

Appeal No.: 3282 002 2019
Hearing Commenced: March 12, 2019

RED DEER APPEAL & REVIEW BOARD DECISION

CHAIR: Karen Howley
PANEL MEMBER: Michael Kartusch
PANEL MEMBER: Tyler Lacoste

BETWEEN:

ROBERT KITCHEN

Appellant

and

THE CITY OF RED DEER
Represented by Erin Stuart, Inspections & Licensing Manager
Amy Fengstad, Parking & Licensing Supervisor

City Authority

DECISION:

The application by the Appellant for a 2019 Taxi Driver License is approved. The reasons are described below.

BACKGROUND

1. The Red Deer Appeal & Review Board (the Board) is established by The City of Red Deer, By-law No. 3487/2012, *Appeal Boards Bylaw* (October 29, 2012). The duty and purpose of the Board is to hear and make decisions on appeals for which it is responsible under any City bylaw and in particular, arising from The City of Red Deer, Bylaw No. 3282/2001, *Taxi Business Bylaw* (June 18, 2001) (Taxi Bylaw).
2. On February 14, 2019 the City Authority issued a letter revoking the Appellant's (Robert Kitchen) Taxi Driver License pursuant to s. 49 of the Taxi Bylaw. Specifically, the letter states:

The Probation Order submitted on February 6, 2019 identified that you were convicted under the Criminal Code, section 267(a) for an assault with a weapon. Therefore, we are revoking your taxi driver license/badge as per The City of Red Deer *Taxi Business Bylaw 3282/2001* Section:

"49 The License Inspector is hereby authorized to:

f) revoke or suspend a taxi driver's license:

ii) where the character, conduct or state of health of the taxi driver becomes such that he is, in the opinion of the License Inspector, unfit to drive a public conveyance"

Your current taxi badge is to be surrendered to our office at 3rd floor City Hall, 4914 48 Avenue, **immediately**.

You may appeal this decision as per the Taxi Business Bylaw:

"55 Any decision of the License Inspector under section 50 of this bylaw may be appealed to the Red Deer Appeal & Review Board by the broker, licensee, or driver in accordance with the relevant procedures as outlined in The City of Red Deer Committees Bylaw."

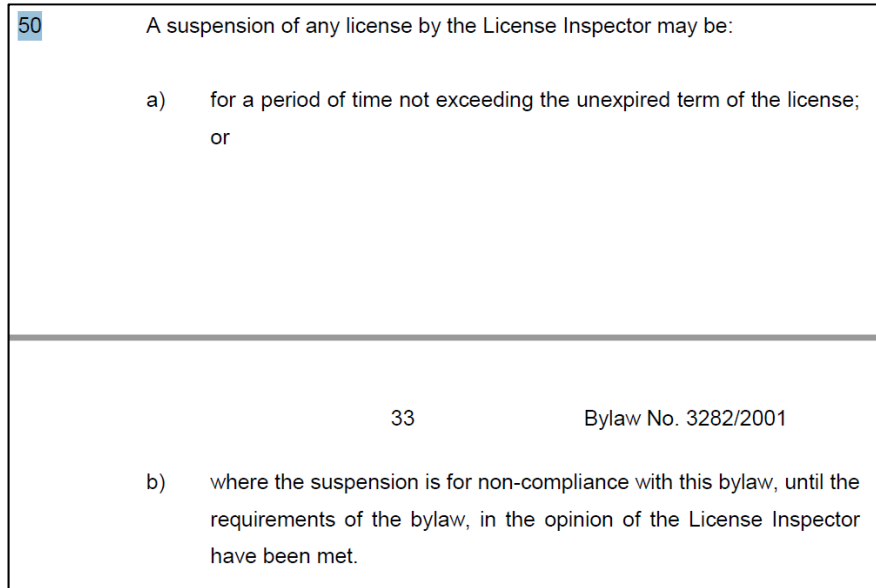
An appeal of the refusal was filed by the Appellant with the Board on February 25, 2019.

3. The Chair confirmed that no Board Member raised any conflicts of interest with regard to the matters before them.
4. Neither party raised any objection to the panel hearing the appeal.
5. The Board considered one preliminary issue: it's authority to hear the appeal.

Board Authority to Hear the Appeal

6. The Board identified a discrepancy in the Taxi Bylaw and the letter of refusal issued by the City Authority. In s. 55, the Taxi Bylaw grants a right of appeal to decisions made under s. 50, however, the refusal letter states that the license was refused under s. 49 of the Taxi Bylaw.
7. The City Authority stated that they believe the discrepancy is a typographical or administrative error. They believe this is supported by the fact that it would not make sense to have a right of appeal under s. 50 of the Taxi Business Bylaw and none under s. 49.
8. The Appellant agreed with the City Authority with respect to the Board's authority to hear the appeal.

9. The Board reviewed s. 49 of the Taxi Bylaw, which lists the powers of the License Inspector, while s. 50 of the Taxi Bylaw relates to the suspension of a license and reads:



10. The Board believes the discrepancy is administrative or typographical in nature.
11. Given that the Board believes that the discrepancy is an administrative oversight or typographical error, the Board has determined that it would be a miscarriage of administrative fairness to, essentially, refuse the Appellant a hearing and decision.

