

By <sup>OPLA</sup> **State of New Jersey** Date 12-31-15  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. MVH 8992-15

AGENCY DKT. NO. 58902

**NEW JERSEY MOTOR VEHICLE  
COMMISSION,**

Petitioner,

v.

**HELAINÉ WILLIAMS,**

Respondent.

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**Scharkner Michaud**, Driver Improvement Analyst 2, for petitioner, pursuant to  
N.J.A.C. 1:1-5.4(a)2

**Helaine Williams**, respondent, pro se

Record Closed: October 1, 2015

Decided: November 16, 2015

BEFORE **JOHN S. KENNEDY**, ALJ:

**PROCEDURAL HISTORY AND STATEMENT OF THE CASE**

Respondent Helaine Williams appeals the 180-day suspension of her New Jersey driving privileges. Petitioner New Jersey Motor Vehicle Commission (MVC) alleges that respondent operated a motor vehicle during a period of suspension.

As a result of a scheduled suspension notice issued by the MVC (P-12), respondent appealed and the matter was thereafter transmitted to the Office of Administrative Law (OAL) and filed on June 18, 2015, as a contested case pursuant to the provisions of N.J.S.A. 52:14B-1 through 15 and N.J.S.A. 52:14F-1 through 13. The matter was heard on October 1, 2015, on which date the record closed.

### TESTIMONY AND STATEMENT OF FACTS

Scharkner Michaud testified on behalf of the New Jersey Motor Vehicle Commission (MVC). Respondent's driving privileges were indefinitely suspended on October 5, 2013 (P-5) for failure to answer a summons in Haddon Heights Municipal Court. Respondent's driving privileges were again indefinitely suspended on October 11, 2013 (P-3) for failure to answer a summons in Gloucester Township Municipal Court. On August 21, 2014, respondent's privileges were restored upon payment of a restoration fee (P-2). During that time period, petitioner was stopped while operating a motor vehicle on January 28, 2014 in Camden, NJ and charged with disregard of stop sign regulations (P-1). On July 20, 2014, MVC issued a scheduled suspension notice indicating that her driving privileges would be suspended effective August 12, 2014 for 180 days for operating a motor vehicle during a period of suspension (P-12).

Respondent testified on her own behalf. She stated that she received the Gloucester Township Municipal Court summons but received it late. She did not realize how serious it was at the time to miss court. She continued to drive after receiving the October 11, 2013 notice because she had to work and help her father get to his doctor's appointments. On January 28, 2014, she was pulled over in Camden for failure to stop at a stop sign.

Respondent is a single mother of one child whom will be three years old in December 2015. The child's father does not help her and she is responsible for taking the child to day care each day. The day care is near her job in Mt. Laurel, which is approximately twenty minutes from her home. Without her driver's license, respondent will have no way to get to work or get her child to day care.

Based upon the testimonial and documentary evidence, and having had the opportunity to observe the appearance and demeanor of the witnesses, I **FIND** as **FACT** that respondent's driving privileges were suspended from October 5, 2013 until August 24, 2014. I further **FIND** as **FACT** that respondent operated a motor vehicle within the time period during which she was suspended, specifically on January 28, 2014. I further **FIND** as **FACT** that respondent is a single mother of one child and relies on her driver's license to take her child to day care and go to work.

### LEGAL ANALYSIS AND CONCLUSION

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 record clearly reflects that respondent did operate a vehicle during a period of suspension. Accordingly, I **CONCLUDE** that the MVC properly seeks to suspend respondent's license in light of the operation of a motor vehicle on January 28, 2014.

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). It is impossible to construct a "definitive catalogue" of all circumstances to be considered in determining the existence of good cause, and "[e]ach 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); Cresse, supra, 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).

Respondent has demonstrated that she has a child in need of transportation to and from daycare and that she is the sole family support. Based on the foregoing, I **CONCLUDE** that respondent has met her burden of proving "good cause" for a special exception to the usual suspension imposed in similar cases. It remains for me to impose the appropriate remedial sanction in this case. This is done from a consideration of the totality of the circumstances, including respondent's personal situation and her driving record. I must balance the competing interests of respondent and the public.

