OAH Docket No. 11-6020-20590-3

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE ST. PAUL CITY COUNCIL

In the Matter of the Taxicab Driver (Provisional) License Application of Gregory J. Stahley	**FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION**

This matter was heard by Administrative Law Judge Barbara L. Neilson at the St. Paul City Hall on July 20, 2009. Rachel Tierney, Assistant City Attorney, appeared on behalf of the City of St. Paul's Department of Safety and Inspections (DSI). Daniel J. Stahley, Attorney at Law, appeared on behalf of the Applicant, Gregory J. Stahley. The record closed at the conclusion of the hearing on July 20, 2009.

ISSUE

The primary issues presented in this case are as follows:

(1) Should the Applicant's application for a taxicab license be denied under St. Paul Legislative Code § 376.16(e)(4)(a) because he was convicted of felony domestic assault in December of 2008 and remains under supervised probation until December of 2013?

(2) Should an exception be granted under St. Paul Legislative Code § 376.16(e)(4)(b) because the offense committed by the Applicant is not related to the occupation of taxicab driver or because he has provided evidence of rehabilitation?

(3) Should the application be denied because the Applicant has been driving a taxicab without a proper license since April 2009?

The Administrative Law Judge recommends that the Applicant's application be denied because he was convicted of felony domestic assault less than one year ago; he remains on probation until 2013; and he has not complied with all terms of probation. The Administrative Law Judge further finds that the offense committed by the Applicant is related to the occupation of taxicab driver and he has not presented sufficient evidence of rehabilitation to fall within the exception set forth in St. Paul Legislative Code § 376.16(e)(4)(b). Finally, under the circumstances of this case, the allegation that Applicant has been driving a taxicab without a proper taxicab driver's license does not provide additional grounds for denial of his application.

Based on all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The City grants a three-month provisional taxicab driver's license in order to allow drivers who have met all of the other requirements for regular licensure additional time to complete the training classes for taxicab drivers required by the City. Individuals are permitted to drive under a provisional license prior to passing their skills test. At the end of the training class, candidates for licensure must pass a test to obtain their full license.[1] The provisional license process requires that applicants pay the license fee at the time of application and have their photograph taken. Thereafter, a criminal background check is conducted and, if there are no concerns, a badge with the applicant's photograph is issued and mailed to the applicant. An applicant is not eligible to drive a cab until he or she has received the badge.[2]

2. On April 20, 2009, Gregory J. Stahley, the Applicant, applied for a provisional taxicab driver's license from the City of St. Paul ("City") and authorized a criminal background check.[3] The Applicant was given a receipt by the City which indicated that the "effective date" was April 20, 2009, and the "expiration date" was July 20, 2009. The receipt form further noted that "[t]here are no conditions placed on this license at this time." The form identified as "unmet requirements" the results of the record checks for criminal history and driving. The receipt form stated in bold type at the bottom, "This is not a License to operate."[4]

3. Christine Rozek, the Deputy Director of the City's Department of Safety and Inspections (DSI), tells City staff who deal with applicants for taxicab driver's licenses that they should tell applicants that, in order to drive, they must have the provisional license badge bearing their picture, and the City cannot issue the badge until it runs the criminal and driving histories for the applicant.[5] However, at the time of his application, the Applicant was not informed by City staff that he was ineligible to drive a taxicab until his picture license was issued. He was merely told that his picture license to operate a taxicab would arrive by mail in about two weeks. The Applicant understood the process to be similar to the issuance of regular driver's licenses, where the documentation issued authorizes the holder to drive while the actual license is being prepared.[6]

4. After receiving the Applicant's application, DSI asked a St. Paul police officer to conduct a criminal history background check. On approximately May 5, 2009, the City was notified that the Applicant had been convicted of Felony Domestic Assault.[7]

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[1] Testimony of Rozek.
[2] Testimony of Rozek.
[3] Exhibit 3; Testimony of Applicant, Rozek.
[4] Exhibit 4.
[5] Testimony of Rozek.
[6] Testimony of Applicant.
[7] Testimony of Rozek.

