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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4157-15T4

NEW JERSEY MOTOR
VEHICLE COMMISSION,

Petitioner-Respondent,

v.

GERARD J. REDMOND,

Respondent-Appellant.

Argued September 18, 2017 – Decided October 16, 2017

Before Judges Sabatino and Whipple.

On appeal from New Jersey Motor Vehicle
Commission.

James N. Butler, Jr. argued the cause for
appellant.

Jennifer R. Jaremback, Deputy Attorney
General, argued the cause for respondent
(Christopher S. Porrino, Attorney General,
attorney; Melissa H. Raksa, Assistant Attorney
General, of counsel; Ms. Jaremback, on the
brief).

PER CURIAM

Respondent, Gerard J. Redmond, appeals from a final decision of the Commissioner of Motor Vehicle (Commissioner) suspending his driver's license after a motor vehicle accident involving a fatality. We remand for the following reasons.

On May 8, 2011, respondent was stopped at a traffic light at an intersection in Jackson Township when a large insect entered his passenger side window and startled him. When he tried to swat the insect, his foot slipped off the brake, and respondent's vehicle entered the intersection, where it collided with a vehicle operated by the decedent. The decedent had the green light as he was travelling through the intersection.

A Jackson police officer arrived at the scene and interviewed both drivers. The officer described both individuals as alert, calm, and able to answer questions. Respondent reported no injury to the officer, described the accident, and was issued a summons for failure to observe a traffic control device. N.J.S.A. 39:4-81. The officer testified the decedent, an elderly man, complained of lower back pain. The decedent was taken to the hospital, where he died six weeks later.

The death certificate issued contemporaneously with the decedent's death listed respiratory failure caused by bi-lateral pneumonia as the cause of death. However, in 2014, the decedent's estate obtained opinions from three medical experts and secured

an amendment to the certificate, listing the cause of death as a motor vehicle accident. Decedent's estate has since filed suit against respondent.

After the Jackson police learned of decedent's death, they referred the case to the fatal accident unit of the State Police. On February 24, 2015, the State of New Jersey Motor Vehicle Commission (the Commission) suspended respondent's license, pursuant to N.J.S.A. 39:5-30, for sixteen months because his actions in failing to observe a traffic control device contributed to a fatality. Respondent appealed the suspension, and the matter was heard in the Office of Administrative Law.

At the outset of the hearing, the Administrative Law Judge (ALJ) granted the decedent's daughter leave to participate, limited to reading an impact statement. At the close of the hearing, she read the impact statement into the record and disclosed that the decedent had contracted MRSA during the hospital stay.

After considering the testimony of the officer and respondent, and reviewing the medical reports, the ALJ determined respondent caused the motor vehicle accident with the decedent. The discussion then turned to the cause of the decedent's death.

The ALJ found no reason to reject the amended death certificate and accepted the motor vehicle accident as the cause

of death. The ALJ concluded respondent contributed to the fatality and affirmed the suspension, while modifying it to six months because of respondent's good driving record.

Respondent appealed the decision to the Commission. The Commission issued a Final Decision on May 27, 2016, upholding the ALJ's determination and suspension. Respondent was granted a stay of the suspension pending this appeal, which followed.

On appeal, respondent argues the ALJ committed reversible error in determining the decedent's death was a result of the accident and abused her discretion by imposing a suspension.¹

¹ We note respondent's amended notice of appeal (NOA) only lists the April 14, 2016 order of the ALJ and not the final decision of the Commission, however, respondent does discuss the final decision in his case information statement. Rule 2:5-1(f)(3)(A) provides, "it is only the judgments or orders or parts thereof designated in the [NOA] which are subject to the appeal process and review." Pressler & Verniero, Current N.J. Court Rules, cmt. 6.1 on R. 2:5-1 (2011). Nonetheless, we may consider orders not referenced in the NOA if the civil case information statement (CIS) places the adversary on notice of the intended scope of appeal. See Ahammed v. Logandro, 394 N.J. Super. 179, 187-88 (App. Div. 2007). We may also consider an order not identified in the NOA where "the basis for the motion judge's ruling on [an order and subsequent order] may be the same. In such cases, an appeal [from the subsequent order] may be sufficient for an appellate review of the [earlier order], particularly where those issues are raised in the CIS," Fusco v. Board of Education of Newark, 349 N.J. Super. 455, 461 (App. Div.), certif. denied, 174 N.J. 544 (2002), by "clearly indicat[ing]" the earlier order is "one of the primary issues presented by the appeal." Synnex Corp. v. ADT Sec. Servs., Inc., 394 N.J. Super. 577, 588 (App. Div. 2007).

