

Petition for Writ of Certiorari to Review Quasi-Judicial Action, Department of Highway Safety and Motor Vehicles: DRIVER'S LICENSES – hardship license – Hearing officer's decision to deny Petitioner's application for early reinstatement of her driving privilege was supported by competent substantial evidence when Petitioner unlawfully operated a motor vehicle while her license was suspended in December of 2012– Petition denied. *Deak v. Dep't of Highway Safety and Motor Vehicles*, No. 14-000029AP-88B (Fla. 6th Cir. App. Ct. September 23, 2014).

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

**CARLY DEAK,
Petitioner,**

v.

**STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES
Respondent.**

**Ref. No.: 14-000029AP
UCN: 522014AP000029XXXXCV**

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

THIS CAUSE is before the Court on a petition for writ of certiorari seeking review of a March 6, 2014 final order of the Department of Highway Safety and Motor Vehicles denying Petitioner's request for early reinstatement of her driving privilege. Petitioner requests that the Department's order be quashed because at the March 6, 2014 administrative hearing, she mistakenly testified that she had last driven a motor vehicle in December of 2013, when she meant to testify that she had last driven in December of 2012. In reviewing the Department's order, this court is limited to determining whether (1) procedural due process has been accorded, (2) the essential requirements of law have been observed, and (3) the administrative findings and judgment are supported by competent substantial evidence. *Vichich v. Department of Highway Safety and Motor Vehicles*, 799 So.2d 1069, 1073 (Fla. 2d DCA 2001). Petitioner is challenging the third prong only.

Petitioner was cited for, and convicted of, numerous traffic offenses between 2008 and 2010, including multiple convictions for driving without a license. On May 5, 2010, Petitioner was designated a Habitual Traffic Offender, and her driver's license was revoked for a period of five years pursuant to §322.27(5), Fla. Stat. On November 24, 2012, while Petitioner's license was suspended, Petitioner was again cited, this time for failing to display her driver's license. After paying all of her traffic fines, and completing the American Safety Council Advanced Driver Improvement Course, Petitioner applied for early reinstatement of her driving privilege on a restricted basis solely for employment purposes.

A person whose driving privilege has been revoked under section 322.27(5) [Habitual Traffic Offender] may, twelve months from the date of such revocation, petition the department for reinstatement of her driving privilege. §322.271(1)(b), Fla. Stat. "Upon such petition and after investigation of the person's qualification, fitness, and need to drive, the department shall hold a hearing pursuant to chapter 120 to determine whether the driving privilege shall be reinstated on a restricted basis solely for business or employment purposes." *Id.* At such hearing, "the department shall determine the petitioner's qualification, fitness, and need to drive." §322.271(4)(b). Additionally, in determining whether the person should be permitted to operate a motor vehicle on a restricted basis for business or employment use only, whether such person can be trusted to so operate a motor vehicle is a factor to be considered." §322.271(2)(a), Fla. Stat.

An administrative hearing on Petitioner's application for early reinstatement was held on March 6, 2014. After reviewing Petitioner's driving record, the hearing officer asked Petitioner why she needed a hardship license. Petitioner responded that, in addition to the driving required by her job, there was traveling involved with being a caregiver to her niece and nephew. The hearing officer informed Petitioner that transporting her niece and nephew and driving for family needs are not authorized under the hardship license. The hearing officer next asked Petitioner when the last time she operated a motor vehicle was. Petitioner testified that the last time she operated a motor vehicle was in December of 2013, to which the hearing officer asked "[s]o why were you driving in December of 2013 when your license has been revoked since 2010?"

Petitioner's application for early reinstatement was denied by the hearing officer, finding that Petitioner "stated under oath [Petitioner] operated a vehicle in 2013. To issue a hardship

license at this time would be in direct conflict with Florida Legislative intent.” Subsequent to the denial of her hardship application, Petitioner filed an affidavit seeking reconsideration. In her affidavit, Petitioner explained that she mistakenly told the hearing officer that the last time she drove was in December of 2013, and that she meant to say December of 2012. Petitioner’s affidavit is unavailing. In determining whether to grant a hardship license, a hearing officer is to consider a person’s qualification, fitness, and need to drive. §322.271(4)(b), Fla. Stat. Even if Petitioner had testified at the hearing that the last time she drove was in 2012, the hearing officer’s rationale for denying her application would have been equally applicable. Petitioner’s admission that she drove while her license was suspended in 2012 further validates the hearing officer’s determination that Petitioner cannot be trusted to operate a motor vehicle on a restricted basis. Notwithstanding Petitioner’s misstatement regarding the last time she drove, there is competent substantial evidence in the record to support the hearing officer’s finding that to issue Petitioner a hardship license would be in direct conflict with legislative intent.

Accordingly, it is

ORDERED AND ADJUDGED that the petition for writ of certiorari is DENIED.

DONE AND ORDERED in Chambers, at St. Petersburg, Pinellas County, Florida, on this 23 day of Sept. 2014.

AMY M. WILLIAMS
Circuit Judge, Appellate Division

JACK DAY
Circuit Judge, Appellate Division

PAMELA A.M. CAMPBELL
Circuit Judge, Appellate Division

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