

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. MVH 02161-14

AGENCY DKT. NO. CXXXX XXXXX 03922

**MOTOR VEHICLE COMMISSION,**

Petitioner,

v.

**AHMAD L. GHIASI,**

Respondent.

---

**Donna Natonick** appearing pursuant to N.J.A.C. 1:1-5.4(a)(2) for petitioner

**Ahmad L. Ghiasi**, respondent pro se

Record Closed: April 4, 2014

Decided: October 29, 2014

BEFORE IRENE JONES, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

This matter concerns the proposed suspension of respondent's New Jersey driving privilege for 90 days because he is considered to be a persistent violator of the Point System Regulations, having been convicted of improperly operating a motor vehicle during his one-year probationary period.

**FACTS**

On January 28, 2011, respondent completed a Probationary Driver Improvement Program. On August 17, 2012, respondent was ticketed for improperly operating a motor vehicle and failing to give a proper signal. He was given two (2) points on his driver's abstract for each offense.

Respondent testified that he was issued two tickets on August 17, 2012. He accepted the settlement offer of 30 day suspension for failing to give a proper signal.

The second violation posted on his abstract on July 8, 2013. This violation was for improperly operating his vehicle on a highway in marked lanes on August 17, 2012. Thereafter, he was issued a scheduled suspension for 120 days.

Respondent noted that the incident occurred while in route to Buffalo, N.Y. A truck was trying to merge into his lane and he attempted to avoid an accident by moving to the next lane. A police officer was driving behind him and issued him two tickets. He did not contest the tickets and paid the \$380 fine. Subsequently, he got a scheduled suspension notice and he went to Trenton where he thought that the matter was settled. However, five months later, he received a second suspension notice about the same incident.

Petitioner noted that he is employed as a truck driver for Magic Landscaping and cannot afford a second suspension. He lives in New York but his employer only operates in New Jersey. He currently has 7 points on his abstract. On November 17, 2013, he received a 2 point credit for attending a defensive driving class.

### **FINDINGS AND CONCLUSIONS**

I **FIND** that petitioner committed the aforesaid incident. I **FIND** that he was issued two tickets from one incident. I **FIND** that while he accepted and served a 20 day suspension, his second offense posted 5 months later. On balance, taking into consideration: (1) punitive and rehabilitative purposes of the motor vehicle laws, see, Fosgate v. Strelecki, 103 N.J. Super, 435 (App. Div. 1968), aff'd, 53 N.J. 55 (1968); (2) the uncontroverted mitigating circumstances, Cresse v. Parsekian, 81 N.J. Super, 537,

549 (App. Div. 1963). I **CONCLUDE** that the imposition of a 10 day license suspension is fair, reasonable and appropriate under circumstances of this case. As noted previously, petitioner has served a 30 day suspension for the same incident. Thus some mitigation is warranted. Hence, I **ORDER** that the respondent's New Jersey driving privilege be suspended for 10 days.

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.

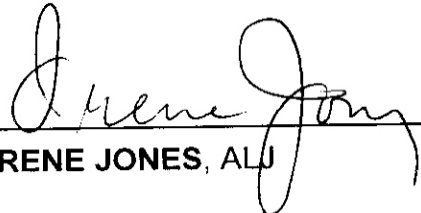
October 29, 2014

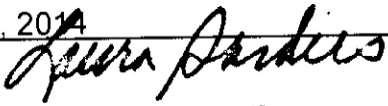
\_\_\_\_\_  
DATE

Date Received at Agency:

Date Mailed to Parties:  
sej

**OCT 30 2014**

  
\_\_\_\_\_  
IRENE JONES, ALJ

October 29, 2014  
  
\_\_\_\_\_  
DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE

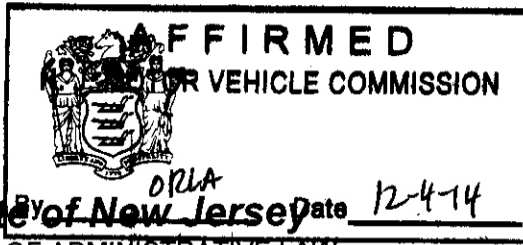


*State of New Jersey*  
**OFFICE OF ADMINISTRATIVE LAW**  
33 Washington Street  
Newark, NJ 07102  
(973) 648-6008

**A copy of the administrative law  
judge's decision is enclosed.**

**This decision was mailed to the parties  
on OCT 30 2014**





**INITIAL DECISION**

OAL DKT. NO. MVH 5359-13

AGENCY DKT. NO. 10514

**NEW JERSEY MOTOR VEHICLE  
COMMISSION,**

Petitioner,

v.