The conviction related to an incident that occurred during the morning of July 6, 2008. On that date, Saint Paul Police Officers Lau Vang and Mark McGinn responded to a call of a physical altercation between the Applicant and J.H. (his then girlfriend). J.H. told Officer Vang that the Applicant and J.H had been arguing that morning. When the Applicant tried to leave, J.H. said that she followed him to his vehicle because she believed that the Applicant had taken her purse. The Applicant denied that he had the purse. Officer Vang's report indicated that J.H. said that the Applicant "shoved her head to the street which cause[d] her head to hit the ground." The Applicant then drove away. Officer Vang observed a golf-ball-sized knot over J.H.'s left eye and some abrasions on her arms and legs. A neighbor told Officer Vang that he had observed the altercation and alleged that the Applicant had struck J.H. with a closed fist causing her to fall to the ground.[8]

5. Another police officer responding to the call called the Applicant on his cell phone, and Applicant agreed to turn himself in. The Applicant voluntarily appeared at police headquarters a short time later. During an interview about the incident, the Applicant admitted that he pushed J.H. down to the ground. Saint Paul Police Officer Mark McGinn arrested the Applicant and charged him with Misdemeanor Domestic Assault. Officer McGinn did not perform a record check at the time Applicant was booked for the incident.[9]

6. A criminal complaint for Felony Domestic Assault in violation of Minn. Stat. § 609.2242, subd. 4, was brought against the Applicant based on the July 6, 2008, incident. The offense was charged as a felony because the Applicant had two prior convictions for domestic assault during the prior ten years. Without that enhancement, the incident would have been charged as a misdemeanor.[10] The two prior convictions involved a violation of an Order for Protection stemming from a visit to his marital home in 2000 and a 2002 fight with a patron in a bar.[11]

7. On October 15, 2008, the Applicant pleaded guilty in Ramsey County District Court to Felony Domestic Assault in violation of Minn. Stat. § 609.2242, subd. 4. On December 4, 2008, the Applicant was sentenced to 30 days in jail (less 5 days served), required to pay a fine and applicable fees; and placed on supervised probation for five years, expiring on December 4, 2013. Other conditions imposed at the time of sentencing included a chemical dependency evaluation/treatment, random testing, mental health counseling as recommended by his probation officer, and domestic abuse counseling/treatment.[12]

8. During the first few months of his probation, the Applicant did not maintain adequate contact with his probation officer, in part due to the Applicant's lack of a permanent residence and reliable telephone. In February, 2009, the Applicant's probation was revoked for lack of contact and he was returned to jail for approximately

[8] Exhibit 1; Testimony of Vang.
[9] Exhibit 1; Testimony of McGinn.
[10] Exhibit 10; Testimony of Vang.
[11] Testimony of Applicant.
[12] Exhibit 11.

two weeks. After his release, the Applicant began keeping in contact with his probation officer.[13]

9. DSI generally considers a recent conviction for assaultive behavior to be a disqualification for a taxicab driver's license, due to the violent nature of such offenses and the need to assure citizens using cabs that they are going to be safe. Taxicab customers are often alone and unfamiliar with their surroundings. They use cabs at all hours of the day and night, and expect that the City has reviewed an applicant for safety before issuing a license. Given the nature of the relationship between cab drivers and customers, it is likely that there will be some arguments over fares or the route taken by the driver, and a driver with anger control issues could pose a significant problem.[14]

10. Upon receiving the information about the Applicant's felony conviction, Christine Rozek, Deputy Director of DSI, referred the application to the Saint Paul City Attorney's Office for review.[15]

11. On May 13, 2009, the City issued a Notice of Intent to Deny License to the Applicant. The City indicated that its recommendation for denial was based upon St. Paul Legislative Code § 376.16 (e)(4)(a). That provision requires that, to be eligible to be licensed to operate a taxicab, individuals "shall not be under sentence or have been discharged from sentence for any felony conviction within the five (5) years immediately preceding application for a license." The Notice indicated that, because the Applicant would be under supervised probation until December 4, 2013, he would not be eligible to apply for a taxicab license until December 5, 2013. The Notice informed the Applicant of his right to request a hearing if he disputed the facts set forth in the letter or wished to present evidence that the conviction was not related to his license or that he has been rehabilitated.[16]

12. On May 26, 2009, the Applicant requested a hearing on the proposed denial of the taxicab license.[17] The City thereafter issued a Notice of Administrative Hearing, assigning the matter to an Administrative Law Judge and setting a hearing date of July 16, 2009.[18] The hearing date was later rescheduled for July 20, 2009, at the request of counsel for the Applicant, and a revised Notice of Hearing was issued.[19]

13. At the hearing, the parties agreed that City could amend the Notice of Hearing to include as an additional ground for denial of the application the allegation that the Applicant has been operating a taxicab without a license since April, 2009.