In the present case, respondent has significant interest in keeping her privileges whereas the public interest in suspending her license is limited because her driving record is not so egregious that she presents danger to others on the road. The vast majority of incidents on her abstract represent administrative actions rather than moving violations.

Having considered respondent's personal situation and her driving record, I **CONCLUDE** that the appropriate remedial sanction to be imposed, one to drive home to respondent the absolute necessity that she obey all motor vehicle and traffic laws, including the requirement to appear in court when summoned to do so and to not drive when she knows she has missed a court and is therefore likely to be under suspension, would be a 90-day suspension of the New Jersey driving privileges of respondent.

**ORDER**

Based on the foregoing, I **ORDER** that the Commission's action suspending respondent's New Jersey Driver's License for 180 days is **MODIFIED** to a period of ninety days. The effective date of this suspension shall be set forth in an Order of Suspension that petitioner shall send to respondent under separate cover.

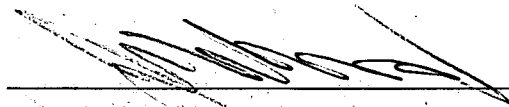
I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

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 16, 2015

DATE

  
\_\_\_\_\_  
JOHN S. KENNEDY, ALJ

Date Received at Agency:

November 16, 2015

Date Mailed to Parties:

11/19/15

cmo

**WITNESSES**

**For Petitioner:**

Sharkner Michaud

**For Respondent:**

Helaine Williams

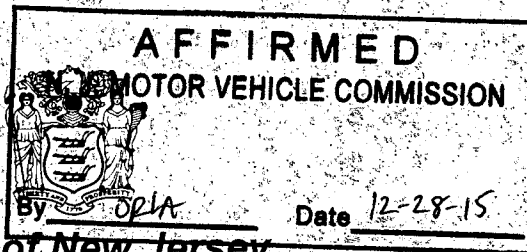
**EXHIBITS**

**For Petitioner:**

- P-1 Certified Driver's Abstract
- P-2 Notice of Restoration, August 22, 2014
- P-3 Order of Suspension, October 29, 2013
- P-4 Notice of Proposed Suspension, August 13, 2013
- P-5 Order of Suspension, October 20, 2013
- P-6 Scheduled Suspension Notice, August 7, 2013
- P-7 Order of Suspension, October 20, 2013
- P-8 Scheduled Suspension Notice, August 7, 2013
- P-9 Not Admitted
- P-10 Not Admitted
- P-11 Not Admitted
- P-12 Scheduled Suspension Notice, July 20, 2014
- P-13 Not Admitted

**For Respondent:**

None



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. MVH 01712-15

AGENCY DKT. NO. CXXXX-XXXX-10882

**NEW JERSEY MOTOR VEHICLE  
COMMISSION,**

Petitioner,

v.

**JOHN F. CONNORS,**

Respondent.

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**New Jersey Motor Vehicle Commission**, appearing without a representative,  
pursuant to N.J.A.C. 1:1-5.6(a)

**Wilfredo J. Ortiz, II, Esq.**, for respondent

Record Closed: October 29, 2015

Decided: November 12, 2015

BEFORE **KIMBERLY A. MOSS, ALJ**:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

This proceeding is brought under N.J.S.A. 39:3-10 et seq., N.J.S.A. 39:5-30, and N.J.A.C. 13:21-14.5(a) and (c) to suspend indefinitely the New Jersey Commercial Driver License (CDL) passenger endorsement of John F. Connors (respondent or Connors). The issues are whether respondent committed a disqualifying crime or offense within the

meaning of N.J.A.C. 13:21-14.5(c)(12) or N.J.A.C. 13:21-14.5(c)(13) and, if so, whether respondent has affirmatively demonstrated sufficient rehabilitation to justify a wavier under N.J.A.C. 13:21-14.5(d).

