SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0065-16T4

MARK KOSCINSKI,

Appellant,

v.

NEW JERSEY MOTOR
VEHICLE COMMISSION,

Respondent.

Submitted January 8, 2018 – Decided February 14, 2018

Before Judges O'Connor and Vernoia.

On appeal from the New Jersey Motor Vehicle Commission.

Mark Koscinski, appellant pro se.

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

PER CURIAM

Petitioner Mark Koscinski appeals from the June 27, 2016 final decision of respondent Motor Vehicles Commission (Commission), which increased the amount of a monthly surcharge

payment it imposed after petitioner was convicted of driving while under the influence of alcohol in Illinois (Illinois conviction). We affirm.

I

Petitioner is a resident of New Jersey. In 2008, he was convicted of driving while intoxicated in New Jersey (New Jersey conviction), his first conviction for such offense. In 2011, petitioner was charged in Illinois for the same offense. For reasons not clear in the record, this charge was not resolved until April 8, 2015, when he pled guilty to this offense. The sentence the Illinois court imposed was that he "continue counseling in New Jersey"[1] and pay a fine of $750.

Both New Jersey and Illinois are members of the Interstate Driver License Compact (Compact), N.J.S.A. 39:5D-1 to -14 and N.J.A.C. 13:19-11.1. The compact requires party states to impose penalties upon licensed drivers who have been convicted of specific offenses in other states. After receiving a record of the Illinois conviction, on May 5, 2015, the Commission issued petitioner a notice of suspension. The noticed stated the Commission proposed to suspend petitioner's New Jersey driving privileges for 730 days, the statutorily mandated

[1] The Illinois court does not specify the kind of counseling petitioner had to continue in New Jersey.

minimum period for a second conviction. See N.J.S.A. 39:4-50(a)(2). Petitioner was also advised of his right to request a hearing, including the format of the hearing request; specifically, the notice stated that if he was seeking a hearing, he was to detail all disputed material facts and specify all legal issues he wished to raise at the hearing.

Petitioner promptly responded by letter, in which he requested a hearing, set forth what he perceived were material issues of fact, and identified the legal issues he deemed relevant to the proposed suspension of his license. On July 17, 2015, the Commission issued an "Order of Suspension" and "Denial of Hearing Request/Final Decision," in which it suspended petitioner's license for 730 days, effective August 17, 2015.

In the order, the Commission denied petitioner's request for a hearing, finding none of the factual or legal issues petitioner asserted warranted such a proceeding. The order further stated it constituted a final decision of the Chief Administrator of the Commission, and that petitioner had forty-five days to file a notice of appeal in the Appellate Division.

In a letter dated "July 17, 2018," petitioner asserted he was making a motion for reconsideration of the order; a complete copy of the petitioner's letter was not included in the record. We discern the motion for reconsideration was denied, but the

Commission's decision also was omitted from the record. Petitioner did not appeal from the July 17, 2015 order or from the Commission's determination to deny his motion for reconsideration.

In a letter dated June 7, 2016, petitioner informed the Commission he received a notice the Commission intended to increase the monthly payment toward the surcharge it imposed as a result of the Illinois conviction, from eighty-three to ninety-seven dollars per month.[2] In that letter, petitioner requested a hearing before the Commission because: (1) although he did not appeal from either the New Jersey or Illinois convictions, he wanted to challenge both on the ground his sleep apnea condition caused him to drive while under the influence of alcohol; (2) he wanted to attack the Illinois conviction on the ground the prosecution of such matter was impermissibly delayed for four years; (3) the Commission improperly imposed monetary penalties and a two-year driver's license suspension "more than three years after the event"; and (4) the Commission was without authority to impose a surcharge or any increases on a surcharge because he had previously paid a fine to Illinois in connection with the Illinois conviction.

[2] A copy of the notice was not included in the record.

On June 27, 2016, the Commission issued a written decision, in which it pointed out N.J.S.A. 17:29A-35 requires an assessment of $1000 per year for three years when a New Jersey driver has been convicted of driving under the influence of alcohol. The Commission further explained petitioner owed $1062 toward the annual surcharge he had been required to pay in 2015; therefore, the Commission determined to impose a payment plan, whereby he would be required to pay ninety-seven dollars per month for the surcharge.

The Commission also informed petitioner it did not have the authority to change any "court-reported violations" and, thus, if he questioned the validity of the Illinois conviction, he would have to submit documentation from an Illinois court stating he had not been convicted of driving while under the influence. The Commission did not grant petitioner's request for a hearing. Petitioner appeals from the June 27, 2016 determination.