14. Since approximately one week after he submitted his application for a provisional license in April 2009, the Applicant has worked approximately 60 hours a week as a taxicab driver for Yellow Cab Company of St. Paul. Over the short time he has driven a taxicab, the Applicant has developed relationships with a number of

[13] Exhibits 11, 12; Testimony of Applicant.
[14] Testimony of Rozek.
[15] Testimony of Rozek.
[16] Exhibit 6.
[17] Exhibit 7.
[18] Exhibit 8.
[19] Exhibit 9.

customers who request him specifically for rides. No complaints have been lodged against the Applicant with respect to his conduct as a driver. He has not had any difficulties with co-workers or customers. On one occasion, two customers ran away without paying for their taxi ride, and he simply let them go.[20]

15. The Applicant enjoys driving a taxicab and wishes to continue working as a taxi driver. That employment will give him a steady income and enable him to maintain his own residence and buy food and clothing. The probation officer assigned to the Applicant has noted that during the time he has been employed by Yellow Cab, the Applicant has maintained regular contact as required by the terms of his probation.

16. During the last ten years, the Applicant has been chronically unemployed and has experienced significant periods of homelessness. Between 2001 and April 2009, his longest period of employment was three months. He frequently slept in his car when he was not employed. Although he remains married, the Applicant has not lived with his spouse for over ten years. In recent years, Applicant has stayed at times with J.H. at her residence. This living arrangement placed a great deal of stress on the Applicant and led to arguments between the Applicant and J.H.[21]

17. The Applicant provided an affidavit from Steve Benson, his probation officer, in which Mr. Benson attested that the Applicant has kept in regular contact with him and has been in compliance with the other terms of his probation since the Applicant began working for Yellow Cab in April 2009. Mr. Benson indicated that he is able to adequately supervise the Applicant and monitor his progress. He believes that having employment has made the Applicant amenable to probation and that he is taking the necessary steps towards rehabilitation. Mr. Benson further noted that he does not believe that the Applicant poses a safety risk to members of the public in his capacity as a taxicab driver, and he supports his application for a taxicab driver's license.[22]

18. The Applicant also submitted affidavits from his spouse, L.S., and his former girlfriend, J.H. They both support his application for a taxicab driver's license. L.S., who was the victim of the Applicant's 2000 conviction for violation of an order for protection, indicated in her affidavit that the Applicant is now able to adequately care for himself, and she strongly believes that the Applicant's past violent actions were brought on because of his unemployment and poverty.[23] J.H., who was the victim of the July 2008 domestic assault, indicated that the Licensee has gained a sense of purpose in his life and lost his violent tendencies since becoming employed as a taxicab driver. She believes that being unemployed and homeless for nearly ten years was the source of the Applicant's anger and frustration. It is her view that the Applicant has been rehabilitated and that his demeanor and violent tendencies have been calmed. She attested that the Applicant has shown improvement in his behavior and outlook and a positive change in his living conditions.[24] The Applicant passed a drug test that was required at the time he started working for Yellow Cab. The Applicant has undergone a

[20] Testimony of Applicant.
[21] Testimony of Applicant; Exhibits 13, 15.
[22] Exhibit 12.
[23] Exhibit 13.
[24] Exhibit 15.

chemical dependency evaluation and has submitted the report to his probation officer. The evaluator did not recommend treatment. Approximately three weeks prior to the hearing, the Applicant began attending a domestic violence/anger management program as required by the terms of his probation. The Applicant has been an active participant in the program, which will be 12 weeks in length.[25]

Based on the above Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the St. Paul City Council have jurisdiction in this case under Minn. Stat. § 14.55 and St. Paul Legislative Code §§ 310.05, 376.16.

2. The Applicant received timely and proper notice of the hearing and the City has complied with all relevant substantive and procedural requirements of statute and rule.

3. Under St. Paul Legislative Code § 376.16(e)(4)(a) and (b), an individual who is "under sentence or [has] been discharged from sentence for any felony conviction within the five (5) years immediately preceding application for a license" is not eligible to be licensed to operate a taxicab unless the license inspector grants an exception pursuant to Minn. Stat. § 364.03 "upon evidence that either the offense is not related to the occupation of taxicab driver, or upon evidence of rehabilitation."

4. Under Minn. Stat. § 364.03, subd. 2, the following factors are to be considered in determining whether a conviction directly relates to the occupation for which a license is sought:

> (1) the nature and seriousness of the crime or crimes for which the individual was convicted;
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> (2) the relationship of the crime or crimes to the purposes of regulating the position of public employment sought or the occupation for which the license is sought;
>
> (3) the relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the position of employment or occupation.