By notice dated March 20, 2014, the Commission proposed to suspend respondent's passenger endorsement indefinitely on the basis that respondent has a disqualifying criminal arrest and/or conviction. Respondent requested a hearing by letter dated April 11, 2014. The matter was transmitted to the Office of Administrative Law (OAL) as a contested case on February 3, 2015. Hearings were scheduled for March 6, 2015, April 22, 2015, July 27, 2015, and September 17, 2015. Petitioner requested an adjournment of hearing dates, which was granted. I heard the matter on October 29, 2015, at which time the record closed.

### **FINDINGS OF FACT**

Having had an opportunity to consider the evidence and testimony of the witnesses, I **FIND** the following **FACTS** in this case:

Connors was convicted on March 9, 2001, of resisting arrest. He was sentenced to two years' probation. On December 21, 2005, he was convicted of aggravated assault. He was sentenced to two years' probation. On October 7, 2012, Connors was arrested and charged with simple assault in Dumont, NJ. This resulted from an argument between Connors and Dolores Petrovich (Petrovich). During the course of the argument he shoved Petrovich. Connors was under stress at that time because of his job and Petrovich's health condition. On or about February 5, 2013, Connors pled guilty to the simple assault charge and was fined.

Connors attended anger management classes from 2006 to 2008. He attributes his 2001 and 2012 convictions to anger and alcohol. Connor believes that his anger stems from being a twin who was less favored by his parents. Connor no longer drinks alcohol. He was employed by BBZ Limousine & Livery service beginning on October 7, 2013, as a limousine driver. He performed his duties for BBZ in an exemplary manner. He left BBZ to work for U.S. Taxi Corp because of an increase in salary. He is the



operations manager for U.S. Taxi Corp. His job requires that he drives. Mario Cofini, director of Buildings and Grounds for Perth Amboy Public Schools, wrote that he has known Connors for thirty years. He has used Connors's transportation services many times and Connors has always been professional.

Connors has become a freemason. As a freemason he participates in charitable endeavors. He does wheelchair escorts for veterans and he collects toys and food and contributes them to the poor. The freemasons also donate to hospitals.

Kenneth Caruso a friend of Connors wrote that Connors has been able to turn his life around. Petrovich submitted a letter. She stated that Connors apologized profusely for the assault. Petrovich has been diagnosed with breast cancer. Connors has taken her to and from her medical appointments and helped her with daily chores. They are no longer romantically involved, but Connors still helps her get to her appointments. Connors took Petrovich to a medical appointment last week. Unfortunately her condition has worsened and the cancer has spread to her lungs. Petrovich believes that Connors is truly sorry for the simple assault and that he has learned from this incident.

Connors was issued a New Jersey CDL license in 2010.

### LEGAL ANALYSIS

N.J.A.C. 13:21-14.5(12) provides:

The phrase "crime or other offense" as used hereinafter shall include crimes, disorderly persons offenses or petty disorderly persons offenses as defined in the "New Jersey Code of Criminal Justice" and any offenses defined by any other statute of this State. A driver has a disqualifying record if:

i. He or she has been convicted of, or forfeited bond or collateral upon, any of the following:

(1) An offense involving the manufacture, transportation, possession, sale or habitual use of a "controlled dangerous

substance" as defined in the "New Jersey Controlled Substance Act"

(2) A crime or other offense involving deviate or illicit social behavior such as rape, incest, sodomy or carnal abuse;

(3) A crime or other offense involving the use of force or the threat of force to or upon a person or property, such as armed robbery, assault and arson;

(4) Any crime or other offense indicative of bad moral character;

(5) He or she fails to notify the Motor Vehicle Commission that he or she has been arrested for, charged with, indicted for, convicted of, or forfeited bond or collateral upon any crime or other offense within 14 days after the date of such event.

