

**THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT**

MERRIMACK, SS.

SUPERIOR COURT

Volodymyr Zhukovskyy

v.

New Hampshire Department of Safety, Division of Motor Vehicles

No. 217-2024-CV-00493

ORDER ON THE MERITS

The Petitioner, Volodymyr Zhukovskyy, appeals the suspension of his operating privileges by the Respondent, the New Hampshire Department of Safety, Division of Motor Vehicles (the “Division”). See Doc. 1 (Pet.); RSA 263:76. The Division objects.¹ See Doc. 17 (Mot. to Dismiss). On December 10, 2024, the Court held a hearing on the merits of the Petitioner’s appeal.² As explained below, upon consideration of the parties’ arguments and the relevant law, the Court DENIES the Petitioner’s appeal and AFFIRMS the Division’s decision.³

BACKGROUND

The Court derives the following facts from the certified record. In accordance with the standard of review, the Court deems “[a]ll findings of the director upon all

¹ The Court denied the Division’s motion to dismiss on December 1, 2024, and decided to treat it as an objection to the Petition.

² Pursuant to the Court’s January 23, 2025, procedural order, the Division provided the requisite notice to next of kin on March 10, 2025. See Docs. 21, 22, 23; RSA 263:56, IV. The Court received no statements from next of kin.

³ At the outset, the Court acknowledges the tragic circumstances of this appeal. Drug use and abuse is a persistent and pressing problem in society. The Court wishes we were in an alternate timeline where the Petitioner did not use drugs and all the motorcyclists were still alive. With that being said, the Court must apply the legal principles as laid out in RSA 263:56, I(g) and RSA 263:76 to the facts of the case as it would to any other case.

questions of fact properly before him” as “prima facie lawful and reasonable.”

RSA 263:76.

On June 21, 2019, the Petitioner operated a 2016 Dodge Ram 2500 which towed a 42-foot-long trailer. The Division’s Report of the Hearings Examiner (“Hearings Examiner Report”) at 10. That morning, the Petitioner traveled from Westfield, Massachusetts, to Clifton Park, New York, to pick up a vehicle that he was supposed to deliver to Gorham, New Hampshire. Id. Prior to beginning his trip for the day, the Petitioner consumed two bags of heroin and a half ounce of cocaine around 6:30 AM. Id. During that time period, the Petitioner typically consumed drugs two to three times a day because otherwise he would start feeling sick. Id. at 7. He would also typically consume energy drinks or sweets while driving to help stave off the ill effects he felt when he had not taken drugs in a while. Id.

Around 6:00 PM on June 21, 2019, the Petitioner was driving along Route 2 in Randolph, New Hampshire. Id. at 10. Four witnesses—Corinne Jennings, Lawrence and Holly Coulter, and Annie Baron—later informed police that they witnessed the Petitioner driving erratically at that time, including that the truck and trailer were close to the center yellow line. Id. at 9. Approximately around this time, a group of motorcyclists belonging to the Jarhead Motorcycle Club entered onto Route 2. Id. at 4. The lead motorcyclist, Al Mazza, briefly turned back to ensure the other motorcyclists were following him. Id. The Petitioner’s truck and trailer went over the yellow center line, striking the side of Mr. Mazza’s motorcycle. Id. at 11. This impact set off a larger string of collisions, resulting in the deaths of Mr. Mazza, Daniel Pereira, Michael Ferazzi, Aaron Perry, Desma Oakes, Edward Corr, and Jo-Ann Corr. Id.

Subsequently, the Division attempted to suspend the Petitioner's driving privileges in New Hampshire under RSA 263:56, I(g). The Division's Hearing Examiner, Attorney Ryan McFarland, heard the Division's case against the Petitioner on May 8, 2024, and June 19, 2024. The parties agreed to proceed by offers of proof rather than have live witnesses testify, except for the Petitioner, who did testify at the hearing. By report dated July 10, 2024, the Hearings Examiner determined that the Petitioner operated his truck negligently on the evening of June 21, 2019, which substantially contributed to a crash that resulted in the death of seven people. Id. at 11. The Hearings Examiner placed great weight on the Petitioner's drug use and the four witnesses' accounts of his erratic driving immediately before the crash. Id. at 8–10. As a result of the Hearing Examiner's decision, the Petitioner's motor vehicle operating privileges were suspended for seven years, effective as of June 24, 2019. Id. at 14. This appeal followed.

