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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION

RE: SULLIVAN, PETER K.
LICENSE TRANSFER DENIAL

AAD NO. 16-002/MSA

DECISION AND ORDER

This matter came before Hearing Officer David M. Spinella on April 5, 2016 for Hearing. The Rhode Island Department of Environmental Management (“RIDEM”), Office of Boat Registration and Licensing, (“The Division”) was represented by Gary Powers, Esquire. The Applicant, Mr. Peter K. Sullivan, represented himself. At the Status Conference on March 9, 2016 both parties stated that they did not want the proceedings at the Hearing transcribed. (R.I.G.L. §42-35-9(f)).

Jurisdiction

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R.I. General Laws §42-17.7-1 et. seq.) and the *Administrative Procedures Act* (R.I. General Laws §42-35-1 et. seq.); the *Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matter* (AAD Rules).

Burden of Proof

The Applicant bears the burden of proof in this matter and must prove, by a preponderance of the evidence that the denial of his Multi-Purpose Fishing License (#MPURP000981) renewal by the Division on February 10, 2016 was not in accordance with the Department of Environmental Management’s Commercial and Recreational Saltwater Fishing

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Licensing Regulations (the "Regulations"). Proof by a preponderance of the evidence requires that the facts be shown to be more likely than not in support of the proponent's conclusion Perry v. Alessi, 890 A.2d 463, 469 (R.I. 2006).

Stipulated Facts

The Applicant did not offer any of his own proposed stipulations of facts.

The Applicant stipulated to the following facts proposed by the Division:

1. The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
2. Pursuant to an application dated February 4, 2016, the Applicant submitted a request for the renewal of Multi-Purpose Fishing License #MPURP000981 to the Division.
3. The Applicant's February 4, 2016 application requesting the renewal of Multi-Purpose Fishing License #MPURP000981 was denied by the Division in a letter dated February 10, 2016.
4. Multi-Purpose Fishing License #MPURP000981 expired on December 31, 2009.
5. The Applicant submitted to the Division a request for the renewal of Multi-Purpose Fishing License #MPURP000981 for 2015 dated July 27, 2015 which was denied on August 17, 2015.

At the Hearing the Applicant stipulated to the admission of all the Division's Exhibits as follows:

Division's Exhibit 1 - Full The Applicant's application dated February 4, 2016 submitted to the Division requesting the renewal of Multi-Purpose Fishing License #MPURP000981. 11 pages (Copy).

Division's Exhibit 2 - Full The Division's letter to the Applicant dated February 10, 2016 denying Applicant's February 4, 2016 Application. 2 pages (Copy).

Division's Exhibit 3 - Full The Applicant's February 16, 2016 letter submitted to the AAD requesting a hearing before the AAD concerning the determination of the Division's letter dated February 10, 2016 denying the Applicant's February 4, 2016 application for the renewal of Multi-Purpose Fishing License #MPURP000981. 1 page (Copy).

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Division's Exhibit 4 - Full A computer printout of the Applicant's License history. 3 pages (Copy).

Division's Exhibit 5 - Full The Applicant's letter dated July 27, 2015 submitted to the Division requesting the renewal of Multi-Purpose Fishing License #MPURP000981. 2 pages (Copy).

Division's Exhibit 6 - Full The Division's letter to the Applicant dated August 17, 2015 denying Applicant's July 27, 2015 request for renewal of Multi-Purpose Fishing License #MPURP000981. 2 pages (Copy).

The Division stipulated to the admission of all the Applicant's Exhibits as follows:

Applicant's Exhibit 1 - Full 2016 Shellfish Sector Management Plan

Applicant's Exhibit 2 - Full Commercial and Recreational Saltwater Fishing Licensing Regulations (October 29, 2015).

Issue to be Addressed

The parties stipulated that the issue to be addressed in this matter is whether the Applicant has satisfied his burden of proving that the Division's February 10, 2016 denial of the Applicant's February 4, 2016 application for the renewal of Multi-Purpose Fishing License #MPURP000981 violated the Department of Environmental Management's Commercial and Recreational Saltwater Fishing License Regulations.

Witnesses

The Applicant was the only witness who testified in support of his case. He stated that he is a retired State employee, who has been hurt financially by certain pension reform legislation passed in Rhode Island, which took away his Cost of Living adjustment. He has also been a substitute teacher. He wants to get back now what he lost in 2009, namely his Multi-Purpose Fishing License in order to earn more money. He then argued that he was not able to renew his

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license in 2009 due to medical conditions he was suffering from, namely: high blood pressure; osteoarthritis; a torn rotator cuff and sleep apnea.

He submitted letters to the Division from Dr. Bruce Fisher, M.D. dated November 31, 2015 and Dr. Marilyn Weigner dated January 6, 2016 with his Multi-Purpose Fishing License Renewal application. (Division's Exhibit 1 - Full).