In this case Connors was convicted on March 9, 2001, of resisting arrest and on December 21, 2005, of aggravated assault. He was sentenced to two years' probation on each charge. He was convicted of simple assault on or about February 5, 2013. His sentence was a fine. He has been convicted of a disqualifying offense. Connors two indictable convictions for resisting arrest in 2001 and aggravated assault in 2005 were disqualifying offenses; however he was issued a passenger endorsement in 2010, subsequent to these convictions.

The Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-2, states:

Notwithstanding the contrary provisions of any law or rule or regulation issued pursuant to law, no State, county or municipal department, board, officer or agency, hereinafter referred to as "licensing authority" authorized to pass upon the qualifications of any applicant for a license or certificate of authority or qualification to engage in the practice of a profession or business or for admission to an examination to qualify for such a license or certificate may disqualify or discriminate against an applicant for a license or certificate or an application for admission to a qualifying examination on the grounds that the applicant has been convicted of a crime, or adjudged a disorderly person, except that a licensing authority may disqualify or discriminate against an applicant for a license or certificate if N.J.S. 2C:51-2 is applicable or if a conviction for a crime relates adversely to

the occupation, trade, vocation, profession or business for which the license or certificate is sought. In determining that a conviction for a crime relates adversely to the occupation, trade, vocation, profession or business, the licensing authority shall explain in writing how the following factors, or any other factors, relate to the license or certificate sought:

- a. The nature and duties of the occupation, trade, vocation, profession or business, a license or certificate for which the person is applying;
- b. Nature and seriousness of the crime;
- c. Circumstances under which the crime occurred;
- d. Date of the crime;
- e. Age of the person when the crime was committed;
- f. Whether the crime was an isolated or repeated incident;
- g. Social conditions which may have contributed to the crime;
- h. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

Respondent works for U.S. Taxi Corp. His job requires that he drive. His prior resisting arrest conviction is from fourteen years ago and his aggravated assault conviction is from almost ten years ago. There is an eight-year gap between his aggravated assault conviction and his simple assault conviction. He was under stress at the time of the simple assault due to his job and Petrovich's medical condition. Since the simple assault he has assisted Petrovich in going to and from her medical appointments and with her daily chores. She believes that he has learned from this experience. He has become involved in charitable efforts as a result of joining the freemasons. He completed anger management classes.

I **CONCLUDE** that respondent is not disqualified from holding a passenger endorsement on his CDL under the provisions of N.J.A.C. 13:21-14.5(c)(12) because he has provided sufficient evidence that he is rehabilitated. He attended anger management; people who know him believe he is fully rehabilitated; and the victim of the simple assault believes that Connors has learned from this incident. The more serious crimes of resisting arrest occurred fourteen years ago and the aggravated assault offense occurred almost ten years ago. The simple assault was an isolated incident that took place eight years after his 2005 conviction.

N.J.A.C. 13:21-14.5(13) provides:

In the absence of a conviction, the Chief Administrator of the Motor Vehicle Commission shall refuse to issue or shall revoke or suspend the bus driver license of any person arrested for, charged with, or indicted for any crime or other offense if the Chief Administrator determines that such person is of bad character or is morally unfit to retain the privilege of holding a bus driver license, or is a potential danger to his or her passengers or to other motorists or to himself or herself.

In this case respondent has shown that he is rehabilitated and has become a person of good character who is morally fit to retain the privilege of holding a passenger endorsement on a commercial driver's license. Respondent testified that he has worked for two years, does charitable work, and assists Petrovich coming and going to medical appointments and with daily chores.

I **CONCLUDE** that respondent is not disqualified from holding a passenger endorsement on his CDL under the provisions of N.J.A.C. 13:21-14.5(c)(13) because he has been rehabilitated since his convictions.

#### **ORDER**

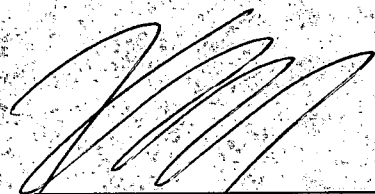
Based upon the foregoing, I **ORDER** that the scheduled suspension of respondent's passenger endorsement on his Commercial Driver License be and is hereby **DISMISSED** and that such endorsement remain in full force and effect.

