

**IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PENNSYLVANIA**

JESSI IRION,
 Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
BUREAU OF DRIVER LICENSING
 Respondent

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: **NO. 17-00816**
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Dated: December 27, 2017

OPINION AND ORDER

I. PROCEDURAL HISTORY

Jessi Irion (“Petitioner”) has appealed an Official Notice of Suspension issued by the Department of Transportation, mailed on April 24, 2017, which suspended Petitioner’s driver’s license for a period of 1 year beginning May 29, 2017, due to her conviction of violating Section 3802(A)(1) of the Pennsylvania Vehicle Code. The Appeal was filed on May 24, 2017, and scheduled for a hearing on August 16, 2017, at which time the hearing was continued until October 11, 2017, and again until December 13, 2017. At the time of the hearing, Kelly Solomon, Esquire, was present on behalf of the Commonwealth, and George Lepley, Jr., Esquire, was present on behalf of Ms. Irion. Petitioner testified at the hearing on December 13, 2017, and the attorneys for both PennDOT and Petitioner presented oral argument.

II. FACTS

On June 29, 2016, the Petitioner pled guilty to a charge of driving under the influence following an incident that occurred on November 23, 2014. Petitioner testified that she received one notice from the Department indicating that her license would be suspended as a result of her conviction for driving under the influence. She further testified that 1 week later, she received another notice from the Department that indicated her license would not be suspended. Petitioner testified that, 9 months after receiving correspondence that her license would not be suspended, she received a notice from PennDOT mailed on April 24, 2017, that her operating privileges would indeed be suspended for one year as a result of her conviction.

Petitioner lives with her parents. She works as a server at Kathy's Café, a job she commenced approximately one year before her conviction. However, the majority of her income is derived from self-employment. Petitioner operates a horse stable on the property on which she and her parents live, where she gives riding lessons and trains horses. Additionally, Petitioner participates in horse shows with the clients she trains, which requires her to transport horses. Clients pay her a fee to train and transport their horses to said shows. Petitioner testified that she is a single mom and works as much as possible to build her business. She testified that she currently has 4 or 5 horses in training and gives approximately 10-12 lessons per week. Petitioner testified that she made arrangements to attend several future horse shows in the 9 months prior to receiving the April 24, 2017, notice of suspension.

Petitioner admitted that she had previously had her license suspended when she entered the ARD program following her first DUI. However, she testified that she did not think her license would be suspended after she received a letter indicating it would not. Petitioner acknowledged that her work training horses and giving lessons is performed at her residence and that a valid driver's license would not be necessary to continue that aspect of her employment. She testified that her license is necessary, however, for traveling to horse shows because she transports the horses in her trailer.

II. DISCUSSION

“In order to sustain an appeal of a license suspension based on delay, the licensee must prove that: (1) an unreasonable delay chargeable to PennDOT led the licensee to believe that her operating privileges would not be impaired; and (2) prejudice would result by having the operating privileges suspended after such delay.”

Terraciano v. DOT, Bureau of Driver Licensing, 753 A.2d 233, 236 (Pa. 2000). In *Terraciano*, the Court found that a seven year delay in suspension proceedings was an unreasonable delay attributable to PennDOT and that the licensee was prejudiced by the delay because she had obtained a commercial driver's license and was employed as a school bus driver in the meantime.

In the present case, counsel for PennDOT conceded that the 9 month gap between the electronic transmission of the DL-21 Form (Report of the Clerk of Courts showing the Conviction or Acquittal of Any Violation of the Vehicle Code) and the Department sending notice of the suspension was attributable to PennDOT. What constitutes an unreasonable delay depends on the circumstances of each individual

case. **Id.** In this case, counsel for PennDOT indicated that he found nothing in the record which would explain the delay in the appropriate notice of suspension being sent to Petitioner.

Having concluded that the delay was unreasonable and attributable to PennDOT, we must now look to whether the delay caused the Petitioner to believe her operating privileges would not be impaired. Petitioner testified about two notifications she received from PennDOT following her conviction, one allegedly notifying her of a suspension and a subsequent one allegedly notifying her that her license would not be suspended, prior to receiving the notice mailed on April 24, 2017, which is the subject of this appeal. Petitioner testified that she thought her license would not be suspended due to the correspondence from PennDOT purportedly informing her that it would not be. The Court would find Petitioner's assertion more credible had she (1) introduced into evidence the first two letters she allegedly received from PennDOT, and (2) not had her license suspended in 2004 for an underage alcohol offense and again in 2009 for a DUI for which she was granted ARD. (Exhibit C-1(6)).