These letters state that the Applicant was suffering from these conditions since 2009 and that these conditions stabilized as of the dates the letters were written. The letters do not indicate that these conditions precluded the Applicant from fishing or renewing his license in 2009, but the Applicant testified his doctors advised him to discontinue shellfishing in 2009. The Applicant testified a few times that he was either at the doctor's office or in a rescue squad in 2009 because of these medical conditions. As a result of these ailments, he testified that he was not paying attention to his mail, which resulted in his failure to renew his license in 2009.

The Section 6.7-4(c) of the Regulations provides as follows:

(6.7-4) License Renewals, Transitions and Upgrades

(c) Applicants who possessed a valid Multi-Purpose License (resident only) as of the immediately preceding year may obtain a Multi-Purpose License for the immediately following year; alternatively, applicants who possessed a valid Multi-Purpose License (resident only) as of the immediately prior year may obtain a Principal Effort License with Quahaug (resident only), Soft-Shell Clam (resident only), Shellfish Other (resident only), Lobster (resident only), Non-Lobster Crustacean (resident only), Restricted Finfish, Non-Restricted Finfish, and/ or Whelk (resident only) endorsements for the immediately following year. (Emphasis added.)

The Applicant admits his license expired in 2009, but argues he should now be excused from his failure to file a timely renewal application in 2009, because of his medical conditions.

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He points to the Commercial and Recreational Saltwater Fishing License Regulations (Applicant's Exhibit 2 – Full), and cited the provisions that deal with hardship issues.

The Applicant then gave a detailed narrative review of certain provisions of the 2016 Shellfish Sector Management Plan and the Regulations that discuss issues, such as the best management practices in the shellfish sector and the exit/entry ratio of individuals that are licensed to fish in this fishery. The Applicant argued these provisions encourage the Division to issue more licenses in this sector and encourage more business in the industry. (Applicant's Exhibit 1 - Full pgs. 3, 6, 14, 15, 18, and 25). Therefore, he argued that his medical conditions in 2009 plus these provisions to issue more Licenses are reasons for him being excused from failing to renew his Multi-Purpose Fishing License in 2009 and have it renewed now.

The Division's first witness was Ms. Margaret McGrath. Ms. McGrath is the Programming Services Supervisor for the Office of Management Services at the Department of Environmental Management. Ms. McGrath testified that the Applicant is not eligible for a hardship exemption at this point in time since he failed to timely renew his license in 2009 in accordance with Section 6.7-4(c). Alternatively, she stated that in 2009, he failed to request an operator permit pursuant to the Regulations based on his medical hardship. Such a request would have kept his original license intact for 2009 and could have been renewed during his disability. (Applicant's Exhibit 2 – Full, page 24 Regulation 6.7-9(e)). This Regulation reads as follows:

(6.7-9) Issuance of New Licenses and Operator Permits Under Hardship Conditions

(a) A hardship shall be deemed to exist if a license holder who is actively fishing dies or becomes permanently or temporarily incapacitated by illness or injury so as to not be able to fish for any period in excess of fourteen (14) days.

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(b) The Department will require proof of hardship in the form of a death certificate or a diagnosis and prognosis of the incapacity of the license holder signed by a medical doctor (M.D. or O.D.).

(c) In the case of permanent incapacity or death, the Department will issue, upon application, a single, new, equivalent license with applicable endorsement(s) to a member of the license holder's family who is a Rhode Island resident. That family member may be designated by the license holder or by mutual agreement among surviving family members if the license holder is deceased. Prior to issuance of the new license, the original license will be surrendered. The new license will be valid for the balance of the license year, and will be eligible for renewal pursuant to the terms and conditions set forth in section 6.7-3.

(d) In lieu of subsection 6.7-9(c), in the case of permanent incapacity or death, the Department will issue, upon application, an operator permit or equivalent license of the same category to a Rhode Island resident designated by the incapacitated license holder, or in the case of death, by the deceased individual's next of kin. Said permit or license will serve as the legal equivalent of the license held by the original licensee. Prior to issuance of the operator permit or equivalent license, the original license will be surrendered. The operator permit or equivalent license will be valid for the balance of the license year and will be eligible for renewal once, at a cost equal to the original license, upon approval by the Director.

(e) In the case of temporary incapacity, exceeding a period of fourteen (14) days, the Department will issue, upon application, an operator permit or equivalent license of the same category to a Rhode Island resident designated by the incapacitated license holder. Said permit or license will serve as the legal equivalent of the license held by the incapacitated license holder. Prior to issuance of the operator permit or equivalent license, the original license will be suspended. The operator permit or equivalent license will remain valid for the balance of the license year, or until the return to wellness of the incapacitated license holder, whichever occurs first. The operator permit or equivalent license will be eligible for renewal once, at a cost equivalent to the cost of the original license, upon approval of the Director. Upon the return to wellness of the incapacitated license holder, the original license will, upon application, be reinstated and the operator permit or equivalent license will be surrendered.

