



A F F I D A V I T
MOTOR VEHICLE COMMISSION

ORLA
State of New Jersey Date *3-4-16*

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO MVH 18684-13

AGENCY DKT. NO 02382

**NEW JERSEY MOTOR
VEHICLE COMMISSION,**

Petitioner,

v

ARTHUR ATOEFF,

Respondent

Nonee Lee Wagner, Deputy Attorney General, appearing for petitioner (John J Hoffman, Acting Attorney General of New Jersey, attorney)

Frank LoBascio, Esq , appearing for respondent

Record Closed January 7, 2016

Decided January 19, 2016

BEFORE DEAN J. BUONO, ALJ

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, the Motor Vehicle Commission (MVC), proposed an indefinite suspension of respondent, Arthur Atoeff's, driving privileges pursuant to N J S A 39 5-30 and N J A C 13 21-8 4, based upon information that he is not medically or physically able to safely operate a motor vehicle

On August 23, 2012, the MVC sent the respondent a Notice of Scheduled Suspension, which was due to be effective on September 21, 2012. Respondent requested a fair hearing and the MVC transmitted the matter to the Office of Administrative Law (OAL), where it was filed on December 17, 2013. N.J.S.A. 52:14B-1 et seq., N.J.S.A. 52:14F-1 et seq. The hearing was held on September 14, 2015, and the record was left open at the request of both counsel to submit closing arguments.¹ A brief was submitted by the petitioner on November 18, 2015. After several attempts to contact respondent's counsel, a telephone conference was held on December 18, 2015. At the telephone conference, all parties agreed that respondent would submit a closing brief within two weeks. On December 31, 2015, I received respondent's brief and thereafter a responsive brief from petitioner on January 7, 2016. After intensive review of all submissions the record closed on January 7, 2016.

FACTUAL DISCUSSION

The following facts are not disputed as they derive from the exhibits. Respondent Arthur Atoeff, age seventy-seven, was involved in a motor vehicle accident on September 29, 2011, resulting in a charge of Disregard of a Stop Sign (P-4, P-6). Consequently, the municipal court judge ordered a driver-examination/medical-evaluation and referred the matter to the MVC. A medical-review case was initiated (R-2.)

The MVC received information during the medical review that the respondent had a neurological disorder, right-field homonymous hemianopsia, and related visual-field deficits resulting from traumatic brain injury following an accident in 1986 (R-1, R-3). Respondent's situation was referred to the Division's Medical Advisory Panel (the "Panel") for its recommendation regarding his fitness to operate a motor vehicle. The Panel Referral (dated August 16, 2012,) noted the respondent's driving record (P-4) which indicated involvement in twenty-one prior motor vehicle accidents since 1979 (Seventeen of those accidents occurred after respondent's head trauma in 1986). At the July 18, 2012, Administrative Conference, a driver evaluation from a Certified Driver

¹ This matter had been adjourned on several occasions at the request of both parties prior to being assigned to this Judge on August 27, 2015.

Rehabilitation Center was ordered, which was carried out on August 9, 2012, at the St. Lawrence Rehabilitation Center with both pre-driver and behind-the-wheel assessment. The respondent failed the latter exam by being "unable to demonstrate consistent safe driving skills" and "unable to demonstrate potential for improvement of noted deficient areas." The Panel recommended the suspension of the respondent's driving privileges on August 16, 2012 (P-6)

Members of the Panel, including Francis Wood, M D , recommended suspension of respondent's driving privileges. In a Panel Referral dated April 16, 2013, (P-7) Dr Wood concurred with one of respondent's treating neurologists, Dr Vergara that the respondent suffers from right homonymous hemianopsia. He also added that "this is the kind of neurological deficit that could lead to numerous accidents, such as the driver has had, due to visual field inattention. At the time, in a setting [of] testing, where the driver's attention is unusually focused, he could appear to perform normally." (Ibid) Dr Wood further described right homonymous hemianopsia as a neurological condition rather than an "eye" condition, and explained how the condition might affect the ability to safely operate a motor vehicle. In part, he wrote