5. The Applicant was convicted of Felony Domestic Assault in December 2008 and remains under probation for that offense until December 2013. The Applicant was charged with a felony level crime because of prior convictions in 2000 and 2002 for violation of an order for protection and assault.

6. Mr. Stahley's felony conviction for Domestic Assault relates directly to the occupation of taxicab driver within the meaning of Minn. Stat. § 364.03, subd. 2, and St.

[25] Testimony of Applicant; Exhibit 14.

Paul Legislative Code § 376.16(e)(4)(b). His prior convictions for assault and violation of an order for protection, which caused the enhancement of his most recent conviction to a felony level, also relate directly to the occupation of taxicab driver.

7. Under Minn. Stat. § 364.03, subd. 3(a), a person who has been convicted of a crime which relates directly to the occupation for which he seeks a license shall not be disqualified from such an occupational license if he can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the occupation for which the license is sought. The statute specifies that "[s]ufficient evidence of rehabilitation may be established by the production of:

> (1) a copy of the local, state, or federal release order; and
>
> (2) evidence showing that at least one year has elapsed since release from any local, state, or federal correctional institution without subsequent conviction of a crime; and evidence showing compliance with all terms and conditions of probation or parole; or
>
> (3) a copy of the relevant Department of Corrections discharge order or other documents showing completion of probation or parole supervision.

In addition to the above documentary evidence, Minn. Stat. § 364.03, subd. 3(b) states that the licensing authority must also "consider any evidence presented by the applicant regarding:

> (1) the nature and seriousness of the crime or crimes for which convicted;
>
> (2) all circumstances relative to the crime or crimes, including mitigating circumstances or social conditions surrounding the commission of the crime or crimes;
>
> (3) the age of the person at the time the crime or crimes were committed;
>
> (4) the length of time elapsed since the crime or crimes were committed; and
>
> (5) all other competent evidence of rehabilitation and present fitness presented, including, but not limited to, letters of reference by persons who have been in contact with the applicant since the applicant's release from any local, state, or federal correctional institution.

8. The Applicant has not demonstrated by a preponderance of the evidence that he has been sufficiently rehabilitated and is presently fit to perform the duties of a taxicab driver within the meaning of Minn. Stat. § 364.03, subd. 3.

9. The City has not shown that Applicant was informed that he was not authorized to drive a taxicab after he filed his application for a provisional taxicab

license, and the receipt form that was given to the Applicant at the time of his application provided conflicting and ambiguous information on that subject. Under these circumstances, the fact that the Applicant operated a taxicab prior to the hearing in this matter does not provide additional grounds for denial of his application.

10. These Conclusions are reached for the reasons discussed in the attached Memorandum, which is incorporated in these Conclusions.

Based upon the above Conclusions, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the St. Paul City Council DENY the application by Gregory J. Stahley for issuance of a taxicab license.

Dated: August 19, 2009

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: Digitally Recorded, No transcript.

NOTICE

This Report is a recommendation, not a final decision. The St. Paul City Council will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions and Recommendation. Pursuant to St. Paul Legislative Code § 310.05(c-1), the Council shall not make a final decision until the parties have had an opportunity to present oral or written arguments to the Council. The parties should contact City Clerk Shari Moore, 310 City Hall, 15 West Kellogg Boulevard, St. Paul, Minnesota 55102 for information concerning the scheduling of argument and the date on which the Council will meet to decide this matter.

MEMORANDUM

It is clear that the Applicant was convicted of a felony within the five years prior to his application for a taxicab driver's license. While the underlying crime would otherwise have been charged as a misdemeanor,[26] it was enhanced to a felony due to the Applicant's prior convictions in 2000 and 2002.

[26] Even if this conviction had been for misdemeanor domestic assault, St. Paul Legislative Code § 376.16(e)(4)(a) also requires that applicants who have not been discharged from sentence for any non-traffic misdemeanor conviction within the three years immediately preceding their license application be

The Applicant maintains that his felony domestic assault conviction is not directly related to performing the duties of a taxicab driver and attempted to draw several distinctions between his conduct and the circumstances encountered by taxicab drivers. However, the Administrative Law Judge is persuaded by the City's argument that the conviction in this case is related to the occupation for which licensure is sought because customers using taxicabs are likely to engage in behavior similar to that which provoked Applicant when he committed assault. Applicant's assaultive behavior is appropriate to consider in assessing whether a taxicab license should be issued. Taxicab drivers interact with members of the public under a wide variety of circumstances, and there is a strong likelihood that Applicant will encounter members of the public who are argumentative or refuse to pay for his services. The ability to handle disagreements in a nonviolent manner is an important attribute for those seeking licensure as a taxicab driver. Moreover, passengers in taxicabs have a legitimate expectation that the City will not license drivers if there are concerns about their propensity for violent behavior.