If this Court were to find that Petitioner truly believed that her operating privileges would not be impaired as a result of PennDOT's delay, Petitioner must also prove that she would be prejudiced by having her operating privileges suspended after such a delay. Prejudice is established "when the licensee is able to demonstrate that [s]he changed her circumstances to her detriment in reliance on the belief that her operating privileges would not be impaired." **Fisher v. DOT, Bureau of Driver Licensing,**

682 A.2d 1353, 1356 (Pa. Commw. 1996). The loss of employment requiring an operator's license has been determined to be prejudicial. **Id.** In Fisher, there was more than a four year gap between the licensee's conviction and when he received his notice of suspension. The licensee testified that during the intervening period he repeatedly contacted PennDOT to determine the status of his license and was assured that his license was restored and there was no problem. **Id.** Based on these reassurances, the licensee opened a delivery service that required him to have a license to make deliveries for his business. **Id.** The trial court concluded that a suspension would force the licensee to close his business, and that the unreasonable delay was attributable to PennDOT and therefore he would suffer prejudice if his license were suspended four years later. The Commonwealth Court affirmed.

In **Bennett v. Dep't of Transp.**, the licensee was terminated from his employment as a tractor trailer operator as a result of his conviction in October of 1990 for driving while his operating privileges were suspended. 642 A.2d 1139 (Pa. Commw. 1993). He collected unemployment until securing employment as a truck driver in June of 1991. Two weeks later, the licensee was notified by PennDOT that his operating privileges would be suspended for one year. Licensee's appeal was dismissed by the trial court. The appellate court reversed, finding that the appellant detrimentally relied on the belief that his license would not be suspended by changing his status from an unemployment recipient to an employee in a position requiring a valid license. **Id.**

Petitioner testified that possessing a valid driver's license is essential to her employment, in order to be able to drive herself to and from her job as a server as well

as to transport her clients' horses to shows. She testified that she increased her business, both in the number of lessons she provides at her residence and in the number of horse shows she plans to travel to with her clients, when she believed that her license would no longer be suspended following her DUI conviction. Petitioner argues that she reasonably believed that her license would not be suspended due to a letter she allegedly received notifying her that it would not be suspended. However, as that letter was not introduced into evidence by Petitioner, and is not contained in the certified records provided by PennDOT in Exhibit C-1, the Court is unable to determine what the letter said, or whether or not Petitioner's belief was reasonable. Furthermore, as Petitioner had her license suspended on two prior occasions for alcohol-related offenses, including one previous DUI, this Court questions the credibility of Petitioner's statement that she did not believe that her license would be suspended following an additional DUI conviction.

Petitioner asserts that she was prejudiced by the delay in receiving the notice of suspension. Despite Petitioner's testimony that she increased the amount of clients she serves in reliance on her belief that her license would not be suspended, she produced no evidence to support this. Although she testified that she made arrangements to attend and participate in additional horse shows as a result of her belief that her license would not be suspended, having a driver's license is required for only a small part of her business. Petitioner is not required to have a driver's license to give riding lessons, train, or board horses, as she provides them at her own residence and therefore does not need to travel. Petitioner is not required to have a license to participate in horse

shows with the clients she trains. The only thing she would actually be precluded from doing as a result of her license being suspended is physically transporting the horses to and from the shows. During the pendency of Petitioner's one year suspension, Petitioner could have another individual with a valid driver's license drive her truck, which she indicated is used to haul the trailer transporting her clients' horses to shows. While this may be a temporary inconvenience, and require Petitioner to share some of her earnings with a paid driver, the Court finds that this does not rise to the level of prejudice which would result in Petitioner's suspension being overturned in light of PennDOT's delay.

CONCLUSION

The Petitioner has failed to convince the Court that, despite a 9 month delay in receiving the notice of suspension, she reasonably believed that her driving privileges would not be impaired as a result of her conviction for driving under the influence. Additionally, the Court finds that, although she will be inconvenienced by the suspension of her operating privileges, she has not been prejudiced by the delay, as her business is mainly operated at her residence where she gives riding lessons, and trains and boards horses, and she would still be able to participate in the horse shows with her clients. The suspension of her driving privilege is a collateral consequence of her conviction for DUI, and although the 9 month delay in sending out the notice of suspension is clearly attributable to PennDOT, Petitioner has not met her burden of proving that she reasonably believed that her driving privileges would not be impaired or that she was prejudiced by the delay. Therefore, Petitioner's appeal is denied, and the

one year suspension, issued as a result of Petitioner's conviction for violating Section 3802(A)(1) of the Vehicle Code, is reinstated.

BY THE COURT,

Joy Reynolds McCoy, Judge