(f) New equivalent licenses issued pursuant to this section are not subject to the application deadline provisions set forth under section 6.7-3.

In 2009, the Applicant did not avail himself of Regulation 6.7-9(e) or any of the other provisions according to Ms. McGrath.

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The last witness for the Division was Mr. John Lake, who is a Principal Biologist for marine fisheries at the Department of Environmental Management. Mr. Lake helped prepare the 2016 Shellfish Sector Management Plan (Applicant's Exhibit 1 - Full). He confirmed many of the facts that the Applicant discussed regarding the intent of the 2016 Shellfish Sector Management Plan, but he stated that this Plan has nothing to do with the Multi-Purpose Fishing License the Applicant now wants renewed. It only pertains to the shellfish sector. Therefore, the exit/entry ratio and best management practices the Applicant spoke about do not apply to his situation.

Discussion

The Applicant failed to renew his Multi-Purpose Fishing License in 2009 in accordance with the Department's Regulations. I agree with the Division's argument that the Applicant is not entitled to renew his Multi-Purpose Fishing License (#MPURP000981) pursuant to Section 6.7-4(c) of the Regulations at this time. The reason is that the Applicant did not possess a valid Multi-Purpose Fishing License as of December 31, 2015. The last time he possessed a valid Multi-Purpose Fishing License was December 31, 2009. The Regulations are clear and unambiguous.

Secondly, the Applicant's testimony about the intent of the 2016 Shellfish Sector Management Plan and the Regulations is not relevant to the main issue of whether the Applicant timely demonstrated and documented, a medical hardship to the Division in accordance with the Regulations. He failed to file a timely License Renewal in 2009 or request an operator permit, which could have preserved his Multi-Purpose Fishing License.

Based on all of the facts, circumstances, and evidence presented, I do not believe the Applicant demonstrated, by a preponderance of the evidence, that the Division's decision to deny

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the renewal request of his Multi-Purpose Fishing License was incorrect. Therefore, the Division's February 10, 2016 decision to deny his request for a renewal of his Multi-Purpose Fishing License will be upheld.

Findings of Fact

1. The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
2. Pursuant to an application dated February 4, 2016, the Applicant submitted a request for the renewal of Multi-Purpose Fishing License #MPURP000981 to the Division.
3. The Applicant's February 4, 2016 application requesting the renewal of Multi-Purpose Fishing License #MPURP000981 was denied by the Division in a letter dated February 10, 2016.
4. Multi-Purpose Fishing License #MPURP000981 expired on December 31, 2009.
5. The Applicant submitted to the Division a request for the renewal of Multi-Purpose Fishing License #MPURP000981 for 2015 dated July 27, 2015 which was denied on August 17, 2015.
6. The Applicant failed to request an operator permit pursuant to Regulation 6.7-9 in 2009.

Conclusions of Law

1. The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
2. The Applicant's February 4, 2016 application requesting the renewal of Multi-Purpose Fishing License #MPURP000981 was properly denied by the Division in its letter dated February 10, 2016 in accordance with Section 6.7-4 of the Regulations.
3. In 2009 the Applicant failed to request from the Division an operator permit pursuant to Regulation 6.7-9.
4. The Applicant failed to sustain his burden of proof, by a preponderance of the evidence, that the Division's determination and letter of February 10, 2016 denying his request for renewal of his Multi-Purpose Fishing License (#MPURP000981) violated the Department of Environmental Management's Commercial and Recreational Saltwater Fishing License Regulations.

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Wherefore, it is hereby **ORDERED** that:

1. The Applicant's Appeal to the Administrative Adjudication Division filed February 19, 2016 is hereby **DENIED AND DISMISSED**.
2. The Division's February 10, 2016 denial letter of the Applicant's renewal request of his Multi-Purpose Fishing License (#MPURP000981) is hereby **AFFIRMED** and **SUSTAINED**.

Entered as an Administrative Order this 18th day of April, 2016.



David M. Spinella
Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, 2nd Floor
Providence, RI 02908
(401) 574-8600

CERTIFICATION

I hereby certify that I caused a true copy of the within Decision and Order to be forwarded, via regular mail, postage prepaid to: Peter K. Sullivan, 18 Jane Lane, Bristol, RI 02809 and via interoffice mail to Gary Powers, Esquire, DEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this 18th day of April, 2016.



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NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Environmental Management pursuant to RI General Laws § 42-35-12. Pursuant to R.I. Gen. Laws § 42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.