LEGAL STANDARD

The Division's director is authorized to suspend or revoke any license after a hearing if, in relevant part, the State can show by a preponderance of the evidence that a driver: "Has by reckless or unlawful operation of a motor vehicle or boat caused or materially contributed to an accident resulting in death or injury to any other person or serious property damage." RSA 263:56, I(g).

Under RSA 263:76, "[a]ny person whose license has been suspended or revoked . . . may petition, within 30 days thereafter, the superior court in the county where such person resides." The Court "shall determine, after hearing, whether the decision of the director is unreasonable or unlawful." RSA 263:76. "The burden of proof shall be upon

the petitioner.” Id. As noted above, “[a]ll findings of the director upon all questions of fact properly before him shall be deemed prima facie lawful and reasonable.” Id. “The decision appealed from shall not be set aside or vacated except for errors of law, unless the court is satisfied, by a clear preponderance of the evidence before it, that such order is unjust or unreasonable.” Id.

ANALYSIS

The Petitioner argues that the Hearings Examiner’s decision was unlawful and unreasonable because the Hearings Examiner: (1) erroneously determined that the Petitioner was unlawfully operating his truck; (2) made an improper inference that the Petitioner was suffering from drug withdrawal at the time of the crash and did not otherwise determine that the Petitioner was impaired; (3) overlooked evidence that Mr. Mazza was impaired and actually caused the collision; (4) placed undue weight on eyewitness recollections and failed to consider eyewitness recollections which suggested that the Petitioner did not cause the crash; and (5) failed to consider the Petitioner’s expert report which concluded that Mr. Mazza contributed to the crash. Doc. 1 ¶¶ 8–25. The Division broadly contends that the Hearings Examiner lawfully and reasonably concluded that the Petitioner operated his truck negligently which substantially contributed to seven people’s deaths.

As a preliminary matter, the Court addresses the Petitioner’s concerns over the Hearings Examiner’s reliance on Sally Hull’s eyewitness account. At the December 10 hearing, the Petitioner sought to expand the record by introducing a Zwicker letter related to Ms. Hull’s statements. Ms. Hull told police that she saw the Petitioner driving erratically around 4:30 PM, roughly two hours before the crash. Through the Zwicker

letter, the State revealed that Ms. Hull's observations were not about the Petitioner's vehicle but rather another vehicle and thus did not use her statements during the Petitioner's criminal trial. The Petitioner now seeks to bring the Zwicker letter into evidence for the Court to consider as it determines whether the Hearings Examiner's decision was lawful and reasonable. On that point, the Petitioner argues that Ms. Hull's account provided the Hearings Examiner with a faulty foundation from which he made his findings. The Petitioner points out that Hearings Examiner relied on Ms. Hull's statements in his report and because her observations were the strongest eyewitness support as to the Petitioner's erratic driving, the Hearings Examiner's decision cannot stand without Ms. Hull's statements.

Although the Hearings Examiner cited Ms. Hull's observations in support of his decision, he relied on other evidence. Notably, he also relied on the accounts of four other eyewitnesses who observed the Petitioner's driving much closer in time to the crash—roughly within thirty minutes—compared to Ms. Hull's observations that occurred two hours prior to the collision. Similarly, although the Hearings Examiner placed great weight on eyewitness statements in general, there is no indication in the Hearing Examiner's report that he relied heavily on Ms. Hull's account compared to the other eyewitness accounts he cited in support of his decision. This other evidence provides the Court with a sufficient basis—without Ms. Hull's statements—to assess the Hearings Examiner's decision. Thus, the Court will not consider Ms. Hull's statements in assessing the reasonableness and lawfulness of the Hearings Examiner's decision.

