



AFFIRMED
MOTOR VEHICLE COMMISSION

ORLA
State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

Date 11-18-16

INITIAL DECISION

OAL DKT. NO. MVH 08603-16

AGENCY DKT NO. 03562

**NEW JERSEY MOTOR
VEHICLE COMMISSION,**

Petitioner,

v.

KENNETH J. HALL,

Respondent.

New Jersey Motor Vehicle Commission, appearing without a representative,
pursuant to N.J.A.C. 17:27-5.6

Kenneth J. Hall, respondent, pro se

Record Closed. August 12, 2016

Decided October 4, 2016

BEFORE DEAN J. BUONO, 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 Kenneth J. Hall (respondent or Hall). 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 March 29, 2015, 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. On April 14, 2015, respondent requested a hearing along with a request that any hearing be held after the resolution of his pending criminal charges. The matter was transmitted to the Office of Administrative Law (OAL) as a contested case on June 6, 2016. A hearing was scheduled and held on August 12, 2016, at which time the record closed. At the hearing, the Commission relied upon the packet of discovery materials in support of its Notice and chose not to appear or present testimony at the hearing.

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 (Exhibit P-19). The notice referenced an arrest on March 12, 2015, and a charge of Simple Assault (causing or attempting to cause purposefully, knowingly or recklessly caused bodily injury to another) to which respondent plead guilty (Exhibits P-4 and P-5). The preceding statements are not in dispute and are hereby **FOUND** as **FACTS**.

Respondent testified on his own behalf. He stated that he caught his wife committing adultery and confronted her with the allegations. During the confrontation, he was angered by her indiscretions after thirty-eight years of marriage and assaulted her. Respondent's wife called the police. He was arrested and spent three days in Camden County Jail.

Respondent was released on bail, and charged with Disarming an Officer, Threatening to Kill and Possession of a Weapon for an Unlawful Purpose. His wife returned home and confronted the prosecutor about dropping the charges, but they refused. Ultimately, respondent plead guilty to the lesser included offense of Simple Assault and upon its completion, the charges were dismissed on April 2, 2015 (Exhibit R-5)

Respondent and his wife have four children together. Their oldest son was murdered in Philadelphia approximately six years ago. There also was testimony that another child was deceased. Respondent indicates that he has no prior convictions. He completed the required drug scan and alcohol rehabilitation as required by probation. He also completed an anger management program (Genesis) (Exhibit R-1). He has had gainful employment for approximately thirty consecutive years. His current employment with Rapid Rover requires a "P" endorsement on his CDL. He wants to continue to retain his passenger endorsement to provide employment flexibility. He is the sole source of income in his household.

Considering the foregoing, I **FIND** that respondent was convicted of a crime pursuant to the March 12, 2015, arrest and he plead guilty and was sentenced on March 7, 2016. However, I **FURTHER FIND** that respondent has completed a rigorous rehabilitation process.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

The question to be determined in this case is whether or not the respondent demonstrated significant rehabilitation and other mitigating factors in support of him retaining his commercial passenger endorsement.

Under the police authority of the State, the Administrator of the Commission has the right to impose reasonable restrictions on the issuance of licenses for various

occupations in order to protect the public health and safety. Sanders v Div of Motor Vehicles, 131 N J Super. 95, 97 (App. Div 1974) It further has been said that the primary objective of administrative proceedings before the Director "is to foster safety on the highway." Atkinson v Parsekian, 37 N J. 143, 155 (1962).

In 1986, the federal Commercial Motor Vehicle Safety Act was enacted at 49 U S C A §2701 to 2718 Section 2708 of the federal act required the states to adopt commercial driver licensing laws in compliance with federal standards or have their highway funds withheld In response, the legislature enacted the New Jersey Commercial Driver License Act in 1990. N.J.S.A. 39 3-10 9 to -10.31. Under rules promulgated by the Commission regarding the right of a commercial driver to have a passenger endorsement, N J A C 13.21-14 et seq., the Administrator –

may not issue a passenger endorsement, or may revoke or suspend the passenger endorsement of any person when it is determined that the applicant or holder of such license has

12. A criminal record that is disqualifying 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.

(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,

[N J A C. 13 21-14 5(c).]

In addition, there are general requirements for a person to hold such an endorsement. "Applicants shall be at least 21 years of age, have a minimum of three years driving experience, be of good character and physically fit and possess a valid New Jersey driver license" N.J.A.C. 13:21-14.5(a) The Commission charged respondent with respect to these disqualifying provisions

The law vests the Chief Administrator with discretion on this type of suspension both because of the permissive use of "may" rather than the mandatory "shall" language above and because it has reserved the right to waive any portion of the disqualifying regulation "[if] sufficient and reasonable grounds are established at a hearing . . . " N.J.A.C. 13:21-14.5(d) Proof of rehabilitation establishes grounds to waive the regulation. Sanders, supra, 131 N.J. Super at 98. The standards set forth in the Rehabilitated Convicted Offenders Act provide guidance in assessing whether the proofs are sufficient to justify a waiver of a disqualifying condition. See N.J.S.A. 2A:168A-1 to -3 As a matter of policy, "it is in the public interest to assist the rehabilitation of convicted offenders by removing impediments and restrictions upon their ability to obtain employment or to participate in vocational or educational rehabilitation programs based solely on the existence of a criminal record" N.J.S.A. 2A:168A-1.

Various factors are enumerated in N.J.S.A. 2A:168A-2 to determine whether a conviction for a crime relates adversely to a particular occupation. The factors include. (1) the nature and duties of the occupation, (2) the nature and seriousness of the crime, (3) the circumstances under which the crime occurred; (4) the date of the crime, (5) the age of the person when the crime was committed; (6) whether the crime was an isolated or repeated incident, (7) social conditions which may have contributed to the crime, and (8) any evidence of rehabilitation, including good conduct in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, or the recommendation of persons who have or have had the person under their supervision.

In this case, the respondent is a sixty-year-old man who currently maintains an event free driving abstract. He has been financially supporting himself and his family for years as a professional driver. He has no prior contact with the criminal justice system and was entirely compliant with the requirements of his probation. He has successfully demonstrated the support of his employer, and a sincere and serious commitment to the community and his own continued progress.

I CONCLUDE that respondent should be deemed to have demonstrated significant rehabilitation and other mitigating factors in support of retaining his commercial passenger endorsement. **I FURTHER CONCLUDE** that the public is not at risk as a result of the passenger endorsement of respondent and that he is deserving of a waiver of his past transgressions so that his future can continue to grow in a positive direction.

ORDER

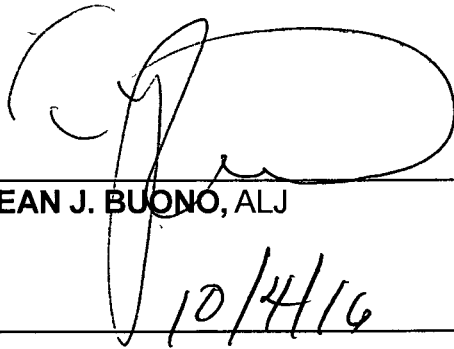
Based upon the foregoing, I **ORDER** that the scheduled suspension of respondent's passenger endorsement on his Commercial Driver License be and is hereby **DISMISSED**.

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

October 4, 2016
DATE


DEAN J. BUONO, ALJ

Date Received at Agency

10/4/16

Date Mailed to Parties:

10/5/16

/v/

WITNESSES

For petitioner:

None

For respondent:

Kenneth Hall

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