

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

ROBERT CORNELIO,
Petitioner,

v.

CASE NUMBER: 2021-CA-000490

**STATE OF FLORIDA, DEPT. OF
HIGHWAY SAFETY & MOTOR VEHICLES,**
Respondent.

Petition for Writ of Certiorari

Keeley R. Karatinos, Esquire
Attorney for Petitioner

Mark L. Mason, Esquire
Attorney for Respondent

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

THIS CAUSE came before the Court on remand from the Mandate, entered March 14, 2023, from the Second District Court of Appeal, Case No. 2D22-1683. As set forth in its Order and Opinion, entered February 24, 2023, the above-styled Petition for Writ of Certiorari is not moot as the “capable-of-repetition-but-evading-review exception to mootness applies.” The Second District Court of Appeal clarified its earlier holding, set forth in *McLaughlin v. Dep’t of Highway Safety & Motor Vehicles*, 128 So. 3d 815 (Fla. 2d DCA 2012), which concluded that because the suspension had expired, the issue of the validity of the suspension of the petitioner’s driver license was moot.¹ Hence, upon review of the briefs, record, and being otherwise fully advised, the Court finds that the Petition for Writ of Certiorari must be denied.

¹ The Florida Supreme Court, on December 9, 2021, declined to accept jurisdiction to resolve the inter-district conflict between *McLaughlin* and other cases on this matter. See *Cordaro v. Dep’t. of Highway Safety & Motor Vehicles*, 2021 WL 5853778 (Fla. Dec. 9, 2021).

STANDARD OF REVIEW

The circuit court, sitting in its appellate capacity, must determine whether: (1) the tribunal afforded the parties due process of law; (2) the order meets the essential requirements of law; and, (3) the order is supported by competent and substantial evidence. *Haines City v. Heggs*, 658 So.2d 523, 530 (Fla. 1995)(*citations omitted*). This Court, sitting in its appellate capacity, is not entitled to reweigh the evidence; it may only review the evidence to determine whether it supports the hearing officer's findings and decision. *Dept. of Highway Safety & Motor Vehicles v. Stenmark*, 941 So.2d 1247, 1249 (Fla. 2d DCA 2006)(*citations omitted*). “As long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and the court's job is ended.” *Dusseau v. Metro. Dade Cty. Bd. of Cty. Commrs.*, 794 So.2d 1270, 1276 (Fla. 2001).

BACKGROUND FACTS

Petitioner, Robert Cornelio (“Cornelio”), appeals the Findings of Fact, Conclusions of Law and Decision (“DMV Order”), entered January 27, 2021, by Samantha Simpkins, Field Hearing Officer (“Hearing Officer”), affirming the license suspension imposed by the Respondent, State of Florida, Department of Highway Safety and Motor Vehicles (“DMV”). The Hearing Officer upheld Cornelio’s six-month driver’s license suspension, effective December 8, 2020, for driving under the influence after Cornelio’s breath tests showed an unlawful alcohol level.²

The underlying traffic stop occurred during the early morning hours of December 8, 2020, after Cornelio was stopped by the Pasco County Sheriff’s Office (“PCSO”) for driving 78 miles per hour in a posted 45 miles per hour zone. Cornelio submitted to a breath test which showed a

² The Court notes that, while this appeal was pending, Cornelio arrested a second time for DUI in Hillsborough County, Case No. 2021-CT-006872.

breath alcohol level of .151 g/210L, at 3:15 a.m., and .147 g/210L, at 3:18 p.m. Cornelio was arrested for DUI and his driver's license was suspended for a period of six months.

Cornelio timely requested an administrative hearing before the DMV's Bureau of Administrative Reviews ("BAR") to challenge the lawfulness of his license suspension. A telephonic hearing was held on January 15, 2021, with the Hearing Officer placing the call from Tallahassee.³ The Hearing Officer admitted eight documents received from the PCSO into evidence, to include the Breath Alcohol Test Affidavit, over the objection of Cornelio. As set forth in the transcript of the administrative hearing, the following exhibits were admitted:

- DDL-1 – FL DUI Uniform Traffic Citation AC393CE;
- DDL-2 – Photocopy of FL Driver License;
- DDL-3 – Pasco County Complaint Affidavit;
- DDL-4 – Alcohol/Drug Influence Report;
- DDL-5 – Breath Alcohol Test Affidavit;
- DDL-6 – Alcohol Influence Report – Initial Contact Supplement;
- DDL-7 – Breath Test Report;
- DDL-8 – Florida Uniform Traffic Citations;
- Driver Ex. 1 – Email Thread and Attachments; and,
- Driver Ex. 2 – 12-16-20 Letter.⁴

The transcript shows that the Hearing Officer listened to Cornelio's objections and case law argument. The Hearing Officer stated she would reserve ruling until she had a chance to

³ Robert Cornelio did not appear for this hearing, but was represented by counsel. While Cornelio had the right to request the presence of a witness, no witnesses were subpoenaed for this hearing. See § 322.2615(6)(b), Fla. Stat.

⁴ While these Exhibits were not expressly stated in the DMV Order, the transcript clearly shows that Driver's Exhibits 1 and 2 were admitted into the record.

thoroughly review the cited statutes and case law. After the hearing, the Hearing Officer took the matter under advisement before entering the DMV Order on January 27, 2021, affirming Cornelio's license suspension.