The parts of the cerebral hemispheres that are primarily concerned with vision are the occipital lobes (the back portion of the hemispheres) and the fiber tracts that lead to them. When one occipital lobe is damaged, say by a stroke or a hemorrhage or an injury, as in the case [of] Authur Atoeff, or sometimes a tumor, the brain no longer receives impulses that see what is on the opposite side of the individual, and this is called "hemianopsia[.]" That's Latin, I believe, for "half-blindness." It is more disabling than the total loss of vision in one eye, because, when one eye is lost, provided the other eye is intact, the other eye still sees images from both sides of the field of vision—that is to say, from both the right and the left, whereas with hemianopsia, the individual is blind on one side, even though visual acuity from each eye can test normally, since visual acuity is testing straight ahead vision, not vision from the side. Thus an individual with a hemianopsia could pass the visual acuity test, but still have a disabling handicap.

The handicap is disabling because an individual with a [right] hemianopsia, say, is blind to objects that are on

his/her [right], and in the case of a driver, this would include oncoming traffic, cars approaching from the [right] at an intersection, and pedestrians dashing out from the [right] (An individual with a right hemianopsia would be blind to objects on the right, such as parked cars and pedestrians dashing out from the right) While it can be argued that the handicap could be overcome by turning the eyes or head to the side, or from side to side, this is an impractical solution because one cannot keep the eyes or head turned to one side all the time, and there will be measurable intervals of time when the individual is blind on one side, and even short periods of blindness can be disastrous when one is concerned with safe driving Furthermore, when in heavy traffic or at an intersection, there can be cars approaching from both sides at the same time

[P-1 at 2]

On September 11, 2014, respondent's physician, Frederick E Lepore, M D , completed an exam and reported that respondent's condition was "clear-cut right-field homonymous hemianopsia" and he indicated that respondent's "visual function meets the requirements for a private operator's driving license in the State of New Jersey " (R-1 at 3) Dr Lepore also completed a vision report that indicated "his right hypertropia has been corrected with prism glasses and he attains fusion in the primary gaze " (Ibid)

I **FIND** as **FACT** all of the above, which is undisputed The MVC offered the testimony of Dr Wood in support of its contention that respondent is medically and/or physically unable to safely operate a motor vehicle The respondent proffered testimony of Dr Lepore who indicated that his visual function meets the requirements for a private operator's driving license in the State of New Jersey

TESTIMONY

Francis A. Wood, M D, is a retired Board-Certified neurosurgeon with thirty years experience who retired in 1989 He works for the MVC Committee Advisory Service and originally examined individuals with convulsive disorders but his duties have expanded and include other afflictions Currently, he reviews approximately ninety

cases per month for the agency, but he does not perform any examinations. Based upon his education, background and experience, he is qualified as an expert for the petitioner in the medical field of neurosurgery.

The function of the Panel is to review a driver's ability to operate motor vehicles in the State of New Jersey who have varying medical conditions. He described two ways that the Panel reviews drivers:

- 1) Doctors in New Jersey are required to report that person has a convulsive condition and,
- 2) Police can request a review or retest individuals involved in Motor Vehicle (MV) accident/infractions.

The Panel is comprised of two Neurologists, Board Certified Ophthalmologists, Board Certified Endocrinologists, and one or two Board Certified Psychiatrists. They do not review each others reports.

Dr. Wood reviewed respondent's medical records in rendering his report of April 16, 2015, and ultimate conclusion in this case. He testified that respondent has clear-cut right-field homonymous hemianopsia, which is a neurological condition, not ophthalmological. The condition caused blindness in his right field of vision. In other words, respondent is blind on the right side. The main symptom is the inability to see to one side, which may cause bumping into objects or not getting away from objects. His condition is not subject to change because of the length of time, approximately twenty-eight years, that he has had it. Dr. Wood explained the difference between half eye and half field of vision. Left side of brain controls right side of body and vice-versa. The motor pathways cross differently than sensory. Also, the eyes see both visual fields but still cross neuropathically.

