

CHAIRPERSON'S FINAL DETERMINATION AND ORDER

In the Matter of
New York City Taxi & Limousine Commission
Petitioner
against
Mohammed K. Ahmed
Respondent

ISSUE

Under the persistent violator (PV) program, which is established by local law and implemented by agency rule, the Taxi and Limousine Commission (TLC) is required to suspend or revoke the license of any taxi or for-hire vehicle driver who accumulates a specified number of penalty points against his or her TLC driver's license for certain TLC rule violations within any 15-month period. The penalty for accumulating at least six points within a 15-month period is license suspension of no more than 30 days, while the penalty for accumulating at least ten points within a 15-month period is license revocation. A driver, however, can receive a two-point reduction for timely and voluntary completion of a TLC-approved refresher course and thus seek to avoid suspension or revocation.¹

The issue in this case is whether the TLC rules permit a driver to complete the refresher course *after* the TLC has issued a summons (but before a penalty has been imposed) in order to reduce points that underlie the PV violation alleged in the summons. They do.

STATEMENT OF FACTS

Summons #PV0003691, dated August 18, 2014, alleges that the respondent violated Rule 54-27(b)(2)(i) for accumulating six PV points against his TLC license.² According to the certification of mailing, the TLC mailed the summons to the respondent on August 19, 2014.

At a hearing on the summons, the respondent offered proof that he completed a refresher course on August 20, 2014 and asserted that he received the summons only after he completed the course. Consequently, the respondent argued, he took the course voluntarily and should be entitled to the two-point reduction provided for in the rules. In response, the TLC argued that the course was completed after the summons was mailed, and so as per prior decisions of the Appeals Unit, course completion should not be considered voluntary.

¹ In October 2014, the TLC adopted rule changes to the PV program and related critical driver program, which, among other things, increased the number of points reduced for taking the refresher course from two to three. See http://www.nyc.gov/html/tlc/downloads/pdf/newly_passed_rules_vision_zero.pdf. These rule changes do not have retroactive effect and thus do not apply here. In any event, this order is still applicable under the rule changes.

² Rule 54-27(b)(2)(i) provides: Any Driver who has accumulated six or more Commission-issued points but fewer than ten points against his or her Taxicab Driver's License within a 15-month period and whose License has not been revoked will have his or her License suspended for up to 30 days.

The hearing officer found the TLC's argument unpersuasive and credited the respondent's testimony that course completion was voluntary. Consequently, the hearing officer applied the two-point reduction and dismissed the summons because the respondent did not have enough points against his TLC license to establish a rule violation.

On appeal, the TLC argued, among other things, that the refresher course should not have counted, and the Appeals Unit agreed. The Appeals Unit stated that a point reduction will apply so long as the course is completed "at any time prior to the issuance of the Critical Driver summons back to the date of the earliest violation carrying points in the relevant 15-month look back period." Citing *Taxi & Limousine Commission v. Ghodratoolah Hakimi*, Summons No. CD0015298 (June 24, 2014), it further stated that the issuance date is "the date that the TLC mails the summons, not the date on the summons." Here, according to the Appeals Unit, since the respondent took the course only after the TLC mailed the summons, he was not eligible for the point reduction and thus guilty of violating Rule 54-27(b)(2)(i).

The respondent now petitions the Chair pursuant to Rule 68-12 to reverse the decision of the Appeals Unit, arguing that the hearing officer was correct in finding that he voluntarily took the refresher course and is thus eligible for a point reduction.

ANALYSIS

The PV program, which, as mentioned, relates to points assessed against a TLC-issued driver's license, is complemented by the critical driver (CD) program, which relates to points assessed against a state-issued driver's license for traffic violations, such as speeding or running a red light. Both programs function in a similar manner; license suspension when at least six points are assessed against the relevant license, license revocation when at least ten points are assessed against the relevant license, and the option to take a two-point reduction course to avoid suspension or revocation.³ But there are distinctions, particularly regarding the refresher course.

Generally, before suspending or revoking a license under the CD or PV programs, the TLC will deduct two points from the total points of any driver "who voluntarily attends and satisfactorily completes" a refresher course,⁴ and if the TLC has already suspended or revoked a license, the point reduction will not affect such suspension or revocation. The CD rules, however, go one step further and set a date after which taking the course is no longer considered voluntary; Rule 54-27(a)(7) provides that, in order for a refresher course to reduce CD points, "the course must be satisfactorily completed prior to the issuance of a critical driver program summons."⁵

³ The PV program also establishes penalties for taxi drivers who violate three or more non-point carrying rules within a 15-month period. See Rule 54-27(b)(1).

⁴ See Rule 54-27 and Rule 55-27.

⁵ The issuance date of a CD summons has been interpreted on different occasions to mean the date on the summons, see, e.g., *Taxi & Limousine Commission v. Lakhwinder Singh*, Lic. No. 5344340 [March 28, 2012]), as well as the date that the TLC mails the summons, see, e.g., *Taxi & Limousine Commission v. Ghodratoolah Hakimi*, Summons No. CD0015298 (June 24, 2014). Although this issue is outside the scope of this order, it should be noted that the rules that the TLC adopted in October 2014, see *supra* note 1, remove language that requires course completion prior to the issuance of a CD summons in order avoid revocation.

Here, the Appeals Unit relied on case law that interpreted and applied Rule 54-27(a)(7) to find that the respondent did not voluntarily take the refresher course. This reliance was in error. Rule 54-27(a)(7) only applies to critical driver cases, and indeed the cases that the Appeals Unit cited involved CD summonses – not a PV summons, as is the case here. Moreover, the text of the rules provides no basis for attaching the issuance date limitation to persistent violator cases.

In this case, as in all PV cases, assuming a driver is otherwise eligible,⁶ point reduction is contingent on voluntary completion of a refresher course. The hearing officer found that the respondent took the course and did so voluntarily, and there is nothing in the record to conclude otherwise, particularly as the summons in no way obligated him to do so.

DIRECTIVE

In the matter of New York City Taxi & Limousine Commission against Mohammed K. Ahmed (Lic. No. 5264436), the decision of the Appeals Unit regarding summons #PV0003691 is **reversed and the penalty vacated.**

This constitutes the final determination of the TLC in this matter.

So Ordered: January 28, 2015



Christopher C. Wilson, Deputy Commissioner/General Counsel

⁶ Rule 54-27(b)(6)(iv) provides that the TLC will reduce PV points only once in any five-year period.