II

On appeal, in addition to asserting contentions he did not raise before the Commission when he challenged the increase in the surcharge payment, petitioner reprises the arguments he made before the Commission and further contends the Commission erred when it failed to grant his request for a hearing.

We do not address any contentions that were not made before the Commission. "Generally, an appellate court will not consider issues, even constitutional ones, which were not raised below." State v. Galicia, 210 N.J. 364, 383 (2012). As for the remaining arguments, all are without merit.

Our role in reviewing a decision of the Commission is limited. In the absence of a "a clear showing that it is arbitrary, capricious, unreasonable or not supported by credible evidence in the record as a whole[,]" the decision will be sustained. Klusaritz v. Cape May County, 387 N.J. Super. 305, 313 (App. Div. 2006); Brady v. Bd. of Review, 152 N.J. 197, 210-11 (1997).

We reject petitioner's argument the Commission was without authority to impose a surcharge or an increase in the surcharge because he had previously paid a fine to the Illinois court in connection with the Illinois conviction. The Compact provides for party states to impose penalties upon licensed drivers who have been convicted of specific offenses in other states. When a New Jersey driver has been convicted of driving under the influence of alcohol in another state, N.J.S.A. 39:5D-4 directs the Commission to "give the same effect to the conduct reported . . . as it would if such conduct had occurred in the home state," New Jersey.

In New Jersey Division of Motor Vehicles v. Egan, 103 N.J. 350, 357 (1986), our Supreme Court reviewed the policy of the Director of the Division of Motor Vehicles to exercise the discretion granted by N.J.S.A. 39:5D-4 to "uniformly impos[e] New Jersey's more stringent penalty instead of being reduced to 'the least common denominator of other States[.]'" The Court noted the "legislative policy of exacting stringent penalties for drunk-driving offenses has never been stronger[,]" and concluded the "Director's administrative policy of imposing these home state penalties furthers this legislative policy" and was not an abuse of discretion. Ibid.

Accordingly, petitioner was subject to punishment in both Illinois and New Jersey for driving while intoxicated. State, Div. of Motor Vehicles v. Pepe, 379 N.J. Super. 411, 418 (App. Div. 2005). The fact the Illinois court imposed a sentence did not preclude the Commission from imposing applicable mandatory sanctions and penalties for petitioner's second driving while intoxicated conviction. Thus, the Commission had the authority to impose the surcharge and any increases on such surcharge.

We also reject petitioner's contention the Commission erred when it declined petitioner's request to hold a hearing, so that he could collaterally attack the New Jersey and Illinois convictions. Although the Administrative Procedure Act,

N.J.S.A. 52:14B-1 to -15, affords licensees an administrative hearing if there are disputed material facts, see N.J.S.A. 52:14B-11, by the same token, a contested case hearing is not required where the material facts are not in dispute. Pepe, 379 N.J. Super. at 419 (noting if there are no disputed issues of fact, a hearing is unnecessary).

Here, petitioner failed to identify any material facts that were in dispute, including the existence of the New Jersey and Illinois judgments of conviction. A hearing is not required when, as was the case here, "the agency is required by any law to revoke, suspend or refuse to renew a license, as the case may be, without exercising any discretion in the matter, on the basis of a judgment of a court of competent jurisdiction[.]" N.J.S.A. 52:14B-11; Tichenor v. Magee, 4 N.J. Super. 467, 470-71 (App. Div. 1949) (holding a hearing is not required when out-of-state conviction was undisputed).

Petitioner argues that, had the Commission conducted a hearing, he would have successfully convinced it to overturn the New Jersey and Illinois convictions, once the Commission was made aware his sleep apnea condition caused him to drink alcohol and drive. We decline to delve into the many deficiencies of this argument. Suffice it to say there is no serious dispute

the administrative hearing petitioner sought was not the appropriate forum in which to challenge these convictions.

Finally, petitioner contends the four-year delay between being charged with the subject offense in Illinois in 2011 and disposition of this matter in 2015 precluded the Commission from taking any action against him. We reject this premise as unsupported by any statutory, regulatory or decisional authority. To the extent such delay impacts the Illinois conviction, petitioner's recourse is to challenge such conviction in Illinois, not in New Jersey. See, e.g., State v. Laurick, 120 N.J. 1, 11-12 (1990); State v. Ferrier, 294 N.J. Super. 198, 200 (App. Div. 1996); Tichenor, 4 N.J. Super. at 471 (where driver did not appeal Maryland conviction for drunk driving, he cannot "assert" invalidity of the same in a reciprocal suspension proceeding by New Jersey).

To the extent we have not addressed any argument petitioner advances, it either is due to the fact such argument is not properly before us or is devoid of sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.