
DMV v. Bigham
Cite as 13 *N.J.A.R.* 977

DIVISION OF MOTOR VEHICLES,
Petition,
v.
CYNTHIA K. BIGHAM,
Respondent.

Initial Decision: September 28, 1987

Final Agency Decision: November 12, 1987

Supreme Court of New Jersey Decision Appears at:
119 *N.J.* 646 (1990)

Selected for publication in *N.J.A.R.* because the
court appeal of this case was published.

SYNOPSIS

Respondent disputed the proposed imposition of an automobile insurance surcharge. The matter was transmitted to the Office of Administrative Law for a hearing.

The facts of the case were undisputed. Respondent did not realize her license had expired until she was involved in an accident that was not her fault. She was convicted for driving without a license. Based on that conviction, the Division of Motor Vehicles assessed a surcharge pursuant to the New Jersey Automobile Insurance Reform Act of 1982, *N.J.S.A.* 17:29A-33 et seq., and regulations at *N.J.A.C.* 13:19-13.1. Respondent argued that the regulations should not be applied to her because she did not receive a license renewal form. She also argued that applying the regulation based on the facts of the case would be inconsistent with the intention of the statute, which is to penalize drivers for serious or fault-oriented activities. The administrative law judge agreed with respondent's arguments and concluded that no surcharge should be levied.

Upon review, this initial decision was rejected by the Director of the Division of Motor Vehicles. Because respondent was convicted of a surchargeable offense, a surcharge should be imposed. The Director said it was immaterial whether respondent received a renewal notice. In addition, he held that the surcharge attaches automatically upon conviction.

The Appellate Division reversed, holding that the statute does not authorize surcharges for offenses that do not pose a direct threat to safety. The Supreme Court reversed the Appellate Division, reinstating the order of the Division of Motor Vehicles.

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Division of Motor Vehicles, petitioner, appearing pursuant *N.J.A.C.* 1:1-8.6(a)
William J. Bigham, Esq., for respondent (Sterns, Herbert, Weinroth & Petrino, attorneys)

SCOTT, ALJ:

The petitioner, Division of Motor Vehicles, is seeking to impose a surcharge in the amount of \$100 for the 1986 billing year pursuant to the New Jersey Automobile Insurance Reform Act of 1982 (hereinafter "the Act") *N.J.S.A.* 17:29A-33 *et seq.* and regulation promulgated thereunder (hereinafter "the regulation") *N.J.A.C.* 13:19-13.1.

PROCEDURAL HISTORY

On July 12, 1986, the Division mailed an insurance surcharge bill to the respondent. On August 7, 1986, the respondent requested a hearing. On December 17, 1986, the petitioner conducted an unsuccessful settlement conference at which time the respondent chose to appear in person at a hearing before the Office of Administrative Law pursuant to *N.J.A.C.* 1:2-3.3. On March 23, 1987, the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to *N.J.S.A.* 52:14B-1 *et seq.* and *N.J.S.A.* 52:14F-1 *et seq.* The petitioner relies on documents supplied to the respondent pursuant to *N.J.A.C.* 1:2-3.1 including the surcharge bill, driving record and conference report.

ISSUES

The respondent does not dispute that her driver's license expired and that as a result a conviction under *N.J.S.A.* 39:3-10 was entered by the Medford Township Municipal Court on July 8, 1985. The respondent acknowledges that under the provisions of *N.J.A.C.* 13:19-13.1 violation of *N.J.S.A.* 39:3-10 is an offense for which a surcharge may be assessed. The respondent has been driving over 18 years and has never been convicted of a moving violation. It is also not disputed that the respondent was not aware that her driver's license had expired and there was no renewal form automatically sent to the respondent by the petitioner prior to the expiration of her driver's license. On July 8, 1985, the respondent was involved in a

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motor vehicle accident which was not her fault. The officer investigating the accident on examining the respondent's driver's license informed the respondent that it had expired. It was at this time the respondent realized that she had not received an automatic renewal of her driver's license and that her driver's license had expired.

