

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND IF FILED, DETERMINED

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

**KRISTINE BLAND,
Petitioner,**

**REF: 19-000073AP-88A
UCN: 522019AP000037XXXXCV**

-vs-

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

_____ /

Opinion Filed _____

Petition for Writ of Certiorari from
Decision of Hearing Office
Bureau of Administrative Reviews
Department of Highway Safety and
Motor Vehicles

Daniel D. Nawara, Esq.
Attorney for Petitioner

Christine Utt, General Counsel
Mark L. Mason, Asst. General Counsel
Attorneys for Respondent

PER CURIAM

Petitioner, Kristine Bland, seeks certiorari review of the Final Order Denying Early Reinstatement of the Hearing Officer of the Bureau of Administrative Reviews, Department of Highway Safety and Motor Vehicles entered October 18, 2019. The Final Order denied Petitioner's request for early reinstatement of her driving privileges. The Petition is denied.

Statement of Facts

Petitioner's driving privilege was suspended for a period of five (5) years after being classified as a habitual traffic offender. A "habitual traffic offender" is defined as a person who accumulates a specified number of offenses, such as driving a motor vehicle while license suspended within a five-year period. §322.264(1)(d), Fla. Stat. The Department is statutorily required to revoke the license of any person designated as a habitual traffic offender "for a minimum of 5 years from the date of revocation" §322.27(5)(a), Fla. Stat.

The Petitioner's record shows the following convictions:

- 1.) January 4, 2010 conviction for driving while license suspended.
- 2.) March 2, 2010 conviction for driving while license suspended
- 3.) February 6, 2014 conviction for driving while license suspended

The 2014 conviction was not added to the Petitioner's driver record until September 13, 2018 due to a late submission by a clerk of court. The driver record further shows that a notice of a five-year revocation of the driving privilege was mailed to the Petitioner at the address on file with the Department on September 28, 2018, with an effective date of October 18, 2018.

Petitioner applied for a hardship license as provided for by statute. A hearing was set and held on October 18, 2019.

At the hearing, Petitioner testified that her current address was in Palm Harbor, FL. The hearing officer stated the address the Department had for Petitioner was a Dunedin address and went on to explain that the Department sends mail to the address on file. The hearing officer also informed Petitioner that by statute, a motorist is required to update the Department of a change of address within thirty days of moving. Petitioner stated she had not lived at the address the Department had for over eight years. Petitioner testified she was going to change her address with the Department that day.

The hearing officer asked Petitioner “Any other driving violations you’re aware of, tickets, accidents, suspensions or other issues?” Petitioner testified she had not had a ticket or any contact with law enforcement regarding her driving since her license was suspended in 2014. Petitioner denied having any driving violations, tickets, accidents, suspensions or other issues. The hearing officer questioned Petitioner about three traffic tickets issued to her on December 15, 2018. The traffic tickets were for driving on the wrong side of the road, driving without tag lights and driving while license suspended. Petitioner at first denied any knowledge of the tickets. She then stated the tickets were pending in court. The hearing officer informed Petitioner the questions he asked about any driving violations were not limited to convictions. Petitioner at that point stated that she had no knowledge of the three pending traffic citations until informed by the hearing officer. Petitioner then testified she was unaware her driving privileges were suspended and stated the pending tickets had been dismissed. After further inquiry as to the status of the tickets, Petitioner testified she was hoping they would be dismissed the following Monday after this hearing.

The hearing officer then questioned the Petitioner on her need to drive and what she had learned from her driving education courses. The Department stipulates that Petitioner established her need to drive for reinstatement of her driving privileges.

The hearing officer issued a Final Order Denying Early Reinstatement on October 18, 2019. The Final Order Denying Early Reinstatement reads, in pertinent part, as follows:

“After considering your driving record, your testimony during the hearing, and your qualification, and fitness and need to drive, during the Hardship Hearing, I find as follows:

You received citations for driving while suspended, driving on the wrong side of the road and no tag light on December 15, 2018 after having your driving privileges revoked on October 18, 2018. The intent of Statute 322.263 is to provide maximum safety for all who use the public highways of Florida. Deny the privilege to persons that have demonstrated an indifference for the safety of other and disrespect for laws of Florida. Discourage repetition of violations and impose

deprivation of the privilege of operating a motor vehicle upon habitual offenders who have been convicted repeatedly of traffic violations.

