



AFFIRMED
MOTOR VEHICLE COMMISSION

By LPA
State of New Jersey

Date 8-19-19

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. MVH 03243-19

AGENCY DKT.NO.JXXXX XXXXX04862

**NEW JERSEY MOTOR
VEHICLE COMMISSION,**

Petitioner,

v.

ADAM J. JONES,

Respondent.

Courtney Davison, Driver Improvement Analyst 3, for petitioner pursuant to N.J.A.C.
1:1-5.4(a)(2)

Adam J. Jones, respondent, pro se

Record Closed: May 21, 2019

Decided: July 3, 2019

BEFORE **SUSAN L. OLGATI**, ALJ:

STATEMENT OF THE CASE

Respondent, Adam J. Jones, appeals the Motor Vehicle Commission's (Commission) action seeking to impose a 180-day suspension of his driving privileges due to his operation of a motor vehicle during a period of suspension.

PROCEDURAL HISTORY

On May 27, 2018, the Commission issued a scheduled notice of suspension as of June 19, 2018, for a period of 180 days. Respondent submitted a timely request for hearing. The Commission transmitted the matter to the Office of Administrative Law, where it was filed on March 6, 2019, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The hearing was conducted on May 21, 2019, and the record closed on that date.

FACTUAL DISCUSSION AND FINDINGS

The following facts are supported by the undisputed documentary and testimonial evidence in the record therefore I **FIND**:

Respondent has a driver abstract dating back to March 2004 which reflects multiple motor vehicle violations, as well as, multiple license suspensions primarily relating to non-payment of an insurance surcharge.¹ As a result of one of his traffic violations, respondent incurred an insurance surcharge. He failed to make the required surcharge payment and as a result, on June 30, 2017, the Commission issued a notice of proposed suspension. The notice advised respondent that if he did not remit a surcharge payment of \$100 by July 11, 2017, his driving privileges would be suspended as of August 13, 2017. P-2. The Commission sent the notice of proposed suspension to W.W. Drive.² A copy of the notice was also sent to W. Avenue³. Respondent admits that he received the notice of the proposed suspension at his W.W. Drive address. Respondent did not pay the required insurance

¹ A review of the last five years of respondent's driving history reveals five moving violations including: using a hand held cell phone while driving (August 18, 2017) ; improper turn green arrow traf. cnt. (April 7, 2016); improper visibility/lights (March 10, 2015); no lic., reg. or ins. id. in possession April 1, 2013; and driving while suspended prk. ticket (February 27, 2013) . During this same time period, respondent's driving history reveals eight license suspensions, five due to non-payment of insurance surcharge and three court ordered suspensions due to failure to appear.

² The address where respondent currently resides. The names of the streets have been changed to protect the respondent's confidentiality.

³ Respondent advises that this is his mother's address and that he has not lived at this address for approximately seven years. Despite this, respondent has not changed his address on file with the Commission. .

surcharge by the date indicated in the notice of proposed suspension. As a result, his license was suspended effective August 13, 2017. P-3.

On August 18, 2017, respondent received a summons in N.Y. for using a hand held cell phone while driving. Thereafter, respondent paid the outstanding surcharge and his driving privileges were restored effective August 23, 2017. P-4. On May 25, 2018, the Commission issued an Order ^{proposing to} suspending respondent's driving privileges for 180 days due to his operation of a motor vehicle [on August 18, 2017] during a period of suspension. P-5.

LEGAL ANALYSIS AND CONCLUSIONS

Respondent argues that when he was ticketed on August 18, 2017, for using a hand held cell phone, he did not also receive a violation for operating a vehicle during a suspension period. Respondent also argues that he did not receive a copy of the August 13, 2017, Order of Suspension as it was only mailed to the W. Avenue address. Thus, respondent contends he was not aware of the suspension at the time he was stopped and ticketed for use of a hand held cell phone. Respondent argues that the Commission selectively chose to mail different notices to different addresses when it knows that he resides at W.W. Drive. Respondent also notes that he drives for a living and supports his child with this income.

The Commission explained that its practice is to mail Orders of Suspension to the last address on record. In respondent's case, the only address on record with the Commission is W. Avenue. See R-7. The Commission further explained that the notice of proposed suspension was issued by the surcharge unit which has access to additional address information associated with drivers. As a result, the surcharge unit also sent a copy of the notice of the proposed suspension to respondent's W.W. Drive address.

The issue is whether respondent received proper notice of the suspension of his driving privileges. The controlling statute in this matter is N.J.S.A. 39:5-30. The Commission's power to suspend respondent's driving privileges stems from this statute which provides that every class of license may be suspended after due notice in writing of the proposed suspension and the grounds thereof. Id. The statute further provides that:

In the notice, the director shall provide the individual charged with an opportunity for a plenary hearing to contest the proposed final suspension, revocation or other final agency action. Unless the division receives, no later than the 10th day from the date the notice was mailed, a written request for hearing, the proposed final agency action shall take effect on the date specified in the notice. Id.

