

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED
IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

RICHARD FORD,
Petitioner,
v.

CASE NO.: 15-000045-AP-88B
UCN: 522015AP000045XXXXCI

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

ORDER AND OPINION

Petitioner appeals a final order of the Department of Highway Safety and Motor Vehicles (“DHSMV”) that denied his application for a hardship license under § 322.271, Florida Statutes. DHSMV found Petitioner unfit by reason of willful disregard for the law and public safety. On appeal, Petitioner contends that DHSMV’s order was not supported by competent substantial evidence because the Hearing Officer’s decision was based on the traffic violation that itself resulted in Petitioner’s license suspension.¹ For the reasons set forth below, the Petition for Writ of Certiorari is denied.

Facts and Procedural History

On the night of December 27, 2014, Petitioner was involved in an accident where he struck a pedestrian with the right front section of his vehicle. The pedestrian was intoxicated with a BAC of .278 and standing in the middle lane of a three lane road. The roadway was dark but lighted, conditions were clear, and Petitioner’s condition was apparently normal. After hitting the pedestrian, Petitioner fled the scene. The pedestrian died two days later. Petitioner was then charged with a violation of § 316.027, Florida Statutes, “Leaving scene on public or private

¹ Petitioner argues that the Hearing Officer was not allowed to base his determination entirely on the traffic violation, he does not argue that the Hearing Officer was not allowed to consider the traffic violation at all.

property without rendering aid (involving death/injury).” After conviction, Petitioner’s license was suspended.² Fla. Stat. § 316.027(2).

Petitioner then sought a DHSMV hearing on an early license reinstatement (hardship license) application. At the hearing, the DHSMV Hearing Officer considered evidence pertaining to the traffic violation that resulted in the license suspension as well as evidence of Petitioner’s completion of a driver improvement course, his intentions regarding prevention of future traffic violations, and his driving record. After consideration, the Hearing Officer denied Petitioner’s request for a hardship license based on the above evidence, and specifically noted in his Order that his decision was based in part on the crime of fleeing the scene of a fatal crash, which showed that Petitioner had a willful disregard of the law and the safety of others. Such disregard is against the legislative intent of Chapter 322, Drivers licenses. Fla. Stat. § 322.263. After the Hearing Officer denied Petitioner’s request for a hardship license, Petitioner filed the instant Petition for Writ of Certiorari.

Standard of Review

On review of the DHSMV order, this Court must ascertain whether (1) the DHSMV afforded the Petitioner procedural due process, (2) the essential requirements of the law were observed, and (3) the DHSMV’s decision is supported by competent, substantial evidence. *Dep’t of Highway Safety & Motor Vehicles v. Silva*, 806 So. 2d 551, 553 (Fla. 2d DCA 2002).

Discussion

When a licensee has committed an offense that requires mandatory license revocation upon conviction, the DHSMV has both the authority to revoke or suspend a driver’s license and to modify such revocation or suspension. Fla. Stat. §§ 322.27; 322.271. Fleeing the scene of a crash involving death or bodily injury is an offense that requires any convicted driver to have his driver’s license revoked. Fla. Stat. § 316.027(2). After a license suspension or revocation, a licensee may request early reinstatement of his license for business or employment purposes and

² Although a driver who violates § 316.027, Florida Statutes, is required to have his license revoked for three years, the record reflects that the DHSMV ordered Mr. Ford’s license suspended for a period of one year.

may show that the suspension or revocation causes a serious hardship. Fla. Stat. § 322.271. The DHSMV will investigate the applying licensee's qualification, fitness, and need to drive. *Id.*

Petitioner contends that the DHSMV Hearing Officer's denial of his request for a hardship license was only based on the traffic violation that itself resulted in the license suspension, which he contends was not competent substantial evidence of Petitioner's willful disregard for the law and safety. He also contends that being denied a hardship license by virtue of the crime that resulted in his license suspension renders Petitioner's ability to obtain a hardship license as illusory. Chapter 322, Drivers Licenses, "shall be liberally construed to the end that the greatest force and effect may be given to its provisions for the promotion of public safety." Fla. Stat. § 322.42. At Petitioner's hardship hearing, the Hearing Officer had broad discretion to determine Petitioner's qualification, fitness, and need to drive. *See* Fla. Stat. §§ 322.42; 322.271. As part of his determination, he is not precluded from considering the character of the traffic violation that itself resulted in Petitioner's loss of license. *See* Fla. Stat. §§ 316.027; 322.271.

Furthermore, Petitioner's arguments are without merit because the Hearing Officer based his decision to deny the request only *in part* on the violation. At the hearing, the Hearing Officer considered (1) a DAVID printout giving a factual description of the Petitioner's charges, (2) an eight page Florida Traffic Crash Report Form, and (3) a two page Comprehensive Case Information System Citation Details sheet. The Hearing Officer also asked Petitioner about his completion of a driver improvement course, his intentions regarding prevention of future traffic violations, and his driving record. In the Order denying Petitioner's request, the Hearing Officer specifically stated that he based his denial in part upon his consideration of Petitioner's driving record, testimony during the hearing, qualification, fitness, and need to drive, and in part upon the traffic violation that itself resulted in Petitioner's suspended license.

Thus, contrary to Petitioner's argument that denial of a hardship license was based only on the type of crime generally, the Hearing Officer acted within his discretion and found that Petitioner was unfit to have a hardship license by virtue of the entirety of the evidence.

Conclusion

Because the Hearing Officer's denial of Petitioner's hardship license request was supported by competent substantial evidence that Petitioner showed a willful disregard for law and public safety in contravention of legislative intent, it is

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is hereby **DENIED**.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, this 26 day of OCTOBER, 2015.

Original Order entered on October 26, 2015, by Circuit Judges Jack Day, Pamela A.M. Campbell, and Peter Ramsberger.

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