

Weckworth v Schroeder

Supreme Court of New York, New York County

May 18, 2020, Decided

156582/2019

Reporter

2020 N.Y. Misc. LEXIS 2176 *; 2020 NY Slip Op 31473(U) **

[**1] ROGER E. WECKWORTH, Petitioner, For an Order and Judgment Pursuant to Article 78, - v - MARK J.F. SCHROEDER, ACTING COMMISSIONER OF NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES, NYS DEPARTMENT OF MOTOR VEHICLES, NYS DEPARTMENT OF MOTOR VEHICLES ADMINISTRATIVE APPEALS BOARD, Respondents. INDEX NO. 156582/2019

Notice: THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

Prior History: *New York v. Weckworth*, 55 Misc. 3d 1210(A), 58 N.Y.S.3d 875, 2017 N.Y. Misc. LEXIS 1376 (Apr. 17, 2017)

Judges: [*1] HON. EILEEN A. RAKOWER, J.S.C.

Opinion by: EILEEN A. RAKOWER

Opinion

Petitioner Roger E. Weckworth ("Petitioner") brings this [Article 78](#) proceeding seeking an Order to vacate the determination of the NYS Department of Motor Vehicles ("DMV") Driver Improvement Bureau to not re-issue a driver's license to Petitioner. Respondents have interposed an Answer.

Background

Petitioner held a New York State Class D Driver's License since 1970. From 1977 through 2016, Petitioner held a Commercial Driver's License.

On October 21, 2016, Petitioner, who at the time was employed as a New York City bus driver, was involved in an accident that resulted in the death of a pedestrian.

[**2] On August 16, 2017, Petitioner pled guilty to and was convicted of a violation of New York Vehicle & Traffic Law ("VTL") [§ 1146\(c\)\(1\)](#), for failure to exercise due care in operating a motor vehicle. The revocation of Petitioner's license was ordered by the criminal court pursuant to [VTL § 510\(3\)](#). On November 27, 2017, a DMV Division of Safety and Business Hearings conducted a fatal accident hearing. At the hearing, Petitioner testified and was represented by counsel.

After the hearing, the ALJ ordered the DMV Driver Improvement Bureau ("Driver Improvement Bureau") to implement [*2] the revocation of Petitioner's license that had been ordered by the criminal court. On May 3, 2018, Petitioner submitted an application for re-licensure.

By letter dated December 4, 2018, the Driver Improvement Bureau notified Petitioner that his application for re-licensure had been denied pursuant to Part 136 of the Commissioner's Regulations. The letter noted Petitioner's involvement in the fatal accident on October 21, 2016, his conviction, and the criminal court's revocation of his driver's license. The letter also identified Petitioner's previous "series of convictions, incidents, and/or accidents, which in the judgment of the Commissioner or his/her designated agent, upon review of your entire driving record, establishes that you would be an unusual and immediate risk upon the highways." The "incidents/convictions/accidents" are as follows: "Failed to Use Due Care with Serious Physical Injury" (10/21/2016); Property Damage Accident (13/13/2016); Personal Injury Accident (1/6/2003); Property Damage Accident (5/30/1994); Personal Injury Accident (8/7/1991); and Personal Injury/Property Damage Accident (4/22/1991)."

The December 4, 2018 letter stated:

A review of your driving history [*3] indicates that your failure to observe the rules and regulations governing the operation of a motor vehicle constitutes a serious lack of regard on your part for

the safety and welfare of other users of the highway. Based upon the law and the above referenced driving convictions or incidents, your application for a driver license is denied.

[**3] The December 4, 2018 letter advised Petitioner that he could: (1) "submit the attached form 'Request for Relicensing Reconsideration After Denial' to the Driver Improvement Bureau within 50 days...IF you have unusual, extenuating, and compelling circumstances that you believe would justify approval of your driver license application;" (2) submit an appeal from, appeal fee and copy of this denial letter to the DMV Appeals Board; or (3) submit another reapplication to the Driver Improvement Bureau. The letter specifically stated, "**DO NOT SUBMIT CLAIMS OF UNUSUAL, EXTENUATING AND COMPELLING CIRCUMSTANCES TO THE APPEALS BOARD.**"

On January 24, 2019, Petitioner submitted an administrative appeal of the denial of re-licensure to the DMV Appeals Board ("Appeals Board"). Petitioner's appeal contained information concerning his history as a NYC public transit [*4] bus worker.