In MVC v. Hayes-Scharon, OAL docket No. 01490-13 (Initial Decision, April 25, 2013), the ALJ noted the intent of the above referenced statute is clear. "When advance notice of an intent to suspend is provided, that notice is sufficient to warn the driver that the suspension will proceed on the date specified." Id. In that case, the ALJ found that the notice of the proposed suspension was sufficient because it made clear that respondent's license would be suspended on a date certain if payment was not made by the fixed date. The ALJ found that as respondent did not make payment by the date indicated, she knew or should have known that her license would be suspended on the date indicated. Id. In affirming the decision of the ALJ, the Chairman of the Commission found additional support in the governing case, State v. Wenof, 102 N.J. Super. 370, 376 (Law Div. 1968), *overruled on a jurisdictional question* (but not on the notice requirements) by State v. Ferrier, 294 N.J. Super. 198 (App. Div. 1996), *certif. denied* 148 N.J. 461 (1997), which held that actual receipt of the notice is not required to meet the due process notice requirement contained in N.J.S.A. 39:5-30. As cautioned in Wenof, "[i]f such requirement [of actual notice] existed the scofflaw would have it in his power to thwart the revocation proceedings." Id. The Wenof decision held that legally sufficient notice is provided when the notice is sent through ordinary mail to the last address of record provided by the driver, as this is "reasonably calculated to reach the intended part[y]." Id. at 375-376. There, the court found that notice was properly sent to the driver at her last address of record. Moreover, the driver admitted to having received notice of the proposed suspension, thus the court found there was no question that proper advance notice had been provided.

Here, a copy of the June 2017, proposed notice of suspension was sent to both respondent's last address on record with the Commission (W. Avenue) as well as his current address (W.W. Drive). The proposed notice of suspension clearly advised respondent that if the required surcharge payment was not made by July 11, 2017, his driving privileges would be suspended effective August 13, 2017. Further, as in the

Wenof case, respondent admits to receiving a copy of the notice of the proposed suspension at the W.W. Drive address. Thus, respondent was on notice that his driving privileges were suspended effective August 13, 2017, based on his failure to timely remit the required surcharge payment. Respondent's contention that notice was not sufficient because he did not receive a copy of the final Order of Suspension at the W.W. Drive address wholly is unpersuasive. Respondent received notice of the proposed suspension and had an opportunity to contest same. That he failed to comply with the conditions of the notice of proposed suspension or that he may not have also received the final Order of Suspension which was mailed to the address on record with the Commission, as provided by the respondent, is of no consequence. Accordingly, I **CONCLUDE**, that proper advance notice of the suspension was provided.

Having concluded that proper advance notice of the proposed license suspension was provided, I next give consideration to the remedial sanction to be imposed.

N.J.A.C. 13:19-10.8 provides for a 180-day suspension of driving privileges when it is shown that a driver has operated a vehicle during a period of suspension. The undisputed record reflects that respondent operated a vehicle on August 18, 2017, during a period of suspension.

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. 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). It is the Commissioner's function to impose suspensions for the purpose of reforming the particular motorist, and not for the purpose of frightening or deterring others, even though that may be an incidental result. Cresse v. Parsekian, 81 N.J. Super. 536, 549 (App. Div. 1963), aff'd 43 N.J. 326 (1964).

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. Our courts have held that "[t]he 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 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, 81 N.J. Super. at 549. Need alone cannot be the deciding factor, however, 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, while respondent has an extensive driving history dating back to 2004, his moving violations do not appear to be egregious in nature. Further, since the August 18, 2017, ticket for use of a hand held cell phone, respondent has not received any additional violations.⁴ Additionally, while respondent's driving history reflects multiple license suspensions, the suspensions are primarily due to non-payment of insurance surcharges. In the instance of the underlying August 13, 2018, suspension for non-payment of surcharge, respondent satisfied that surcharge and had his driving privileges restored ten days later (effective August 23, 2018). Finally, respondent advises that he works as a driver and supports his child with this income. While respondent should clearly be more diligent in responding to the notices he receives from the Commission and should update his address on record with the Commission, neither the remedial nature of the statute nor the interest in public safety is served by the imposition of the full suspension period.

Accordingly, based upon the totality of the circumstances, including respondent's driving record; his apparent progress towards improvement, his employment situation, and his need to financially support his child, I **CONCLUDE** that respondent's driving privileges should be suspended for 120 days.

⁴ As per the February 14, 2019, abstract of driver's history at P-1.

ORDER

Based upon the foregoing, I therefore **ORDER** that the Commission's decision to suspend respondent's driving privileges should be and is hereby **MODIFIED** to a period of **120** 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.

July 3, 2019

DATE



SUSAN L. OLGIATI, ALJ

Date Received at Agency:

7/3/19

Date Mailed to Parties:

7/8/19

SLO

APPENDIX

WITNESSES

For petitioner:

Courtney Davison

For respondent:

Adam Jones

EXHIBITS

For petitioner:

- P-1 Abstract of Driver History Record
- P-2 Proposed Plan Default and Proposed Suspension, June 30, 2017
- P-3 Order of Suspension, August 13, 2017
- P-4 Restoration Notice, August 24, 2017
- P-5 Scheduled Suspension Notice, May 27, 2018
- P-6 Request for Hearing June 9, 2018
- P-7 Driver History, Not Guilty Decisions
- P-8 Motor Vehicle Service Address Change History
- P-9 Conference Report, August 13, 2018

For respondent:

None