The Court will now turn to the substance of the Petitioner's argument, starting with the legal framework in which the Hearings Examiner rendered his decision. As

stated above, under RSA 263:56, I(g), the State was required to show by a preponderance of the evidence that the Petitioner: (1) operated his vehicle unlawfully or recklessly, and (2) caused or materially contributed to a fatal accident. Here, the Hearings Examiner did not find that the Petitioner operated his vehicle recklessly, but rather, found that he operated his vehicle unlawfully. RSA 265:79-b makes driving negligently a crime, and therefore, unlawful. RSA 626:2, II(d), as referenced in RSA 265:79-b, establishes that a person “acts negligently with respect to a material element of an offense when he fails to become aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct.” In addition, the risk “must be of such a nature and degree that his failure to become aware of it constitutes a gross deviation from the conduct that a reasonable person would observe in the situation.” RSA 626:2, II(d).

In finding that the Petitioner operated his vehicle negligently, the Hearings Examiner considered the Petitioner’s testimony that he consumed drugs around 6:00 AM on the day of the crash and had not consumed any drugs afterwards. The Hearings Examiner found this fact to be indicative of the Petitioner’s negligence given his testimony that he would start feeling sick after he stopped using drugs, requiring him to use drugs two-to-three times a day so he would not feel sick or low. Consequently, the Hearings Examiner determined that although there was insufficient evidence that the Petitioner was impaired or intoxicated at the time of the crash, “there is a reasonable inference that the [Petitioner] was likely coming down from his drug use since it had been 12 hours since his last use and he reported that he was using 2 to 3 times a day during this period in order to feel good.” Hearings Examiner Report at 8.

Moreover, the Hearings Examiner determined that four eyewitnesses supported the conclusion that the Petitioner drove his vehicle negligently. First, Ms. Jennings described that the Petitioner's trailer was "'whipping' and out of control" and "going towards the centerline." Id. at 9. The Hearings Examiner found this statement probative because it provided "evidence that the [Petitioner's] trailer was out of control just prior to the accident." Id. Second, Mr. and Mrs. Coulter were driving in the opposite direction as the Petitioner and observed that the Petitioner almost collided with a vehicle in front of them, causing the Coulters to brake and head towards the white fog line to avoid a collision. Id. They both also observed the Petitioner in their lane of travel and that when Mrs. Coulter looked directly at the Petitioner, it appeared that he was reaching for or just dropped something. Id. Third, Ms. Baron, who was sitting in the backseat of her vehicle—which was directly behind the Petitioner's vehicle—observed the Petitioner going over the centerline multiple times. Id. The Hearings Examiner also considered the fact that a fifth eyewitness—Adam Bartley—did not observe Petitioner drive erratically and found that it did not "diminish the observations made by the other witnesses." Id.

The Hearings Examiner next considered the competing accident reconstruction reports that the parties submitted. The Division submitted three reports from Crash Lab, dated February 14, 2020, August 31, 2020, and May 11, 2022, the latter of which responded to Boston Scientific's April 1, 2022, report the Petitioner submitted. The three Crash Lab reports consistently concluded that at the time of the impact between the Petitioner and Mr. Mazza, the Petitioner's vehicle's front left tire was positioned on the yellow centerline. Feb. 14, 2020, Report at 31; August 31, 2020, Report at 27;

May 11, 2022 Report at 3. On the other hand, the Boston Scientific Report determined that because Mr. Mazza's motorcycle was in a hard right-hand lean prior to impact, even if the Petitioner was located fully within his travel lane, the crash still would have occurred because of the motorcycle's trajectory. April 1, 2022, Report at 4. The Crash Lab disagreed with Boston Scientific's analysis, including Boston Scientific's analysis of Mr. Mazza's pre-crash trajectory based on the physical evidence and testimony from other Jarhead motorcyclists. May 11, 2022, Report at 3. The Hearings Examiner considered both sets of expert reports, concluding that they demonstrated that the Petitioner's front left tire was on the centerline at the time of the crash. Hearings Examiner Report at 9. In addition, the Hearings Examiner also noted that the Boston Scientific report concluded that the steering direction of the Petitioner's truck indicated that the truck was veering towards the other lane of traffic. Id. at 9–10.