He testified there is an interruption of neuro pathways between eyes and brain. Right homonymous hemianopsia means that there is left side damage to the brain. The right hemi (half) anopsia (blindness) literally translated means a half blind visual field. The respondent cannot see anything on the right half of his visual field. The causes can be attributed to Brain tumor, stroke or traumatic brain injury. Respondent presented

with a history of a traumatic brain injury from 1986 when he suffered a severe fall from a great height, "which makes sense "

Dr. Wood presented (P-3) which was representative of visual fields. He explained that the "left half of brain see's right half of each eye " Consequently, the right half of the brain sees the left half of each eye. He narrated that Page 1 was not correct because both eyes see same things. On Page 2 it shows left not right homonymous hemianopsia but it reflects Atoeff's condition. Page 3 reflects a Bitemporal condition and Page 4 is "not Atoeff " These conditions are caused by neurological functions of the eye not ophthalmological.

In rendering his opinion in this case, Dr. Wood reviewed respondents Driver's Abstract which "reinforced" his conclusion because the accidents "involved objects, and accidents from the right " (P-4). Dr. Wood did review the abstract, and he had a "very difficult time reading it and doesn't rely on it " In fact, he stated that he "didn't look at abstracts because doesn't know how to read them " Nevertheless, it reveals twenty-one accidents since 1979, seven in six years, and eleven between 2005 and 2012. (P-4; P-6)

Dr. Wood also reviewed copies of police accident reports in rendering his opinion of the case. The facts of the accidents were helpful in understanding respondent's issues, including failure to observe a stop sign on the right. He also relied on numerous reports of driver testing on the respondent. His opinion with regard to neurological problems and the driver exam is that individuals can minimize the errors in doing it in repetition where practice makes perfect. He explained that in a "controlled setting" "it's easier for respondent to focus differently," whereas out on the street it is a "one shot deal " On the accident of September 29, 2011, respondent stated, "he was suddenly struck by # 2 " "Driver # 1 (Atoeff) didn't see the stop sign " The investigation revealed Driver # 1 (Atoeff) was at fault. Dr. Wood stated that it is "not just a mistake that he didn't see sign." "He has right homonymous hemianopsia which is blindness in the right" Then it is "common sense" that homonymous hemianopsia caused the accident.

Dr Wood in preparation for his report reviewed many of the respondent's medical records (P-2) Dr Vergara was the treating neurologist that examined the respondent and did a visual field study on March 30, 2013. However, in looking at Vergara report from 2013, (R-4) Dr Vergara says the respondent "can drive safely" but Dr Wood disagrees that he is able to drive. "He examined him, I didn't" Vergara says "ophthalmological problem" Dr Wood disagrees, stating that "Vergara waffled" When confronted with the Health South Driver Assessment and Retraining Program Discharge Summary that indicates that respondent passed the test, (R-3) Dr Wood commented that he is able to drive while "supervised with focused attention" In other words, the respondent had a specific task to complete and was not distracted, therefore he was successful

Dr Wood testified that "people do drive with handicaps, disabilities and injuries including one eye as well as homonymous hemianopsia." He explained that visual field and visual acuity are two different things. Visual acuity is measured and tested with the standard eye chart. Consequently, "visual field is peripheral vision" He stated that respondent "has normal visual acuity but not visual field" "MVC only measures visual acuity" and the "standards are very low" Dr Wood's opinion, within a reasonable degree of medical certainty, is that respondent is not able to safely operate a motor vehicle

Frederick E Lepore, M.D. is a Board Certified Neurologist. He did his undergraduate work at Princeton University and went to medical school at the University of Rochester. Thereafter, he had a Fellowship in Neuro Ophthalmology. In 1980 he came to New Jersey and began working at the University of Medicine and Dentistry of New Jersey, Robert Wood Johnson facility as a Professor of Neurology and Ophthalmology. Even with his teaching schedule, he continues to maintain a medical practice and has patient consultations five days a week. He was qualified as an expert in Neuro Ophthalmology by the respondent.