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

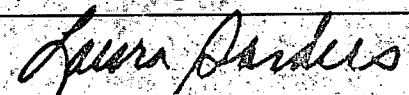
This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within 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.

11-12-15  
DATE

  
KIMBERLY A. MOSS, ALJ

Date Received at Agency

11-12-2015  


Date Mailed to Parties:

**NOV 17 2015**

ljb

DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE

**DOCUMENTS IN EVIDENCE**

**For Petitioner:**

P-1 Packet from Motor Vehicle Commission

**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 NOV 17 2015**

**STATE OF NEW JERSEY  
MOTOR VEHICLE COMMISSION  
CASE FILE NUMBER: DXXXX XXXXX01832  
OAL DOCKET NUMBER: MVH 11212-15**

**IN THE MATTER OF** :  
**TERENCE DONELLY** : **FINAL DECISION**

The Motor Vehicle Commission (“Commission”) hereby determines the matter of the proposed suspension of the New Jersey Commercial Driver License (“CDL”) **passenger-carrying endorsement** of **TERENCE DONELLY**, respondent, pursuant to N.J.S.A. 39:3-10.1, 39:5-30 and N.J.A.C. 13:21-14.5(a) and (c) because he has a criminal record which may be disqualifying. Prior to this final agency determination, I have reviewed and considered the Initial Decision rendered by the Administrative Law Judge (“ALJ”). No exceptions have been filed. Based upon the record presented I shall modify or reject certain of the ALJ’s findings of fact and analysis as specifically indicated below. To the extent that I have not specifically modified or rejected a finding or conclusion herein I have adopted those findings and conclusions of the ALJ and incorporate those by reference in this decision. Finally, I shall affirm the ALJ’s recommendation that the proposed suspension of respondent’s passenger-carrying endorsement privileges be dismissed, upon the condition as specified in the Order on page 8 herein that he submit documentation that he has completed probation.

**Disqualifying Offenses**

In her Initial Decision, the ALJ recommends that the MVC’s proposed indefinite suspension of respondent’s passenger endorsement should be dismissed. Initial



Decision at 4. While I agree with the ALJ's recommendation, I find it necessary to reject certain parts of the analysis and conclusions that led to that recommendation. In arriving at her conclusion, the ALJ notes respondent was convicted of two disorderly person charges (offenses) of violent behavior and that all other charges were dismissed. The ALJ cites to N.J.A.C. 13:21-14.5(c)12<sup>1</sup> and concludes that disorderly person offenses for violent behavior are not disqualifying offenses. Finally, the ALJ concludes that respondent is not disqualified from holding a passenger endorsement because he was not proven to be a person of bad character. Based on these conclusions, the ALJ determined that that respondent's record was not disqualifying.

N.J.A.C. 13:21-14.5(c)12 states, in pertinent part, that the Chief Administrator may suspend the passenger endorsement for a criminal record that is disqualifying. Pursuant to N.J.A.C. 13:21-14.5(c)12, a "crime or other offense" includes crimes, disorderly persons offense or petty disorderly person offense as defined in the "New Jersey Code of Criminal Justice and any other offenses defined by any other statute of this State." N.J.A.C. 13:21-14.5(c)12i disqualifies a person from holding a passenger endorsement when the conviction is for an offense that is, "(3) a crime or other offense involving the use of force or the threat of force to or upon a person or property, such as armed robbery, assault and arson." Upon conviction of such an offense there is a presumption that respondent's passenger-carrying endorsement will be revoked, suspended, or denied.

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<sup>1</sup> It is noted that the Initial Decision on page 3 cites N.J.A.C. 13:21-14.5(12), but quotes from N.J.A.C. 13:21-14.5(c)12. The Commission views this as merely a grammatical error that has no bearing on the overall analysis or conclusions made by the ALJ. Thus, the Initial Decision is modified accordingly.