We have a limited role in reviewing administrative agency decisions. Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). We will not overturn such decisions unless they are "arbitrary, capricious or unreasonable" or "not supported by substantial credible evidence in the record as a whole." N.J. Soc'y for Prevention of Cruelty to Animals v. N.J. Dep't of Agric., 196 N.J. 366, 384-85 (2008) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)); In re Tukes, 449 N.J. Super. 143, 156 (App. Div. 2017).

N.J.S.A. 39:5-30(a) empowers the Commission to suspend a motorist's driving privileges for violation of any of the provisions of the motor vehicle statutes and imposes no limitation on the length of the suspension. The Commission may rest his or her decision upon a mere preponderance of the evidence. Cresse v. Parsekian, 81 N.J. Super. 536, 548-49 (App. Div. 1963), aff'd, 43 N.J. 326 (1964). "In proceedings before an administrative agency . . . it is only necessary to establish the truth of the charges by a preponderance of the believable evidence and not to prove guilt beyond a reasonable doubt." Atkinson v. Parsekian, 37 N.J. 143, 149 (1962) (citations omitted).

Here, the ALJ's findings and conclusions with respect to respondent's violation are supported by witness testimony and other evidence presented at the hearing. In its final decision,

the Commission adopted the ALJ's findings and conclusions in whole, including the reduction of respondent's license suspension. We need not discuss whether respondent violated N.J.S.A. 39:4-81, failure to observe a traffic control, because he pled guilty to that violation in municipal court. The focus of our discussion is limited to whether the resulting accident caused the decedent's death.

Among other things, the ALJ determined (1) respondent acknowledged failure to observe the traffic light caused the accident, (2) the decedent passed away because of the accident, and (3) the un rebutted death certificate indicated the accident was the cause of death. The ALJ then rejected respondent's unsupported suggestions that decedent's estate amended the death certificate to gain advantage in a related civil lawsuit or that the decedent died because of other conditions contracted in the hospital.

Based upon our review of the record, we take no issue with these determinations by the ALJ.

We next consider respondent's argument that the imposition of a six-month suspension was arbitrary and unreasonable. Generally, "in reviewing administrative agency decisions, we accord substantial deference to an agency head's choice of remedy or sanction, seeing it as a matter of broad discretion, especially

where considerations of public policy are implicated." In re Herrmann, 192 N.J. 19, 34-35 (2007) (quoting Div. of State Police v. Jiras, 305 N.J. Super. 476, 482 (App. Div. 1997), certif. denied, 153 N.J. 52 (1998)). Here, the penalty was within the numerical parameters of the Commissioner's delegated authority under N.J.S.A. 39:5-30(a). However, in Cresse, we said

The Director must weigh each case individually, to determine whether a suspension is required at all for the purposes above mentioned, and, if so, for how long. Among other things, he should consider the facts which constitute the particular violation; whether the motorist was willful or reckless, or merely negligent, and, if merely negligent, how negligent; how long the motorist has been driving; whether this is his first offense; whether he has been involved in any accidents; his age and physical condition; whether there were any aggravating circumstances, such as drinking, or, on the other hand, whether there were extenuating circumstances. Upon these and all the other facts and circumstances, he should determine whether it reasonably appears, as a matter of prophylaxis and not of punishment, that the motorist should be kept off the highway, and, if so, for how long.

[Cresse, supra, 81 N.J. Super. at 549.]

Here the ALJ considered respondent's minimal driving record and gainful employment, and determined respondent's actions were not willful or reckless but merely negligent. The decision to suspend respondent's driving privileges for six months, as a means of "prophylaxis and not of punishment," was based on respondent's

"refus[al] to accept that the accident he caused had effects subsequent to the incident itself." This finding stemmed from respondent's legal argument he should not be subject to suspension based upon a death certificate amended three and one half years after decedent's death. Based on our review of the record, we do not consider this an appropriate aggravating factor, and consider the imposition of a term of suspension for six months on that basis an abuse of discretion. We thus remand the matter to the Commission to determine anew on proper factors whether a suspension is required, and if so, for how long.

Remanded for reconsideration of the term of suspension, consistent with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



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