ISSUES RAISED

Before this Court, Cornelio has raised several issues, which are consolidated according to the standard of review. The issues are:

(1) Cornelio was denied due process of law when the Hearing Officer entered all documents it received from law enforcement, before giving Cornelio an opportunity to object; and, Cornelio was denied due process of law when the telephonic hearing originated in Tallahassee instead of Tampa (which Cornelio asserts also departs from the essential requirements of law);

(2) The DMV Order and proceedings before the Hearing Officer departed from the essential requirements of law because Cornelio's Breath Test Affidavit was admitted into evidence over Cornelio's objection; the Hearing Officer failed to consider the case law submitted by Cornelio, or provide legal analysis in her decision; and, the Hearing Officer failed to admit into evidence Petitioner's Exhibits 1 and 2, which were composite email chains; and, lastly,

(3) The DMV Order is not supported by competent substantial evidence as the DMV failed to show that the administered breath tests were scientifically reliable.

The DMV counters these arguments with citations to the record and case law.

LAW AND ANALYSIS

In addressing the first prong, due process of law, the Court finds that Cornelio was afforded due process during the administrative hearing below. Initially, the Court finds that Cornelio was

not denied due process by the Hearing Officer admitting the documents before giving Cornelio the opportunity to object. Section 322.2615(2)(b), Florida Statutes, states that “[m]aterials submitted to the department by a law enforcement agency or correctional agency *shall* be considered self-authenticating and *shall* be in the record for consideration by the hearing officer.” (*emphasis added*). The Hearing Officer was statutorily required to admit the documents into the record, regardless of when Cornelio was given the opportunity to object.

Next, the Court finds that Cornelio’s argument that the Hearing Officer denied him due process because the telephonic hearing originated from Tallahassee, instead of Tampa, is without merit. Florida Administrative Code Rule 15A-6.009, location of hearings, requires that hearings be held at the nearest BAR office to the arresting county. The Court finds this section applies only to in-person hearings.⁵ The hearing also occurred during a pandemic wherein the Florida Supreme Court issued several orders permitting the use of telephonic hearings. Lastly, section 322.2615(6)(b), Fla. Stat., specifically provides that “[t]he hearing officer may conduct hearings using communications technology.”

In addressing the second prong, whether the Hearing Officer departed from the essential requirements of law, the Court first finds that the Breath Test Affidavit was lawfully admitted into evidence. *See* § 322.2615(2)(b), Fla. Stat.; Rule 15A-6.013(2), Fla. Admin. Code. There is no rule or law that requires the Hearing Officer, in this administrative review proceeding, to exclude the Breath Test Affidavit without an agency inspection report. Florida Administrative Code Rule 15A-6.013(2), introduction of evidence, states:

(2) The hearing officer *may* consider any report or photocopies of such report submitted by a law enforcement officer, correctional officer or law enforcement or correctional agency relating to the suspension of the driver, the administration or analysis of a breath or blood

⁵ At least one other circuit court, sitting in its appellate capacity, has also concluded that Rule 15A-6.009 applies only to in-person hearings. *See Celaj v. Dept. of Highway Safety and Motor Vehicles*, Case No. 2021-CA-000240 (Fla. 7th Cir. Ct. Oct. 4, 2021).

test, *the maintenance of a breath testing instrument*, or a refusal to submit to a breath, blood, or urine test, which has been filed prior to or at the review. *Any such reports submitted to the hearing officer shall be in the record for consideration by the hearing officer.*

No extrinsic evidence of authenticity as a condition precedent to admissibility is required. (*emphasis added*).

Therefore, the lack of an agency inspection report does not negate the Hearing Officer's requirement to admit the Breath Test Affidavit, and then give it whatever weight, relevance, and credibility she deems appropriate. See Rule 15A-6.013(7)(c)(stating "[t]he hearing officer is the sole decision maker as to the weight, relevance and credibility of any evidence presented").

The next two issues raised under this prong of review, whether the DMV Order and Hearing Officer departed from the essential requirements of law, are without merit. The Hearing Officer is not required to provide a legal analysis of the case law submitted by Cornelio in its decision, and the record shows that the Hearing Officer did admit into evidence Petitioner's Exhibits 1 and 2, which were composite email chains.

Turning to the last prong of review, the Court finds that there is competent substantial evidence to support the DMV Order. The test for competent substantial evidence is whether there exists any competent substantial evidence to support the decision maker's conclusions, and any evidence which would support a contrary conclusion is irrelevant. *Dusseau*, 794 So.2d at 1276; *Stenmark*, 941 So.2d at 1249. This Court is prohibited from reweighing the evidence and substituting its judgement for that of the Hearing Officer. *Dept. of Highway Safety and Motor Vehicles v. Silva*, 806 So.2d 551, 553 (Fla. 2d DCA 2002)(*citations omitted*). Accordingly, the Court finds that the DMV Order is supported by competent substantial evidence and adheres to the essential requirements of law, and that there is no basis to grant certiorari relief under the facts of this case.

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

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida on this ____ day of _____, 2023.

Original Order entered on October 16, 2023, by Circuit Judges Susan Barthle, Daniel Diskey, and Lauralee Westine.

Copies furnished to:

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