**JOHN P. KELLY,**

Respondent.

---

**Kenneth Vercammen**, Special Counsel, for petitioner (John J. Hoffman, Acting Attorney General of New Jersey, attorney)

**Thomas E. Monahan, Esq.**, for respondent

Record Closed: September 4, 2014

Decided: October 20, 2014

**BEFORE PATRICIA M. KERINS, ALJ:**

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

John P. Kelly (Kelly) appeals from the decision of the Motor Vehicle Commission (Commission) to suspend his license for a period of 540 days (eighteen months) due to his involvement in an accident resulting in the death of an individual. By letter of February 11, 2013, the Commission notified Kelly of its action to suspend his license

pursuant to N.J.S.A. 39:5-30, and he appealed that decision. On April 10, 2013, 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 1, 2013, June 26, 2014, and August 19, 2014. The record remained open for post-hearing submissions. The record closed on September 4, 2014.

### **FACTUAL DISCUSSION**

Many of the material facts in this case are undisputed. The accident that led to the fatality in this matter took place on May 18, 2012, at approximately 6:35 p.m. on a clear day. Respondent Kelly was driving his vehicle northbound on Route 9 in Eagleswood Township, Ocean County. Route 9 in that area is a straight two-lane roadway. As he was making a left hand turn across the southbound lane into the parking lot of his business, he collided with a motorcyclist proceeding in a southbound direction. The individual on the motorcycle, William D. Kolb (Kolb), died as a result of the collision. According to a State Police Fatal Accident Report of May 18, 2012, Kelly tested negative for both alcohol and drugs, and postmortem toxicology tests for Kolb also were negative for alcohol or drugs. No motor vehicle summonses were issued to Kelly as a result of the accident.

In support of its case, the Commission presented the testimony of New Jersey State Police Detective Sergeant Patrick Brady (Brady), State Police Trooper Joseph Mezzo (Mezzo) and Daniel Conklin (Conklin). Brady is a member of the State Police Fatal Accident Investigations Unit and responded to the accident scene to assist in the investigation. Mezzo was on the scene already as the State Police station in Tuckerton, New Jersey is responsible for Eagleswood. Brady did not interview witnesses but assisted in the investigation by taking measurements, mapping the accident and creating diagrams for the State Police reports. In addition to assisting onsite investigations at times, his duties at the Fatal Accident Investigation Unit include a review of fatal accidents throughout the state.

Brady testified as to the reports he authored and his review of the accident scene. He described Route 9 as a straight road in the area of the accident, and the weather being clear. Kelly was driving a Chrysler Pacifica, while Kolb was on a Harley Davidson motorcycle. In his report he notes that it appeared Kolb was operating the motorcycle above the posted speed limit as he was passing another southbound vehicle, skidded as he approached the turning Kelly vehicle and collided with the right front side of the Chrysler as it was making the turn. It was his opinion that Kelly did not yield the right of way to Kolb due to failing to observe, or by misjudging the speed of the oncoming vehicle. Under cross examination he admitted that he was not able to determine where the motorcycle was located on the road when Kelly began his turn.

Trooper Mezzo was the first trooper on the scene. He performed CPR on the victim prior to the arrival of emergency medical personnel. He also interviewed witnesses at the scene and reviewed a video from a nearby convenience store which he testified showed the motorcycle moving at a high rate of speed. In his interview with Kelly, respondent said he had tried to stop once he saw the oncoming motorcycle. Mezzo also recalled interviewing Patrice Adams (Adams), a witness to the accident, who told him that as Kelly started his turn no one was in the passing lane. However, the cyclist then passed her on the left at a high rate of speed and collided with the turning Kelly. He recalled her stating that she had no reason to take evasive action to avoid the turning Kelly. He concluded that the cause of the accident was the unsafe speed of the cyclist during passing.

As its final witness, the Commission presented the testimony of Conklin. He was exiting a nearby gas station to proceed south on Route 9 as the accident occurred and witnessed the collision. Conklin was on a motorcycle with a friend and said he heard a downshift and then acceleration by Kolb's cycle, although he did not think Kolb was traveling at an excessive rate of speed. He said Kelly made a sharp left. When shown the State Police diagram of the scene he differed with the locations shown, and he further disagreed with Adams' testimony regarding her location on the roadway. He was not interviewed at the scene by the police.