APPLICABLE LAW AND REGULATIONS

Administrative regulations will be invalidated where they do not achieve the legislative aim. New Jersey Election Law Enforcement Commission, 82 N.J. 57 (1980). It does not matter if the administrative agency acted in good faith. *Kamienski v. Board of Mortuary Science*, 80 N.J. Super. 366 (Appellate Division). If the agency in adopting a rule contravenes or deviates from the legislative enactment it will be invalidated.

The purpose of the Act pursuant to which the regulation was adopted is to set up a merit rating plan and an accident surcharge system in order to penalize poor drivers and to ensure that automobile insurance will be more equitable to the motorist of New Jersey. N.J.S.A. 17:29A-34. The summary (published at the time the regulation was proposed in January 1984) indicates that only serious or fault oriented activities would result in a surcharge. The published summary included the following:

The proposed new rule establishes surcharge amounts for convictions and administrative suspensions in addition to those violations specifically enumerated in the New Jersey Merit Rating Plan of the New Jersey Automobile Insurance Reform Act of 1982. The Act provides that the . . . Plan is not limited to the provisions specifically set forth therein and that surcharge amounts in addition to those set forth in the statute may be imposed by rules and regulations Surcharges are levied (by this proposed regulation) for serious motor vehicle violations for which points are not assessed and which are not specifically dealt with in the Act. These violations include refusal to submit to a chemical test, driving while suspended, driving without insurance and driving while intoxicated in another jurisdiction

RESPONDENT'S POSITION

It is the respondent's position that allowing this regulation to be applied to the respondent under the facts stated above is inconsistent with the intention of the statute. The respondent feels that this is even more important where the petitioner has determined for its own

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reasons not to automatically send out renewal forms to New Jersey drivers to renew their drivers' licenses.

FINDINGS

Based upon the evidence, I **FIND** that on July 8, 1985 the respondent was involved in an automobile accident which was not her fault. At the time of the investigation of this accident, the respondent was advised that the driver's license she had in her possession had expired. The respondent was not aware that her driver's license had expired nor had she received a renewal notice or any other indication from the petitioner that her driver's license was expiring or had expired. On July 22, 1985, the respondent was convicted of a violation of *N.J.S.A.* 39:3-10 and fined \$10. The respondent does not dispute the calculation of the surcharge but disputes that the regulation should be applied to her at all.

CONCLUSION

I **CONCLUDE** that for the reasons stated above no surcharge should be levied against the respondent pursuant to *N.J.A.C.* 13:19-13.1.

This recommended decision may be adopted, modified or rejected by the **DIRECTOR OF THE DIVISION OF MOTOR VEHICLES, GLENN R. PAULSEN**, who by law is empowered to make a final decision in this matter.

FINAL DECISION BY THE DIRECTOR OF THE DIVISION OF MOTOR VEHICLES, GLENN R. PAULSEN:

The Division of Motor Vehicles (Division) hereby determines the matter concerning the imposition of a surcharge on Cynthia K. Bigham, respondent, pursuant to the New Jersey Merit Rating Plan (Plan) authorized by the New Jersey Automobile Insurance Reform Act of 1982, *N.J.S.A.* 17:29A-33 *et seq.*, as amended by *P.L.* 1985, c. 520 (the Act), and the regulations promulgated thereunder, *N.J.A.C.* 13:19-12.1 *et seq.* and 13:19-13.1 *et seq.* Pursuant to *N.J.A.C.* 13:19-13.1, a Plan surcharge in the amount of \$100 was levied upon respondent for being an unlicensed driver. Prior to this final agency decision in this matter, I have reviewed and considered the Initial Decision rendered by the Administrative Law Judge (ALJ). No exceptions were filed by or on behalf of respondent. Based upon the record

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presented, I shall reject the recommendation of the ALJ for the reasons stated herein.