On March 5, 2019, the Appeals Board informed Petitioner of its decision of February 26, 2019 denying his appeal. The February 26, 2019 decision stated:

Department records indicate that appellant's driving record includes a conviction for Failure to Exercise Due Care with Serious Injury in connection with a fatal accident on October 21, 2016. Appellant has also been at fault in connection with two personal injury accidents and a property damage accident.

Given appellant's driving record, the denial of appellant's application for a driver's license had a rational basis, was authorized by [Vehicle and Traffic Law §510](#) and Part 136 of the Commissioner's Regulations, and did not constitute an abuse of discretion.

The decision further stated:

[15 NYCRR §136.4\(e\)](#) provides that the Commissioner may consider unusual, extenuating or compelling circumstances presented for review, [**4] which form a valid basis to deviate from the general policy of Part 136, in the exercise of the discretionary authority granted under [VTL §510](#).

In the letter denying appellant's application for re-licensure, appellant was instructed to submit any unusual, extenuating or compelling circumstances

to the Department's Driver Improvement Bureau within 60 days of the denial [*5] letter. According to Departmental records, appellant did not submit information regarding unusual, extenuating, and compelling circumstances to the Driver Improvement Bureau, but rather submitted such information only to the Appeals Board. [Section 136.8](#) of the Commissioner's Regulations specifically prohibits the Appeals Board from consideration of any information that has not previously been submitted to the Driver Improvement Bureau. Therefore, any arguments pertaining to unusual, extenuating, and compelling circumstances are waived and shall not be reviewed by the Appeals Board.

Parties' Arguments

Petitioner argues that Respondents acted arbitrarily, capriciously, and abused their discretion when they issued the final decision denying Petitioner's application for re-licensure. Petitioner further argues that Respondents acted contrary to law when they failed to give Petitioner the opportunity to respond prior to the denial. Petitioner further argues that the decision dated December 4, 2018 does not support the harsh penalty imposed in light of Petitioner's driving service to the public. Petitioner further argues that the Driver Improvement Bureau and the Appeals Board failed to take into account [*6] his 40 year service as a New York City public transit driver and the awards he won for his driving skills. Petitioner argues there is no support that he was at fault for all the prior incidents and the fact that he had no incident for eleven years prior to the fatal accident [**5] was ignored. Petitioner requests an Order directing Respondents to issue Petitioner a NYS Class D Driver's License.

Respondents argue that the DMV's determination not to issue a license to Petitioner is rationally based and is neither arbitrary nor capricious.

Legal Standard

"[Article 78](#) proceedings exist for the relief of parties personally aggrieved by governmental action." [Dunne v Harnett, 92 Misc. 2d 48, 399 NYS 2d 562, 563 \[Sup Ct, NY County 1977\]](#). Judicial review is limited to questions expressly identified by [CPLR 7803](#). [Featherstone v Franco, 95 NY2d 550, 554, 742 N.E.2d 607, 720 N.Y.S.2d 93 \[2000\]](#). One such question is "whether a

determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed." See [CPLR 7803 \[3\]](#).

"[I]t is settled that in a proceeding seeking judicial review of administrative action, the court may not substitute its judgment for that of the agency responsible for making the determination, but must [*7] ascertain only whether there is a rational basis for the decision or whether it is arbitrary and capricious." [Flacke v Onondaga Landfill Systems, Inc., 69 NY2d 355, 363, 507 N.E.2d 282, 514 N.Y.S.2d 689 \[1987\]](#). "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts." [Testwell, Inc. v New York City Dept. of Bldgs., 80 AD3d 266, 276, 913 N.Y.S.2d 53 \[1st Dept 2010\]](#).