Dr Lepore is very familiar with visual field testing and utilizes that type of testing every day in his practice and teachings. He performed a test on the respondent after a thorough two-hour examination and visual scans. He opined that respondent can drive. He met "current visual acuity exam at better than 20/50," "despite the visual fields being

abnormal" He described that the findings were "not outside of regulations of MVC" because "MVC only looks at visual acuity not visual fields" He further exclaimed that "there is some vision in right visual space" "He has homonymous hemianopsia which means there is a field cut that is the same in both eyes"

Dr Lepore agrees with Dr Woods that the diagnosis of clear-cut right-field homonymous hemianopsia is permanent Nevertheless, to make up for respondent's homonymous hemianopsia "he must scan more his environment" He "must move neck to scan the area" Patients with homonymous hemianopsia must be aware of surroundings and environment They must "move head and eyes" and "use common sense and adjust" His opinion within a reasonable degree of medical certainty was that "Atoeff more than meets the criteria to drive" On cross-examination however, Dr Lepore admitted that he did not do any testing on retention time and did not do any testing on respondent to see if he could use common sense or adjust for the impairment

Dr Wood gave credible expert medical testimony and I afford significant weight to his opinion His assessment is corroborated by the diagnosis of clear-cut right-field homonymous hemianopsia and the respondent's significant driving history, which admittedly includes a considerable number of at-fault accidents in the time that he has been driving with the condition

Dr Lepore, likewise gave credible testimony He agrees with Dr Woods that a diagnosis of "clearcut right-field homonymous hemianopsia" and that it is permanent However, he claims that "Atoeff more than meets criteria to drive" Dr Lepore explains that patients with homonymous hemianopsia are required to compensate He explained that "[Atoeff] must scan more of his environment" "He must move neck to scan the area." "Scan the horizon and be aware of his surroundings and environment by moving his head and eyes" "Use common sense, and adjust" However, that being said, there is a lack of competent medical evidence with which to support the contention that respondent can compensate for his visual impairment and that his condition does not adversely impact his ability to safely operate a motor vehicle

Based upon the testimonial and documentary evidence, also having had the opportunity to observe the appearance and demeanor of the witnesses, I also **FIND as FACT**

1 Respondent has complete clear-cut right-field homonymous hemianopsia that affects his field of vision such that he is blind in both eyes in the right field

2 Respondent's driving record includes seventeen accidents since 1986, some of which involved an inability to see other vehicles This evidences a safety risk posed by his physical and/or medical condition

3 The Panel reviewed Dr Wood's medical assessment which was based upon his knowledge and experience in neurology and neurological surgery and it appropriately measured respondent's medical and/or physical ability relative to driving acuity which showed that he cannot safely operate a motor vehicle

4 The techniques articulated by Dr Lepore including but not limited "[Atoeff] must scan more of his environment," "He must move neck to scan the area," "Scan the horizon" and "be aware of his surroundings and environment by moving his head and eyes", "use common sense, and adjust," have not been successful over the years to avoid accidents

LEGAL ANALYSIS AND CONCLUSION

The chief administrator of the MVC has the power to suspend or revoke driving privileges for a violation of the motor vehicle statutes or on other reasonable grounds after proper notice pursuant to N J S A 39 5-30(a) In pertinent part, N J A C 13 21-8 4 states that a person may be prohibited from obtaining or holding a New Jersey driver's license or permit if he or she, "[t]hrough any mental or physical defect is incapable of operating a motor vehicle in a safe manner " N J A C 13 21-8 4(a)(2)

Here, respondent's medical records evidence his neurological condition, clear-cut right-field homonymous hemianopsia, which renders complete right field blindness. His medical condition is irreversible given that he has had the diagnosis since 1986. The number and the nature of accidents, seventeen since his head trauma in 1986, irrefutably demonstrate that his condition impairs his ability to drive safely.