In his Initial Decision, the ALJ concluded that no surcharge should be levied against the respondent for her unlicensed driver conviction pursuant to *N.J.A.C.* 13:19-13.1. The ALJ based his conclusion upon respondent's assertion that she was not aware that her driver's license had expired when she was involved in an accident on July 8, 1985 and that respondent never received the driver license renewal form from the Division or any other notification to the effect that her driver license was expiring. I do not agree with the ALJ's conclusion and recommendation.

The issues presented by the imposition of a Plan surcharge in this matter are relatively simple and straightforward, namely: (1) whether the respondent was convicted of a surchargeable motor vehicle offense committed on or after March 9, 1984, the effective date of the regulation and (2) whether the amount of the Plan surcharge levied upon respondent is correct. Based upon the record presented, I conclude that both of these questions must be answered affirmatively in this matter.

The record presented in this matter is not in dispute. On July 22, 1985, respondent was convicted by the Medford Township Municipal Court of being an unlicensed driver on July 8, 1985. *N.J.A.C.* 13:19-13.1 provides that a Plan surcharge in the amount of \$100 shall be levied upon a driver who has been convicted of being an unlicensed driver in violation of *N.J.S.A.* 39:3-10 where such violation occurred on or after March 19, 1984. Since respondent was convicted of being an unlicensed driver in violation of *N.J.S.A.* 39:3-10 and since the violation occurred after March 19, 1984, I conclude that respondent is properly subject to a Plan surcharge in this matter. *N.J.A.C.* 13:19-13.1.

It is immaterial for the purposes of this final agency decision that respondent's failure to renew her driver license was because she failed to receive an application for renewal of her driver license. It is ultimately the responsibility of every licensee to know when their driving privilege expires. The position of a Plan surcharge in this matter is based upon respondent's conviction of being an unlicensed driver in violation of *N.J.S.A.* 39:3-10.

A surcharge is not a penalty, but rather an additional insurance premium imposed on any driver convicted of certain enumerated offenses. *Walukiewicz v. N.J. Div. of Motor Vehicles*, App. Div. No. A-2991-84T7 (Nov. 3, 1986); *Finnegan v. N.J. Div. of Motor Vehicles*,

App. Div. No. A-3749-84T6 (Nov. 3, 1986). Significantly, the surcharge attaches automatically as a result of the prior court conviction. Respondent will not be permitted to make a collateral attack on a prior court judgment. See *State v. Wenof*, 102 N.J. Super. 370, 374 (Law Div. 1968). A state administrative agency lacks jurisdiction to review the decision of the court. If respondent felt her conviction was in error, she should have filed a timely appeal to a higher court. Having been properly convicted of the underlying offense, respondent is liable for payment of the corresponding insurance surcharge.

I find respondent's citation of *N.J. Chamber of Commerce v. N.J. Election Law Enforcement Commission*, 82 N.J. 57 (1980), and *Kamienski v. Board of Mortuary Science*, 80 N.J. Super. 366 (App. Div.) as not persuasive. The *N.J. Election Law Enforcement Comm.* case involved a challenge on the constitutionality of provisions of the Campaign Contributions and Expenditures Reporting Act and the *Kamienski* case concerns the validity of a rule promulgated by the N.J. State Board of Mortuary Science regarding the issuance of a certificate of registration to operate a mortuary. These cited cases are therefore clearly distinguishable from the facts of this case.

It is, therefore, on this 12th day of November, 1987, ORDERED that Cynthia K. Bigham pay the surcharge imposed for the three (3) year period in accordance with the Merit Rating Plan. In the event that payment of said surcharge to the Division of Motor Vehicles is not made pursuant to the Merit Rating Plan, the New Jersey driving privileges of Cynthia K. Bigham will be suspended indefinitely until such payment is made.

You must check the New Jersey Citation Tracker in the companion looseleaf volume to determine the history of this case in the New Jersey courts.