Public Hearing & Record

12. The Board entered the following documents into evidence:
- A1 – hearing materials (10 pages)
 - B1 – City Authority: Report (exhibits A–H)
 - C1– Appellant: Submission (3 pages starting with letter from Central Alberta Gold Taxi)
13. The Board advised the Parties that the hearing is open to the public, and that documents entered into evidence become a public record unless a Party requests that the hearing be closed or a written document sealed.

14. While the City Authority had no objections to this, the Appellant did not request that the hearing be closed or any portion of the record to be sealed.
15. There were no further preliminary matters.

Position of the City Authority

16. The City Authority stated that the main reasons for revoking the taxi driver license are:
i) safety of the travelling public; ii) character and conduct of the Appellant.
17. With regard to the safety of the travelling public, the City Authority stated that the primary purpose of taxi regulations is to protect the public. In order to ensure this is accomplished, the City exercises some control over people entering the industry as owners and drivers by suspending or revoking the licenses of people who demonstrate that they are not of good character, or for other reasons cannot be relied upon to carry passengers safely.
18. The City Authority stated they were made aware of the pending charges of the Appellant on December 28, 2018 when they were provided the Release of Results of Vulnerable Sector Check; both charges were before the Courts in BC.
19. Due to the pending charges, the City Authority issued a conditional license to the Appellant requiring him to provide the City with an updated Vulnerable Sector Check every three months until the charges were resolved.
20. The City Authority stated that on January 31, 2019 the Appellant was convicted on one count of assault with a weapon, under s. 267(a) of the *Criminal Code of Canada* and Mischief under s. 430(1.1) of the *Criminal Code of Canada*. The Appellant notified the City Authority of the convictions February 11, 2019.
21. The City Authority then referred the Board to a Department Policy (the Policy) adopted on January 25, 2019 which is intended to guide how the License Inspector would evaluate fitness to drive when a Criminal Record Check disclosed concerns.
22. Upon review of the Policy, the City Authority issued a letter revoking the Appellant's taxi licence February 14, 2019.

23. The City Authority argued that taxi passengers are often vulnerable due to age, infirmity or gender; they may be travelling alone, in the night, or while impaired. For these reasons, each application for a taxi driver license must be considered on its own merit, and it is important to consider the character or conduct of the driver.
24. The City Authority stated that the Appellant has been forthcoming and honest about his convictions once he was aware of them. He has provided any required documentation as well as a copy of the decision related to his parole indicating he has been excused from reporting to a Probation Officer. Further, the City Authority stated this speaks to honesty and integrity of the Appellant.
25. The City Authority stated that convictions for offences involving violence, sexual, and indecency are the most serious types of offences when evaluating an application for a taxi driver license. In support, the City Authority referred to the Policy that is used when reviewing Vulnerable Sector Checks and Criminal Record Checks as they relate to Taxi Driver Licenses.
26. The City Authority stated that a lack of complaints or subsequent convictions against the Appellant does not demonstrate fitness to have a license. The Policy states that where there are convictions of specific items under paragraph 12, the licencing authority shall not authorize or maintain the authorization of any person as a vehicle for hire driver.
27. It is the City Authority's position that the Appellant's record renders him unfit to hold a taxi driver license.

Position of the Appellant

28. The Appellant stated that he has driven taxi in the City of Red Deer for the past 8 years and that is what he wants to continue to do. He has had no complaints, at fault accidents, or demerit points during that time. In support of this he has included a letter from his employer as well as a clean drivers abstract.
29. The Appellant stated that he was unaware of the pending charges until he completed the Vulnerable Sector Check in December 2018. He further stated that he contacted the

appropriate authorities in Vernon, British Columbia to remedy the situation once he was aware. The Appellant provided a copy of the statement to the City Authority dated June 17, 2010 that details the events that resulted in the 2019 conviction, which involved a semi-trailer and a car with two male passengers.

30. The Appellant argued that he is of good character and has provided a letter from his employer speaking to his integrity. Testimony was also provided by a longtime friend at the hearing, where she spoke of the Appellant's good nature and kindness.
31. In reference to the charges that were laid, the Appellant stated he is not denying the incident happened, however, it is not exactly as it seems. The Appellant stated he was defending himself from two individuals and the "weapon" was a bungee cord that ended up breaking a car window. Thus considered by the Court to be assault with a weapon.
32. The Appellant stated the Courts imposed less than the minimum sentence that could have been imposed, and that there is a Probation Order in place for 9 months until October 30, 2019. He further stated that he is excused from reporting to the Probation Officer and provided a letter dated February 6, 2019 to support this statement.