Where there is a direct relationship between the crime and the licensed occupation, Minn. Stat. § 364.03 and the St. Paul Legislative Code permit an exception to be made if an applicant demonstrates that he or she is sufficiently rehabilitated and presently fit to perform the occupation of taxicab driver. The statute states that certain evidence is deemed sufficient to demonstrate rehabilitation, such as the release order, evidence showing that at least one year has elapsed since release without subsequent conviction of a crime, evidence showing compliance with all terms and conditions of probation, or documentation that probation has been completed. Because less than one year has elapsed since Applicant's conviction and his probation will not end until late 2013, the Applicant cannot provide such evidence. Moreover, the Applicant has not complied fully with the terms of his probation, as evidenced by his failure to maintain adequate contact with his probation officer and the subsequent revocation of his probation.

The licensing authority is also required to consider as evidence of rehabilitation and fitness any evidence presented by an applicant regarding the nature and seriousness of the crime, all circumstances relative to the crime (including mitigating circumstances or social conditions surrounding the commission of the crime), and other competent evidence of rehabilitation and present fitness, including letters of reference by persons who have been in contact with the applicant since the applicant's release from jail. The Applicant provided some evidence through his own testimony and the affidavits of L.S. and J.H. tending to support a relationship between his violent conduct and the financial and emotional strain he experienced due to unemployment and intermittent homelessness during the past ten years. However, he did not provide a detailed explanation of the reasons for his conduct or otherwise demonstrate mitigating circumstances in connection with the July 2008 offense or the prior convictions. He supplied affidavits from L.S., J.H., and his probation officer supporting his licensure and attesting to the beneficial effects employment as a taxicab driver has had on his outlook, demeanor, and current compliance with the conditions of his probation. However, the

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deemed ineligible for a taxicab driver's license unless the offense is not related to the occupation or there is evidence of rehabilitation.

limited amount of time that has elapsed since his conviction, and the limited contact between Applicant and the persons supporting his appeal do not outweigh the evidence regarding the seriousness of his prior conduct. The Administrative Law Judge is unable to conclude that the Applicant has provided competent evidence of sufficient rehabilitation and present fitness to warrant granting of the provisional license.

The City alleged as additional grounds for denial of the application that the Applicant had improperly driven a taxi without a license during the period between his application for a provisional license and the hearing. The Deputy Director of the City's Department of Safety and Inspections testified that she tells City staff who deal with applicants for taxicab driver's licenses that they should tell applicants that they must have the provisional license badge bearing their picture in order to drive, and the City cannot issue that badge unless the applicant passes the criminal and driving history record checks. However, the Deputy Director was not present at the time the Applicant filed his application, and no one provided direct evidence of what he was told. The Applicant credibly testified that he was not informed that he was ineligible to drive a taxicab until his picture license was issued. Rather, he was merely told that his picture license to operate a taxicab would arrive by mail in about two weeks. The Applicant understood the process to be similar to the issuance of regular driver's licenses, where the documentation issued authorizes the holder to drive while the actual license is being prepared. Moreover, the receipt form that was given to the Applicant at the time provided conflicting and ambiguous information on that subject. One the one hand, the form identified as "unmet requirements" the results of the record checks for criminal history and driving, and stated in bold type at the bottom, "This is not a License to operate." On the other hand, the form also indicated that the "effective date" was April 20, 2009, and the "expiration date" was July 20, 2009, and noted that "[t]here are no conditions placed on this license at this time." Under these circumstances, any confusion on the part of the Applicant about whether or not he was immediately authorized to operate a taxicab was understandable. Accordingly, the fact that the Applicant drove a taxicab after he filed his application should not constitute additional grounds for denial of his application.

The Administrative Law Judge is sympathetic to Applicant's plight. Clearly, Applicant is improving his situation and having employment is an important part of that change. But the City ordinance is clear that Applicant is disqualified from the receipt of a taxicab driver's license for five years subsequent to his 2008 conviction, unless he can show sufficient evidence of rehabilitation and fitness to satisfy Minn. Stat. § 364.03. The statute provides for specific methods by which an applicant can demonstrate such rehabilitation and present fitness to perform the occupation for which licensure is sought. In this case, Applicant has not met the standard set by the statute. For this reason, the Administrative Law Judge has recommended that the application for a taxicab license be denied.

B.L.N.