OFFICE OF THE CITY AUDITOR
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CITY OF PORTLAND

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HEARINGS OFFICER'S ORDER

APPEAL OF NOBLE CHIMA

CASE NO. 3110538

DATE OF HEARING: December 15, 2011

APPEARANCES:

Noble Chima, Appellant

Kathleen Butler, on behalf of the City

HEARINGS OFFICER: Ms. Kimberly M. Graves

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Noble Chima ("Mr. Chima") appeared at the hearing and testified on his own behalf. Ms. Kathleen Butler, Regulatory Division Manager for the City of Portland Revenue Bureau ("Ms. Butler") appeared and represented the City. Mr. Frank Dufay, Regulatory Program Administrator for the City of Portland Revenue Bureau ("Mr. Dufay") appeared as a witness for the City.

Ms. Butler offered Exhibits 1 through, and including, 7 to be admitted into the evidentiary record without objection. The Hearings Officer admitted all offered exhibits into evidence.

Exhibit 4, a November 14, 2011, letter from Mr. Dufay to Appellant, sets out the basis for the denial of Mr. Chima's February 25, 2011, request for renewal of his Portland taxi driver permit.

Exhibit 4 indicates that Mr. Chima's request for renewal of his Portland taxi driver permit was denied based on the existence of numerous disqualifying factors. The disqualifying factors are set out in Portland City Code (PCC) section 16.40.090. The disqualifying factors which are listed as being applicable to Mr. Chima are as follows:

1. Five suspensions within the past ten years
2. Suspended (2003) Washington driver's license
3. A combination of ten traffic violations within the past five years in Oregon and Washington
4. You do not have a driver's license in the state in which you reside

PCC 16.40.090A-LPT and Taxi Driver Permits Required – Application Process and Requirements provides that "No person may drive a for-hire transportation vehicle without a valid, current for-hire transportation driver's permit issued under Chapter 16.40." PCC 16.40.090E provides that "Applicants for a driver's permit may not be issued a permit if any of the following conditions exist." PCC 16.40.090E lists the following conditions relevant to the disqualifying factors set out by Mr. Dufay in Exhibit 4: (4) "During the 5-year period preceding the submission of the initial application, the applicant had greater than 10 traffic infractions as defined in ORS 801.557; . . . (5) During the 10-year period preceding the filing of the initial application, the applicant's driving privileges were suspended or revoked by any governing jurisdiction as a result of a driving-related incident . . ." ORS 801.557 defines a "Traffic violation" as "a traffic offense that is designated as a traffic violation in the statute defining the offense, or any other offense defined in the Oregon Vehicle Code that is punishable by a fine but that is not punishable by a term of imprisonment."

The Hearings Officer, in this case, relies upon the oral testimony offered by the parties, and Exhibit 7 which was offered into the evidentiary record by the City in making this decision.

Is there substantial evidence in the record to support the denial of Mr. Chima's renewal application?

The Hearings Officer finds that the existence of a disqualifying factor listed in PCC 16.40.090 provides sufficient grounds for the denial of a renewal application for a Taxi Driver permit.

City witness Mr. Dufay testified that he reviewed the application for a taxi driver permit submitted by Mr. Chima in February 2011. Mr. Dufay testified that he found a number of "disqualifying factors" existed with regard to Mr. Chima's application. (see PCC 16.40.090E) Mr. Dufay testified that Mr. Chima had had his driver's license suspended 5 times in the 10 years preceding the application. Mr. Chima had had his Washington driver's license suspended, and Mr. Chima had had 10 traffic violations within the 5 years preceding the application. Mr. Dufay testified that he believes some of the suspensions resulted from an arrest for Driving Under the Influence of Intoxicants (DUII). Mr. Dufay testified that the disqualifying factors are taken into consideration when reviewing a taxi driver permit application. Mr. Dufay testified that in some instances a permit may be issued despite the existence of such factors; however, it must be evident that the driver completed a DUII diversion program and that the criminal activity must not be recent. Mr. Dufay testified that he does not believe that Mr. Chima has completed a DUII diversion program. Mr. Dufay stated that he provided Mr. Chima the opportunity to submit evidence to rebut the existence of the disqualifying factors, but that Mr. Chima did not submit any evidence.

Mr. Dufay testified that, while not a disqualifying factor listed in PCC 16.40.090E, Mr. Chima's failure to obtain an Oregon driver's license also provided a basis for denial of his taxi driver permit application. Mr. Dufay testified that the Oregon Revised Statutes (see 807.020) requires anyone living in the state for greater than 30 days to obtain an Oregon driver's license. Mr. Dufay testified that Mr. Chima has been living in Oregon since February, but has not obtained an Oregon driver's license.

Ms. Butler submitted Exhibit 7 for the Hearings Officer's consideration. Exhibit 7 is a printout of Mr. Chima's driver record.

Mr. Chima testified that he submitted his application to renew his permit in February 2011. Mr. Chima stated that he was told by Ms. Butler upon submitting his application that his permit had not yet expired, but that he should have come in a month earlier. Mr. Chima testified that he left town to deal with a family matter, and decided that he would deal with the application when he returned. Mr. Chima stated that upon returning to town he received a "denial letter" from the City. Mr. Chima testified that he has paid all of the tickets that he has received, and that he does not own the City any money for any of the violations on his record. Mr. Chima testified that the tickets were received while he was working, and that they were very expensive. Mr. Chima testified that he does not believe that the City was following the PCC, when they issued him tickets when he was working.

The Hearings Officer finds that testimony of the parties to be credible regarding the information contained in Mr. Chima's driving record.

The Hearings Officer finds, based on a review of Exhibit 7, that Mr. Chima received the following traffic violations, as defined in ORS 801.557, during the five years preceding his application for a Taxi driver permit: 10/16/10-Speeding, 5/21/07-Speeding, 12/4/07-Driving While Suspended (DWS) and Driving Uninsured, 2/20/08-DWS and Speeding, 7/24/08-DWS, 4/17/09-DWS and Driving Uninsured, 8/6/10-Speeding, and 10/13/10-Speeding. The Hearings Officer finds that Mr. Chima received 11 traffic violations in the five years preceding his application. The Hearings Officer finds that Mr. Chima's license was most recently suspended on July 20, 2009, for a period of 30 days.

Conclusions

The Hearings Officer finds that the PCC permits the denial of a Taxi Driver permit application when the driver has had greater than 10 traffic infractions in the 5 years preceding the application, or when an applicant has had their driver's license suspended at any time during the 10 years preceding the application. The Hearings Officer finds that Mr. Chima has had greater than 10 traffic infractions and has had his license suspended within the 5 years preceding his application. The Hearings Officer finds that the City was following the regulations set out in PCC 16.40.090E when it denied Mr. Chima's application for a Taxi Driver permit, and Mr. Chima's appeal is denied.

ORDER AND DETERMINATION:

1. Bases set out in Exhibit 4 for denial of Mr. Chima's application for a Taxi Driver permit are proven; Mr. Chima's appeal is denied.

2. This order has been mailed to the parties on December 16, 2011.

3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: December 16, 2011

Kimberly M. Graves, Hearings Officer

KMG:rs/jeg

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal form page 1	Butler, Kathleen	Received
1a	11/23/11 letter from Chima	Butler, Kathleen	Received
2	Appeal form page 2	Butler, Kathleen	Received
3	12/5/11 memo from Frank Dufay	Butler, Kathleen	Received
4	11/14/11 letter, Dufay to Chima	Butler, Kathleen	Received
5	Mailing List	Hearings Office	Received
6	Hearing Notice	Hearings Office	Received
7	WA State driving record	Butler, Kathleen	Received