Based on the above findings your application for early reinstatement is denied.”

Petitioner timely filed this Petition for Writ of Certiorari.

Standard of Review

Section 322.31 (Florida Statutes 2019), governs the right to review final orders of the Department of Highway Safety and Motor Vehicles.

Circuit court certiorari review of an administrative agency decision is governed by a three-part standard: (1) whether procedural due process has been accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *State Department of Safety and Motor Vehicles v. Sarmiento*, 989 So. 2d 692, 693 (Fla. 4th DCA 2008).

Discussion

Petitioner states the sole issue for consideration is whether the Department of Motor Vehicles erred when it denied Petitioner’s petition for early reinstatement and restricted license, based upon Petitioner receiving citations for knowingly driving with a suspended license. Petitioner concedes that the written notice of her driving privileges was mailed by the Department but argues she did not receive the notice and was therefore unaware of the suspension of her driving privileges. Petitioner did not receive the notice because Petitioner moved and did not update her address as required by statute. Fla. Stat. §322.251(1) specifically provides that notices of revocation may be issued as follows:

“[B]y deposit in the United States mail in an envelope, first class, postage prepaid, **addressed to the licensee at his or her last know mailing address furnished to the department.** Such mailing by the department constitutes notification, and any failure by the person to receive the mailed order will not affect or stay the

effective date or term of the cancellation, suspension, revocation or disqualification of the licensee's driving privilege.” (emphasis added)

Petitioner cannot argue she did not receive the notice when she failed to notify the Department of her correct address as required by Fla. Stat. §322.19(2).

The hearing officer is required by statute to determine the Petitioner's qualifications, fitness and need to drive. Fla. Stat. §322.271(1)(b). First-tier certiorari review does not allow the court to reweigh the testimony; it may only review the evidence to determine whether it supports the hearing officer's decision. *Department of Highway Safety and Motor Vehicles v. Stenmark* (Fla. 2d DCA 2006). The decision to reinstate driving privileges is a two prong analysis. Is the person eligible for a hardship license and can the person be trusted to lawfully operate a motor vehicle? In the case at bar, Petitioner demonstrated a need to drive; however, the hearing officer found that the Petitioner did not satisfy the intent of Fla. Stat. §322.263 to provide maximum safety for all who use the public highways of Florida. In *Ware v. Department of Highway Safety and Motor Vehicles*, 11 Fla. L. Weekly Supp. 791a (Fla. 12 Cir. Ct. April , 2004) “the hearing officer relied on his discretion to deny relief based on his belief that Petitioner could not be trusted to operate a motor vehicle based on his driving history.” See also *Bosecker V. Department of Highway Safety and Motor Vehicles*, 24 Fla. L. Weekly Supp. 404a (Fla. 6th Cir. Ct. June 14, 2016). Petitioner's testimony at the informal administrative review hearing was inconsistent and contradictory.

Petitioner references in her brief the Department did not suspend her license until almost four years after Petitioner's third conviction for driving while license suspended. Petitioner did not raise the issue of the revocation period being backdated to the date of her most recent conviction in the lower tribunal or in the Petition. The issue was not preserved for appeal. See *Department of Highway Safety and Motor Vehicles v. Sperbert*, 257 So. 3d 560 (Fla. 3d DCA 2018).

Conclusion

This Court concludes that procedural due process has been accorded, the essential requirements of law have been observed and the hearing officer's decision in the Final Order Denying Early Reinstatement is supported by competent substantial evidence.

The Petition for Writ of Certiorari is denied.

DONE AND ORDERED in Chambers, at Clearwater, Pinellas County, Florida this _____ day of _____, 2020.

Original Order entered on April 22, 2020 by Circuit Judges Jack R. St. Arnold, Patricia Muscarella, and Keith Meyer.

Copies furnished to:

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