On October 31, 2014 respondent pled guilty to two counts of N.J.S.A. 2C:33-2A(1), which states, in pertinent part:

N.J.S.A. 2C:33-2. Disorderly conduct

a. Improper behavior. A person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he

(1) Engages in fighting or threatening, or in violent or tumultuous behavior.

Respondent's convictions of petty disorderly persons offenses for engaging in fighting or threatening, or in violent or tumultuous behavior involve the use of force or the threat of force and thus, are disqualifying convictions pursuant to N.J.A.C. 13:21-14.5(c).

The ALJ also concluded respondent's arrests for aggravated assault with a weapon formed the Commission's basis for proposing to suspend respondent's passenger endorsement. To the extent that this conclusion suggests or implies that the Commission's action was improper, I offer the following clarifying analysis. Upon notice of respondent's criminal arrests, the Commission initiated an administrative action to indefinitely suspend respondent's CDL passenger-carrying endorsement. N.J.S.A. 39:3-10.1 directs that an applicant for a license to carry passengers must present satisfactory evidence of his or her "previous experience," "good character" and "physical fitness." The statute authorizes the chief administrator of the Commission to suspend or revoke a passenger endorsement for a violation of the motor vehicle laws "or on other reasonable grounds, or where, in his opinion, the licensee is either physically or morally unfit to retain the same." Ibid. Under rules promulgated by the Commission regarding

the issuance of passenger endorsements, N.J.A.C. 13:21-14.1 to 14.10, the chief administrator "may revoke or suspend a passenger endorsement of any person when it is determined that the applicant or holder of such license has . . . failed to submit proof of continuing physical fitness, good character, and driver experience every 24 months." N.J.A.C. 13:21-14.5(c)6. Further, N.J.A.C. 13:21-14.5(c)13 allows the chief administrator of the Motor Vehicle Commission to "... revoke or suspend the passenger endorsement of any person arrested for, charged with or indicted for any crime or other offense if the Chief Administrator determines that such person is of bad character or is morally unfit to retain the privilege of holding a passenger endorsement, or is a potential danger to his or her passengers or to other motorists or to himself or herself." (emphasis added).

Commencement of a passenger endorsement suspension proceeding prior to respondent's conviction is not a procedural error. Respondent's criminal arrest history may be deemed enough to suspend or revoke respondent's passenger endorsement for failure to maintain good character pursuant to N.J.A.C. 13:21-14.5(a) or N.J.A.C. 13:21-14.5(c)12 and/or for being indicative of being a potential danger to others or himself pursuant to N.J.A.C. 13:21-14.5(c)13. Further, respondent's criminal convictions that were determined to be disqualifying stem from the same indictments that were indicated on the Commission's Scheduled Suspension Notice notifying respondent that his passenger endorsement was scheduled to be indefinitely revoked. Exhibit P-1 Supplemental Specifications and P-1 Scheduled Suspension Notice.

I find that initiating this administrative proceeding after respondent's arrest but prior to his conviction, and continuing the proceeding despite the original charges being

dismissed and downgraded charges being initiated as part of a plea agreement, was neither procedurally nor substantively improper or defective. Beginning with the Commission's March 1, 2013, Scheduled Suspension Notice, respondent was placed on notice that these indictments could amount to a disqualifying criminal record resulting in an indefinite suspension of his passenger endorsement. I further find, based on the above, that both of respondent's convictions were petty disorderly persons offenses for engaging in fighting or threatening, or in violent or tumultuous behavior. Finally, I find that both of respondent's convictions are disqualifying offenses pursuant to N.J.A.C. 13:21-14.5(c).

### **Evidence of Rehabilitation**

Upon conviction of a "crime or other offense", pursuant to N.J.A.C. 13:21-14.5(c)<sup>12</sup>, under which both of respondent's convictions fall, there is a presumption that respondent's passenger-carrying endorsement will be revoked, suspended, or denied. This presumption can only be overcome if "sufficient and reasonable grounds" are established under the procedural means described in N.J.A.C. 13:21-14.5(d) and are such that respondent has established rehabilitation to the degree that the public interest would be protected.