The fundamental requirement of due process is "the opportunity to be heard before being condemned to suffer grievous loss of any kind...[and] is a principle basic to our society." [Mathews v Eldridge, 424 US 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 \[1976\]](#). The essence of due process is to ensure that "a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it. All that is necessary is that the procedures be tailored, in light of the decision to be made, to "the capacities and circumstances of those who are to be heard," to ensure that they are given a meaningful opportunity to present the case." [Id. at 348-49](#). The New York State Constitution's guarantees of equal protection and due process are virtually coextensive with those of the U.S. Constitution. [Coakley v Jaffe, 49 F Supp 2d 615, 628 \[**6\] \[SDNY 1999\]](#). "The clauses are formulated in the same words and are intended for the protection of the same fundamental rights of the individual and there is, logically, no room for distinction in definition of the scope of the two clauses." [Cent. Sav. Bank in City of New York v City of New York, 280 NY 9, 10, 19 N.E.2d 659 \[1939\]](#).

A "driver's [*8] license is not generally viewed as a vested right, but merely a personal privilege subject to reasonable restrictions and revocation by [DMV's Commissioner] under [his] discretionary powers." [Scism v. Fiala, 122 AD 3d 1197, 1198, 997 N.Y.S.2d 798 \[3d Dept 2014\]](#).

Pursuant to New York Vehicle & Traffic Law ("VTL") [§ 510\(3\)\(a\)](#), a driver's license may be revoked "for any violation of the provisions of this chapter . . . or for any violation of a local ordinance or regulation prohibiting

dangerous driving as shall, in the discretion of the officer acting hereunder, justify such revocation or suspension." [VTL § 510\(5\)](#) provides that "[a] license or registration may be restored by direction of the commissioner but not otherwise."

[15 NYCRR § 136.4\(b\)](#) provides that "[a]n application for a driver's license may be denied if a review of the entire driving history provides evidence that the applicant constitutes a problem driver, as defined in [section 136.1\(b\)\(1\)](#) of this Part." A "problem driver" is defined as "an applicant for a driver's license or privilege who has had a series of convictions, incidents and/or accidents or has a medical or mental condition, which in the judgment of the commissioner or his or her designated agent, upon review of the applicant's entire driving history, establishes that the person would be an [*9] unusual and immediate risk upon the highways." [15 NYCRR § 136.1\(b\)\(1\)](#). The Commissioner (via the Driver Improvement Bureau) may consider "unusual, extenuating or compelling circumstances" and issue a license notwithstanding the "problem driver" designation in certain situations. [15 NYCRR § 136.4\(f\)](#).

"Denial of an application for license shall be appealable to the Administrative Appeals Board, except that the appeals board shall not consider any material which had not been previously submitted. In such a case, the applicant shall be required to submit any additional material in a new application." [15 NYCRR § 136.8](#).

[**7] Discussion

Based on Petitioner's record which included multiple incidents and accidents in addition to the October 2016 fatal accident, DMV had a rational basis to determine that Petitioner is a "problem driver" as defined in [15 NYCRR § 136.1\(b\)\(1\)](#) and thus not qualified for reissuance of his license. DMV's determination not to reissue a license was therefore not arbitrary and capricious.

While Petitioner argues that the Appeals Board failed to consider his claim that he was entitled to a license because of "unusual, extenuating, and compelling" circumstances, Petitioner did not submit the materials relating to such alleged circumstances to the Driver Improvement [*10] Bureau, as required and permitted by [15 NYCRR § 136.4](#) and specified in the appeal. Petitioner therefore had the opportunity to raise his claim to the Drive Improvement Bureau and was not deprived of due process.

Wherefore, it is hereby

ORDERED and ADJUDGED that the Petition is denied and the action is dismissed and the Clerk is directed to enter judgment accordingly. This constitutes the decision and order of the court. All other relief requested is denied.

Dated: MAY 18, 2020

ENTER: /s/ Eileen A. Rakower

J.S.C.

EILEEN A. RAKOWER

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