I therefore **CONCLUDE** that petitioner has proved by a preponderance of credible evidence that respondent is medically and/or physically incapable of safely operating a motor vehicle.

DECISION AND ORDER

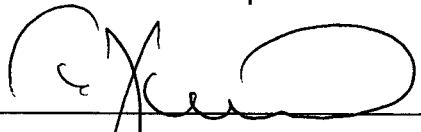
Based upon the foregoing, the MVC properly issued an indefinite suspension of respondent's New Jersey driving privileges. Accordingly, it is **ORDERED** that the driving privileges of respondent, Arthur Atoeff, be suspended indefinitely. The effective date of this suspension shall be set forth in an order of suspension which shall be sent to respondent by the Motor Vehicle Commission 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

1/19/16
DATE


DEAN J. BUONO, ALJ

Date Received at Agency

January 19, 2016

Date Mailed to Parties

1/20/16

/dm

APPENDIX

EXHIBITS

For Petitioner:

- P-1 Francis A Wood, M.D report, dated April 16, 2015
- P-2 Atoeff Medical Records
- P-3 Visual Field Examples
- P-4 NJMVC Abstract
- P-5 (Referred to but not Admitted into Evidence)
- P-6 Medical Advisory Panel Referral, dated August 16, 2012
- P-7 Medical Advisory Panel Referral, dated April 16, 2013
- P-8 NJMVC Medical Examination Report, dated April 12, 2012
- P-9 NJMVC Case History Statement – Head Injury form, dated April 12, 2012

For Respondent:

- R-1 Lepore Report, dated September 11, 2014
- R-2 MVC Conference Report, dated July 18, 2012
- R-3 Health South Driver Assessment and Retraining Program Discharge Summary
- R-4 Manuel Vergara, M D report, dated August 27, 2013

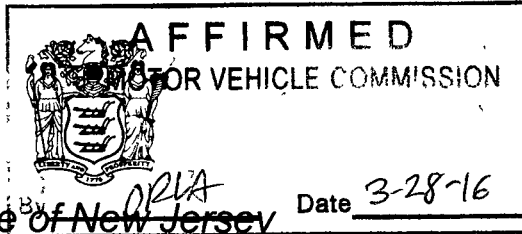
WITNESSES

For Petitioner:

Francis A Wood, M D

For Respondent:

Frederick E Lepore, M D



OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NO. MVH 11089-15

AGENCY DKT NO. 05552

**NEW JERSEY MOTOR
VEHICLE COMMISSION,**

Petitioner,

v.

JAMES W. GRAHAM,

Respondent

New Jersey Motor Vehicle Commission, appearing without a representative,
pursuant to N.J.A.C. 17:27 6(a)

James W. Graham, respondent pro se

Record Closed November 9, 2015

Decided: February 10, 2016

BEFORE **ELIA A. PELIOS, 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 James W. Graham (respondent or Graham)

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 waiver under N.J.A.C. 13.21-14 5(d)

By notice dated April 21, 2013, the New Jersey Motor Vehicle Commission (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 May 10, 2013, along with a request that any hearing wait until resolution of the pending criminal charges. The matter was transmitted to the Office of Administrative Law (OAL) as a contested case on July 23, 2015. A hearing was scheduled for November 9, 2015, at which time the record closed. Orders were entered in this matter to allow for the extension of time in which to file the initial decision.