Board Analysis

33. The City Authority stated that the purpose of the Taxi Bylaw is to protect the public. In relation to this the City adopted the Policy to guide the Licence Inspector where a Criminal Record Check discloses concerns.
34. The Board considered the submissions from City Authority, paragraph 10 of the Exhibit C.1 states a criminal record will not necessarily always result in a refusal or a permanent bar from becoming licensed. Each case is evaluated on its merits.
35. However, paragraph 12 of the Policy states the licensing authority shall not authorize or maintain the authorization of any person as a vehicle for hire driver if a person is charged with or convicted of an offence under the *Criminal Code* (Canada) or the *Controlled Drugs and Substances Act* (Canada) that is related to the functions, duties or business of a vehicle for hire company or a vehicle for hire driver, including, without limitations:

- | |
|---|
| <p>(1) Any offence of a violent nature, including firearms and weapons offences,
(2) Any offence involving sexual assault, sexual exploitations, sexual interference, procuring or invitation to sexual touching,
(3) Trafficking,
(4) Any offence involving fraud or fraudulent transactions, conspiracy to defraud, the use of false pretences, bribery, extortion or theft, or</p> |
| <p>(5) Any offence relating to the unlawful operation of a motor vehicle.</p> |

36. The Board believes paragraph 3 of the Policy speaks to the spirit and intent of the Policy, which is to assess the character and conduct of the applicant for a vehicle for hire driver. Paragraph 12 of the Policy does not take this into account. Therefore, the Board finds there is a discrepancy between the Policy and the Taxi Business Bylaw.
37. Further, paragraph 6 of the Policy states that there should be regard to the guidelines contained in the Policy, however each case will be considered on its individual merits and, where the circumstances demand, the office may depart from the guidelines.
38. Therefore the Board believes in order to be in compliance with the Bylaw a person should be considering the assessment under paragraph 9 of the Policy when evaluating applications with offences under paragraph 12, given the intent of paragraph 3.
39. The Board followed the process set out in paragraph 9 of the Policy and provides the following analysis:
- 1) How relevant are the offence(s) are to the licence being applied for:
The Board believes it to be relevant, because of the nature of the offences e.g. assault with a weapon. However the Board also believes that this is tempered by the circumstances and the time that has lapsed since the occurrence.
 - 2) How serious the offences(s) were:
The City did not contest the Appellant's description of the events, therefore the Board accepts it. However the Board also gives significant weight to the minimal sentence imposed by the court because they believe it speaks to the seriousness of the offence.

- 3) When the offence(s) were committed:
There was no discrepancy on the date of the offence, which was eight years ago.
The Board placed little weight on the when the offences were committed as this is an older crime.

- 4) The date of the conviction:
The date of conviction is January 31, 2019, however the incident occurred in 2010.
This supports the Appellant's statement that he was unaware of the charges and speaks to his character.

- 5) Circumstances of the individual concerned:
After hearing the Appellant's account of the circumstances that led to the charges, and reading the information presented, the Board deduced that the Appellant was forced into the altercation and that in an effort to resolve the issue, he approached the other parties with the end result being a half opened window getting smashed and no injuries being sustained.

- 6) Sentence imposed by the court:
Both sentences were suspended in favor of probation orders that expire on October 31, 2019. The Board accepts the Appellant's statement that probation conditions have been met. In support of this the Board referred to the letter that states the Appellant is excused from reporting to the Probation Officer. (see exhibit C1) The Board believes the suspended sentences imposed by the courts are less than the minimum normally imposed.

- 7) The Applicant's age at the time of the conviction:
The Board was unsure how this would be relevant, therefore gave it no weight.

- 8) Whether they form part of a pattern of offending:
The Board notes that this is a single occurrence and therefore is not persuaded that a single offence constitutes a pattern.

- 9) Any other character check considered reasonable (e.g. personal references):
The City agreed that the Appellant has been forthcoming and honest about his convictions. (see exhibit B.1) For this reason the Board accepts that the Appellant was unaware of the charges, and that he has tried to resolve the issue. Further the

Board believes the letter from the Appellant's employer, together with the letter from the parole officer and the testimony from Gail English spoke to the Appellant's good character.

10) Any other factors that might be relevant:

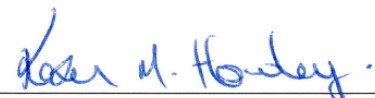
The Board believes this has been addressed within the previous statements.

40. Based on the above, the Board finds that the Appellant's character and conduct is such that he is fit to drive a public conveyance and to revoke his taxi licence in this instance is unduly harsh in this particular circumstance.
41. The Board finds the Appellant is in compliance with the Taxi Business Bylaw; therefore the annual Licence is to be issued by the City Authority for 2019.

CLOSING:

42. For the reasons detailed above, the decision of the City Authority is revoked and the application for a 2019 Taxi Driver License is approved.

Dated at the City of Red Deer, in the Province of Alberta this 22 day of March, 2019 and signed by the Chair on behalf of all three panel members who agree that the content of this decision adequately reflects the hearing, deliberations and decision of the Board.



K. Howley, Chair

Red Deer Appeal & Review Board

EXHIBITS

- A.1 Hearing Materials (10 pages)
- B.1 City Authority Report (Appendices A – H)
- C.1 Appellant Submission (3 pages)