

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

FILED
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KENNEDY
CLERK OF CIRCUIT COURT

CHRISTIE ANN RUHTZ,
Petitioner,

vs.

Ref. No.: 18-0052AP-88B
UCN: 522018AP000052XXXXCI

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

ORDER AND OPINION ON CLARIFICATION

Respondent's Motion for Clarification is granted. The prior opinion rendered June 18, 2019, is withdrawn, and the attached opinion is issued in its place. No further motions for rehearing or clarification will be entertained.

Petitioner challenges a final order from the Department of Highway Safety and Motor Vehicles ("DHSMV") sustaining the suspension of her driving privilege for refusing to submit to a breath test pursuant to § 322.2615, Florida Statutes. Petitioner raises various arguments asserting that the DHSMV's final order was not supported by competent, substantial evidence and her due process rights were violated. The parties agree, however, that Petitioner's due process rights were violated when the Hearing Officer sustained the license suspension for refusing to submit to a breath test even after Petitioner presented proof that she did ultimately submit to the test. Because the Court finds that this issue is dispositive, we decline to address the other issues at this time.

The DHSMV is required to provide a notice of hearing that states specifically the issues that are subject to review. *See* Fla. Admin. Code R. 15A-6.011. Here, Petitioner was only on notice that the hearing concerned the refusal. A refusal hearing and a hearing for unlawful breath-alcohol level both require the Hearing Officer to determine "whether the law enforcement officer had probable cause to believe that the person whose license was suspended was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages." § 322.2615(7), Fla. Stat. In cases of refusal, however, the Hearing Officer must also decide:

Whether the person whose license was suspended refused to submit to any such test after being requested to do so by a law enforcement officer. . . , [and]

Whether the person whose license was suspended was told that if he or she refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months.

§ 322.2615(7)(b), Fla. Stat.

If a driver submits to a breath test, Florida Statutes § 322.2615(7)(a) requires the Hearing Officer to determine:

Whether the person whose license was suspended had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher as provided in s[ection] 316.193.

In addition, a suspension under the latter section only lasts six months, as opposed to the one-year suspension affirmed by the Hearing Officer under the former section. Because Petitioner's due process rights were violated and Petitioner is entitled to notice and an opportunity to be heard at the appropriate hearing, it is

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

DONE AND ORDERED in Chambers, at St. Petersburg, Pinellas County, Florida this 13th day of August, 2019.

Original Order entered on August 13, 2019 by Circuit Judges Thomas M. Ramsberger, Pamela A.M. Campbell, and Linda R. Allan.

Copies furnished to:

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