FACTUAL DISCUSSION

The petitioning agency presented no testimony and proceeded based on the documents provided without representation. The documents show that respondent was served with a notice of scheduled suspension of his passenger endorsement due to a disqualifying criminal arrest and/or conviction record (P-10). The notice appeared to reference an arrest on May 14, 2008, and a charge of offensive touching of which respondent was convicted, and a second arrest on December 5, 2012, for threat to commit a crime and possessing a firearm for an unlawful purpose, which charges were still pending at the time of the notice (P-5). The May 14, 2008, arrest was the subject of, and addressed pursuant to, an earlier OAL proceeding (OAL Dkt. No. MVH 02733-09), at which time no action was taken against respondent's endorsement, and the matter proceeded only in relation to the December 5, 2012, arrest (P-11). The preceding statements are not in dispute and are hereby **FOUND as FACTS.**

Respondent testified on his own behalf. He states that he is separated, trying to reconcile with his wife, and purchase a home in his own name with his own money. He

described the events that led to the charges of December 5, 2012. On that date he stated that the coat rack in his closet had fallen to the floor. He had made four or five trips to the local Home Depot in an attempt to try and obtain the correct hardware to make a repair. Respondent was frustrated. He drank a beer and a few shots. The respondent's wife then came home and wanted to talk with him about something he did not want to discuss. He asked her not to talk about the topic, but she persisted. When she stepped out of the bedroom, he locked the door to keep her out. She knocked on the door and he let her in, and at that point she expressed her frustration and anger at the situation. Respondent set the bag in which he stored a weapon on the bed, and said that he knew how to shut her up if he wanted to. Respondent's wife called the police. He thought that she was kidding, but then realized she was not. He was arrested.

Respondent was released on bail, and charged with improper use of weapon and threatening to commit a crime. His wife returned home the next day and they reconciled. Ultimately, respondent was admitted into pretrial intervention (PTI) and upon its completion the charges were dismissed on April 2, 2015 (R-1).

Respondent indicates that he is a retired detective, and claims to have a healthy respect for weapons. He would never actually point an unloaded weapon, let alone a loaded weapon at anyone. He also notes that he grew up in a house where his mother was abused, and states that he would never hit or harm a woman.

Considering the foregoing, I **FIND** that petitioner was not convicted of any crime pursuant to the December 5, 2012, arrest and that the charges were dismissed upon completion of PTI.

LEGAL ANALYSIS AND CONCLUSIONS

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

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

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 was not convicted of any crime stemming from his December 5, 2012, arrest. The charges were dismissed after his completion of a PTI program on April 2, 2015 (R-1). The May 14, 2008, arrest for offensive touching did result in a conviction, but was addressed at a prior OAL proceeding at which no action was taken against his passenger endorsement (P-11).

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 demonstrated through his credible testimony that given his law enforcement background, he takes weapons safety seriously, as well as issues regarding domestic violence given his experiences growing up. Reviewing his history, this appears to be an isolated incident occurring over three years ago for which the criminal justice system imposed no penalty or sanction upon him, upon completion of a PTI program. It is also noted that respondent's wife provided petitioning agency with a statement that they have received counselling from church, are happy together, and that despite the incident of December 5, 2015, respondent is not a violent man (P-6).

Considering the foregoing, along with the documents supplied and relied upon by the petitioning agency, and noting the disturbing nature of the event described by respondent, 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) as the petitioning agency has not demonstrated by a preponderance of credible evidence that he meets one or more of the categories described therein.

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**.

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.

February 10, 2016

DATE



ELIA A. PELIOS, ALJ

Date Received at Agency

2/10/16

Date Mailed to Parties

2/11/16

nd

WITNESSES

For Petitioner:

None

For Respondent:

James W Graham

EXHIBITS

For Petitioner:

- P-1 Certified Abstract
- P-2 State Police Arrest Notification
- P-3 Complaint Narrative Inquiry
- P-4 Hearing Request Letter
- P-5 NJMVC Supplemental Specifications
- P-6 Statement from respondent's wife
- P-7 NJMVC Passenger Endorsement Warning
- P-8 NJMVC Notice re Mitigating Factors
- P-9 Administrative Office of the Courts ATS/ACS Code Tables
- P-10 Scheduled Suspension Notice
- P-11 Pre-Hearing Conference Report

For Respondent:

- R-1 Pretrial Intervention Program Order of Dismissal