In response to the Commission's case, respondent testified on his own behalf and presented the testimony of Adams. According to Kelly he was making the turn off Route 9 into the parking lot of his family business. He said he was going northbound on Route 9 and came to a full stop with his blinker on to make the left hand turn. He saw a vehicle coming southbound but did not see Kolb's motorcycle as he began his turn. As he was into the turn he heard brakes and saw a motorcycle moving at a high rate of speed about ten feet away. They impacted just as he was entering the driveway of the parking lot of his business. After the impact, he left his vehicle and attempted to aid the decedent. His wife then came out of their delicatessen and called the police.

Adams also testified as to the collision. She was returning from a store in Manahawkin and was traveling south on Route 9. She saw Kelly in the northbound lane ahead of her as he went to make the left turn. He was far enough away from her that she did not have to take evasive action or slow down for him to make the turn. She said that after she saw Kelly, the motorcyclist came from behind her at a high rate of speed. He went around her into the northbound lane as Kelly was into his turn. She testified that there was no way Kelly could have seen the cyclist approaching him as he started his turn.

In reviewing the testimony presented, I found Adams to be more credible than Conklin. Each testified to witnessing the collision, from differing vantages. However, Adams' version is corroborated by her initial statement to Trooper Mezzo immediately after the accident. Her testimony also comports with the facts and diagrams set forth in the State Police reports. Additionally, her demeanor was direct and forthright, with a certainty as to her recall. Finally, she was the witness who was most focused on the events leading up to the collision, as well as the collision itself. Heading toward Kelly, she took notice of his turn and had to make a judgment as to how it affected her vehicle. Her attention was directed toward him. She also was the closest vehicle to the motorcyclist just behind her as he moved around her to accelerate and pass her on the left. Adams' testimony is further corroborated by the credible testimony of Kelly. His recollection of the accident agrees with Adams' in key respects.

Conklin, on the other hand, viewed the collision from further away without his attention being as closely focused on the events. His testimony came over a year after the events when his recall was not as fresh as either Adams' testimony or her corroborative statement to the police at the accident scene. Significantly, his recall of the accident scene itself differed from that of the State Police diagrams. Overall, his testimony was not as credible as that of Adams.

Both Troopers Brady and Mezzo provided credible testimony as to their observations of the accident scene and their investigation and reports. Trooper Mezzo, however, gave more weight in his analysis of the cause of the accident to the eyewitness testimony of Adams, whom he interviewed. Brady acknowledged that he focused mainly on the mapping and diagramming of the scene and gave less weight in determining the cause of the accident to witness statements. Yet, Adams provided crucial and credible testimony as an eyewitness to the accident and, as such, her testimony is corroborative of Mezzo's analysis of the accident's causation.

In reviewing the record therefore, I **FIND** that Kelly was into his left turn when Kolb moved around Adams' vehicle to pass at a high rate of speed. I further **FIND** that based on the credible testimony of Kelly and Adams that Kolb's motorcycle was not visible to Kelly when he began that turn and that it was Kolb's passing of Adam's vehicle at a high rate of speed that caused the collision with Kelly.

### **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. This 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 failed to stop or yield pursuant to N.J.S.A. 39:4-144, and operated his vehicle in a careless manner. N.J.S.A. 39:4-97.

Based on the above, I **CONCLUDE** that the Commission has not met its burden in this matter of proving that Kelly was the cause of this fatality by either operating his vehicle in a careless manner or by failing to stop or yield. While unquestionably a tragic accident, from the record before me, the collision was not the result of his actions.

### **ORDER**

Accordingly, it is **ORDERED** that the Scheduled Suspension Notice issued by the Motor Vehicle Commission under date of February 11, 2013, to respondent John P. Kelly 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 20, 2014  
DATE

  
PATRICIA M. KERINS, ALJ

Date Received at Agency:

October 20, 2014

Date Mailed to Parties:

October 20, 2014

cmo

**WITNESSES**

**For Petitioner:**

Patrick Brady  
Joseph Mezzo  
Daniel Conklin

**For Respondent:**

Patricia Adams  
John Kelly

**EXHIBITS**

**For Petitioner:**

- P-1 Resume of Detective Sergeant Patrick H. Brady #5951
- P-2 New Jersey Police Crash Investigation Report by Detective Sergeant Brady
- P-3 New Jersey Police Crash Investigation Report by Trooper Mezzo
- P-4 Photograph
- P-5 Photograph
- P-6 Diagram
- P-7 New Jersey State Place SIMS Fact Briefing Sheet
- P-8 Abstract of Death Certification Information
- P-9 Statement of John Kelly
- P-10 Statement of Patrice Adams
- P-11 Fatal Accident Report
- P-12 Photograph
- P-13 Photograph
- P-14 Abstract of Driver History Record



**For Respondent:**

None



**A F F I R M E D**  
**MOTOR VEHICLE COMMISSION**

**State of New Jersey**  
By UPLA Date 12-12-14  
**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO. MVH 03083-14

AGENCY DKT. NO. CXXXX XXXXX 05751

**MOTOR VEHICLE COMMISSION,**

Petitioner,

v.

**MAHESHIND S. GHUMAN,**

Respondent.

---

**Donna Natonick** appearing pursuant to N.J.A.C. 1:1-5.4(a)(2) for petitioner

**Maheshind S. Ghuman**, respondent pro se

Record Closed: April 4, 2014

Decided: October 28, 2014

BEFORE IRENE JONES, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner, the Motor Vehicle Commission proposes to suspend the respondent's driving privileges for 180 days because he operated a motor vehicle during a period of suspension. A hearing was held and concluded on April 4, 2014 at which time the record closed.

**FINDINGS OF FACT**

Based upon a review of the entire record, I **FIND** the following **FACTS**:

1. By notice dated July 20, 2012, the MVC issued a proposed suspension notice to the respondent advising him that his driving privileges would be suspended indefinitely as of September 2, 2012. The proposed suspension was based on the respondent's failure to pay the installment amount of \$270.00 for his insurance surcharge assessment.
2. Thereafter, by notice dated September 2, 2012, an Order of Suspension was issued by the petitioner indefinitely suspending the respondent's driving privileges as of September 2, 2012 for failure to submit payment of his insurance surcharge assessment.
3. On September 19, 2012 while driving in Elizabeth, New Jersey, respondent was involved in an accident and was ticketed for the unsafe operation of a motor vehicle.
4. Petitioner claims that when he contested the ticket in the municipal court, he learned that his license was suspended.
5. By notice of January 3, 2013, respondent's driving privileges were restored, effective January 2, 2013.
6. By notice dated March 2013, respondent received a scheduled suspension notice that <sup>proposed to</sup> ~~suspended~~ his driving privileges effective April 13, 2013 for 180 days because he drove during a period of suspension.

**DISCUSSION**

Respondent testified that he is a self employed truck driver who is on call for brokers. He hauls freight for the brokers. His 9 (nine) monthly insurance payments for his truck are \$558 each month plus the initial down payment. He drives approximately 300 to 400 miles a day. He generally makes about \$1,500 per week. Some fifty (50)

percent of his earnings go to pay car/truck insurance, fuel and truck maintenance. He is married and has two children. His wife is a housewife. He is barely making ends meet since the economic recession. Without his license, he cannot earn a living. He will lose his truck, his home and everything.

### **FINDINGS AND CONCLUSION**

I **FIND** that the respondent failed to pay the aforesaid insurance surcharge and his license was suspended.

I **FIND** that a mitigation of the proposed suspension period is warranted as the majority of the offenses on the respondent's Certified Abstract relate to his nonpayment of insurance surcharges. Notably, petitioner has only 2 points on his abstract. His last speeding offense occurred in 1997. This is truly an economic issue - if he does not work because of poor economy, he does not get paid.

I **CONCLUDE** that a 5 day suspension is warranted and it is so **ORDERED**.

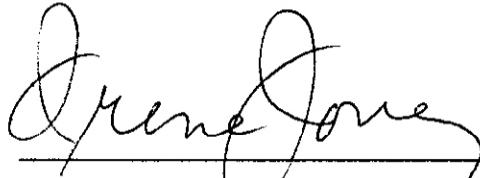
I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

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.

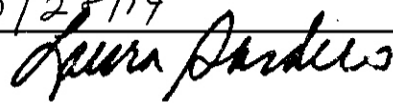
Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, PO Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions." A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

October 28, 2014

\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
IRENE JONES, ALJ

Date Received at Agency:

10/28/14  
  
\_\_\_\_\_

Date Mailed to Parties:  
sej

**OCT 29 2014**

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



*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 29 2014**