In her Initial Decision, the ALJ did not reach the issue of rehabilitation under the "Rehabilitated Convicted Offender's Act" (RCOA), N.J.S.A. 2A:168A-1 to -16, because she concluded that the convictions were not disqualifying. Because I have determined that respondent's criminal convictions are, in fact, disqualifying, as concluded above, it is necessary to provide an analysis of rehabilitation under the RCOA.

The RCOA was enacted in recognition that on occasion people make poor decisions and that under certain circumstances, the interest of justice is best served by declaring such persons rehabilitated so as to prevent them from being disqualified from positions of employment because of their criminal history. To assist in the analysis of respondent's potential rehabilitation, I utilize the eight factors set forth in the RCOA for determining rehabilitation. The factors, found in N.J.S.A. 2A:168A-2, are as follows:

- a. The nature and duties of the occupation, trade, vocation, profession or business, a license or certificate for which the person is applying;
- b. Nature and seriousness of the crime;
- c. Circumstances under which the crime occurred;
- d. Date of the crime;
- e. Age of the person when the crime was committed;
- f. Whether the crime was an isolated or repeated offense;
- g. Social conditions which may have contributed to the crime;
- h. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

Pursuant to N.J.S.A. 2A:168A-2, these factors are used to guide a licensing authority in determining whether a conviction relates adversely to the occupation/business for which the license or certificate (in this case, a "passenger endorsement" on a CDL) is sought. Rehabilitation efforts must be considered in light of the offense(s) respondent committed and the threat to public safety that respondent may re-offend.

As previously noted, respondent is a CDL driver with a passenger-carrying endorsement. This endorsement allows respondent to drive a vehicle carrying more than six passengers. As the driver of such a vehicle, respondent is primarily responsible for the safety of the passengers riding in his vehicle. On October 31, 2014, respondent was convicted of two counts of disorderly conduct for violent behavior stemming from two separate incidents, one in 2012 and one in 2013. Respondent was 29 and 30 years old, respectively, at the time the offenses were committed. It appears the two incidents were isolated and they were both downgraded to petty disorderly persons offenses. I note that respondent served 388 days in custody awaiting final resolution of his arrests. Exhibit P-1 Essex County Judgment of Conviction, page 3. I also note that as a result of these convictions, respondent was placed on probation for a period of one year and ordered to comply with all the requirements of the probationary program, as well as the requirements of his plea agreement. Exhibit P-1, New Jersey Judiciary Plea Form, page 3. The record in this administrative proceeding was closed on September 1, 2015. Because respondent was sentenced to one year probation on October 31, 2014, his probationary period would not have been completed prior to the record closing. However, successful completion of the probationary period would be evidence in support of respondent's rehabilitation. Accordingly, I am inclined to find that respondent has been sufficiently rehabilitated if he provides proof of successful completion of the probationary program.

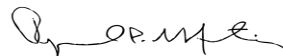
### **CONCLUSION**

Based on a de novo review of the record, I agree with the ALJ's conclusion that respondent's passenger endorsement should not be suspended. I conclude that while

respondent does have a disqualifying criminal record, the time he served in custody as well as complying with the requirements of probation, including anger management classes, for a period of one year, demonstrate sufficient and reasonable grounds for granting a waiver in these particular circumstances.

### **ORDER**

Based on the all of the foregoing, it is, therefore, on this 3rd day of December, 2015, **ORDERED** that respondent provide proof that he completed probation within 30 days of this decision. Upon receiving this documentation, no action will be taken on the proposed suspension of the passenger-carrying endorsement on the New Jersey Commercial Driver License of **TERENCE DONELLY** for his criminal history, as it is specified in this matter. If no documentation is received within 30 days of this decision, respondent's passenger endorsement will be suspended indefinitely for a period of at least three years, after which he may submit an application and proof of rehabilitation for consideration.



Raymond P. Martinez  
Chairman and Chief Administrator

RPM:sem

cc: Terence Donelly