. 39:5-30. The implementing regulations state that whenever an individual's driving privileges have been suspended or revoked, the period of the sanction shall be extended for an additional six months, or for some other period determined by the Commission, should the individual operate a motor vehicle during the period of suspension or revocation. N.J.A.C. 13:19-10.8.

Accordingly, I **CONCLUDE** that respondent's driving privileges should be suspended, for remediation purposes only, in accordance with his Scheduled Suspension Notice dated June 10, 2021, for 540 days, and his Scheduled Suspension Notice dated August 24, 2021, for 600 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 1,140 days should be and is hereby **AFFIRMED**, 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.

November 4, 2022

DATE

Kathleen M. Calemno

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

VIA EMAIL, November 4, 2022

Date Mailed to Parties:

VIA EMAIL, November 4, 2022

KMC/jns

APPENDIX

WITNESSES

For petitioner

Scharkner Michaud

For respondent

Anthony W. Bell

EXHIBITS

For petitioner

- P-1 Certified Abstract
- P-2 Copy of Scheduled Suspension Notice, dated June 10, 2021
- P-3 Copy of Scheduled Suspension Notice, dated August 24, 2021
- P-4 Copy of Conference Report

For respondent

None