Based on the foregoing evidence, the Court finds that the Hearings Examiner lawfully and reasonably determined that the Petitioner operated his truck unlawfully. The evidence the Hearings Examiner relied on shows that the Petitioner was operating a motor vehicle despite knowing the effects that drugs—both the consumption and absence of—had on him. Given the Petitioner's awareness of these effects, the Hearings Examiner was reasonable in concluding that the Petitioner's decision to continue driving despite this awareness was “a gross deviation from the conduct that a reasonable person would observe in the situation.” RSA 626:2, II(d); cf. State v. Shepard, 158 N.H. 743, 747-48 (2009) (overturning defendant's negligent homicide convictions because there was no evidence as to why the defendant's vehicle briefly passed over the yellow centerline, and thus, no evidence showing that the defendant's

conduct was criminally negligent). Here, unlike in Shepard, it is quite clear that the Petitioner's conduct in continuing to operate a motor vehicle despite knowing the effects that drugs have on him demonstrated a gross deviation from how a reasonable person would act. Id.

Likewise, the Hearings Examiner also reasonably and lawfully determined that the Petitioner's unlawful operation of his truck caused or materially contributed to the fatal crash. The Hearings Examiner considered both sets of expert reports in determining that the Petitioner caused or materially contributed to the collision. Hearings Examiner Report at 9–10. Although there is a disagreement between Crash Lab's and Boston Scientific's conclusions regarding Mr. Mazza's causal role in the crash, both sides' reports demonstrate that the Petitioner operated his truck very close to, and eventually on, the yellow centerline. Moreover, it was the Hearings Officer's responsibility to resolve the conflict between the expert reports in reaching his conclusions. Indeed, members of administrative boards and agencies, as part of their role to determine facts and make credibility determinations, do not have to accept conclusions of experts if they have sufficient reasons to disregard the experts' opinions. Cf. Continental Paving, Inc. v. Town of Litchfield, 158 N.H. 570, 575 (2009) (ZBA members need not accept conclusions of experts). Considering Crash Lab's criticism of the Boston Scientific report and the corroboration of the eyewitness testimony, the Hearings Examiner's ultimate conclusion that the Petitioner caused or materially contributed to the crash is lawful and reasonable.

The Petitioner's arguments to the contrary largely center on his disagreement with how the Hearings Examiner weighed the evidence. For example, the Petitioner

argues that the Hearings Examiner erred by giving weight to the eyewitness accounts of Ms. Jennings, the Coulters, and Ms. Baron. As to Ms. Jennings and Ms. Baron, the Petitioner contends that they did not see the Petitioner in the seconds leading up to the crash, nor do their statements definitively show that his truck ever passed the yellow centerline. The Petitioner also contends that Ms. Baron was distracted trying to get directions on her phone when she observed the Petitioner, and thus is not reliable a source of information.

These arguments misconstrue this Court's role in an appeal of a motor vehicle license suspension. The Court does not take a fresh look at the evidence and decide the matter anew. Rather, the Court must accept the Hearings Examiner's factual determinations as prima facie reasonable and only overturn the decision if the decision was clearly unlawful or unreasonable. Proulx v. Dir. N.H. Div. of Motor Vehicles, 154 N.H. 350, 351 (2006). As the Hearings Examiner noted, all four of these eyewitness accounts corroborated—and happened in close proximity to—one another. In fact, the Coulters' observations highlight the Petitioner's erratic driving by explaining how they had to swerve to avoid the Petitioner from coming into their line and hitting their car. Hearings Examiner Report at 9. The Coulters' observations—in addition to Ms. Johnston's and Ms. Baron's corroborative statements—gives ample support to the Hearings Examiner's determinations, and therefore, this Court cannot disturb them. See Proulx, 154 N.H. at 351.

The Petitioner emphasizes that the Hearings Examiner ignored Mr. Bartley's and David Bark's—a jarhead motorcyclist—statements indicating that the Petitioner was not driving erratically. The Petitioner contends that Mr. Bark's statements that Mr. Mazza

looked over his shoulder demonstrated Mr. Mazza's role in causing the crash and that Mr. Bark did not definitively see the Petitioner's truck cross the yellow centerline. Mr. Bartley told police that he did not observe the Petitioner's truck operating in a concerning manner. These arguments do not demonstrate that the Hearings Examiner's conclusions are unreasonable. Crucially, and contrary to the Petitioner's arguments, the Hearings Examiner did consider Mr. Bartley's statements but found them unpersuasive in light of the four other accounts he credited. The Court reasonably assumes that the Hearings Examiner's lack of discussion of Mr. Bark's statements indicates that he did not place any weight on those statements. Given the Hearings Examiner's statutory authorization to make factual determinations in the first instance, the Court sees no error in the Hearings Examiner's reliance on Ms. Johnston's, the Coulter's, and Ms. Barron's accounts.⁴ See RSA 263:76.

The Petitioner also makes much of the fact that the Hearings Examiner did not find that the Petitioner was impaired at the time of the crash and made unreasonable inferences about his experience of withdrawal symptoms at the time of the crash. The Court disagrees. His decision did not rest on the fact of the Petitioner's impairment or his experience of withdrawal. Rather, the Hearings Examiner found that because the Petitioner's testimony demonstrated an awareness of how drugs adversely affected him, his decision to operate his truck despite that knowledge was unlawful. That conclusion in no way depends on unreasonable inferences unsupported by the record, as the

⁴ At the December 10 hearing, the Petitioner pointed out that the Hearings Examiner was not tasked with making credibility determinations because he did not hear any live testimony except from the Petitioner. The Court is not persuaded of the significance of that procedure in this appeal. The parties agreed to proceed by offers of proof in front of the Hearings Examiner and, therefore, the Hearings Examiner had to determine what version of events to believe. The Petitioner cannot claim now that the lack of live witness testimony alters the Hearings Examiner's role.

Petitioner's testimony and statements made to law enforcement reveal his awareness of how drugs—and a prolonged lack of drug use—affected his functioning. This awareness combined with the Petitioner's erratic driving also illustrates that he operated his truck negligently. Thus, the Hearings Examiner's finding of negligence without a finding of impairment was not unreasonable or unlawful. See Shepard, 158 N.H. at 747–48.

In a similar vein, the Petitioner also contends that the decision was unreasonable because it overlooked Mr. Mazza's actions—the fact that he was intoxicated and veered into the Petitioner's lane of travel—which contributed to the crash. The Hearings Examiner's lack of findings on this point was not unreasonable. That Mr. Mazza may have contributed to the crash does not change the fact that the record also supports the conclusion that the Petitioner's negligent driving caused or materially contributed to the crash. The legal framework under RSA 263:56, I(g) does not contemplate that only one individual could be the cause of an accident or that license suspension thereunder is available only for the individual most at fault. Simply put, the Hearings Examiner's decision—which the record supports—finds that the Petitioner's unlawful driving caused or materially contributed to the fatal crash.⁵

Ultimately, the Court finds the Hearings Examiner's determination that the Petitioner's unlawful (negligent) driving caused or substantially contributed to the fatal car crash was lawful and reasonable. The record supports the Hearing Examiner's

⁵ At the December 10 hearing, the Petitioner suggested that the Court should read the phrase “caused or materially contributed” together rather than establishing two separate ways the State could satisfy RSA 263:56. This arguments overlooks the fact that: (1) the Hearings Examiner did not determine that he only materially contributed to the crash, and (2) the word “or” gives the Hearings Examiner an option in finding which conduct satisfies RSA 263:56, I(g).

finding that the Petitioner operated his vehicle negligently because of his decision to drive despite knowing how the absence of drugs in his system negatively affected his functioning. In addition, the record—through eyewitness accounts and expert reports—supports the Hearings Examiner’s decision that the Petitioner caused or materially contributed to the crash. The Court acknowledges that some evidence in the record suggests that the Petitioner was not the sole cause of the crash. That evidence, however, does not change the reasonableness of the Hearings Examiner’s finding that the Petitioner caused or materially contributed to the crash.

CONCLUSION

Consistent with the foregoing, the Court **AFFIRMS** the Division’s decision and **DISMISSES** the Petitioner’s appeal.

So ordered.

May 6, 2025
Date


Judge Martin P. Honigberg

Clerk's Notice of Decision
Document Sent to Parties
on 05/06/2025