

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

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

**LANDON JAMES COADY,
Petitioner,**

**Case No.:21-000007AP-88A
UCN: 522021AP000007XXXXCI**

-VS-

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

_____ /

Opinion Filed _____

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

Brooke Elvington, Esq.
Attorney for Petitioner

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

PER CURIAM

This matter is before this Court on Petitioner, Landon James Coady's
Petition for Writ of Certiorari, filed on March 26, 2021. Having reviewed the

record before this Court and the applicable law and being otherwise fully advised, this Court finds that the Petitioner has not demonstrated entitlement to certiorari relief.

Brief Procedural History

On December 30, 2020 Petitioner was arrested for driving under the influence (“DUI”) in violation of section 316,193, Florida Statutes. The DUI citation issued to Petitioner also served as a notice of his driver license suspension for refusing to submit to a breath test. Petitioner, through counsel, mailed his application for a formal review of his driver license suspension before the Department’s Bureau of Administrative Reviews (“BAR”) at 2814 E. Hillsborough Ae, Tampa, FL 33606. The cover letter from Petitioner’s counsel is dated January 5, 2021 and Petitioner has a printed receipt from the United States Postal Service (USPS) showing the packet was mailed to the BAR on January 5, 2021. There is no return receipt from the USPS establishing when the packet was received. The application contains a stamp at the top of the document “Date received by DHSMV” with the date January 19, 2021. The same date stamp is also included on Petitioner’s cover letter referencing the application, the citation and the \$25.00 check for the filing fee.

On February 2, 2021, the Department mailed a Notice of Telephonic Formal Review Hearing to Petitioner setting the formal review hearing on February 17, 2021 at the Tallahassee branch of the Department. The Department continued the hearing to February 24, 2021 at the Department's Clearwater Branch. The hearing was conducted February 24, 2021 before Attorney Hearing Office Kathryn Bischoff, who was physically located at the Clearwater Branch. The hearing was held telephonically and without witness testimony. Petitioner's counsel made the following arguments at the hearing:

1. The suspension should be invalidated for failure to schedule a review hearing within thirty (30) days pursuant to Florida Administrative Code 15A-6.013;
2. The driver license suspension should be invalidated for violation of Rule 15A-6.009 for failure to hold the formal review hearing in the office nearest to the county in which the arrest was made; and
3. The suspension should be invalidated because the documents used to support the driver license suspension lacked a law enforcement oath and/or affidavit.

The hearing officer denied the motion to invalidate the driver license suspension for the reasons that the formal review hearing was not set within thirty (30) days after the request was received by the Department. The

hearing officer noted that the documents were received on January 19, 2021 based on the "Date received by DHSMV" stamped on the application and stamped on the payment for the filing fee.

Petitioner argued that pursuant to the administrative rule that the formal review hearing must take place in the nearest Department Bureau of Administrative Review Office in the county where the arrest occurred, which in this case was Hillsborough, rather than Clearwater, was a violation of due process. The hearing officer reserved ruling on that motion.

The hearing officer issued the Findings of Fact, Conclusions of Law and Decision on February 26, 2021 affirming the suspension of Petitioner's driving privilege. The hearing officer specifically addressed each of Petitioner's Motion, Objections and Arguments finding as follows:

Motion 1: To invalidate the suspension for failure to schedule the formal review hearing within thirty (30) days.

Ruling Motion 1: Denied. DDI#3 and DDL#4, the letter from counsel for Petitioner requesting a formal review hearing and application for formal review hearings, respectively are both date stamped January 19, 2021. DDL#5 shows the filing fee for the formal review hearing (\$25.00 check referenced in DDL#3) was processed January 19, 2021; the same day it was received, along with the request for formal review hearing, at the Tampa

office of the Bureau of Administrative Reviews. The formal review hearing was initially scheduled for February 17, 2021, and continued by the Department to February 24, 2021. February 17, 2021, is 29 days after the application was received by the Bureau of Administrative Review in Tampa. Rule 15A-6.013(1)(a) FAC states the formal review hearing shall be scheduled to be held within 30 days after the request was received by the division. Continuance of a formal review hearing that was originally scheduled within the 30 days shall not affect the validity of the suspension Rule 15A-6.013(1)(a) FAC. The rule is clear the 30 days to schedule a formal review hearing runs from the date the request is received by the Bureau of Administrative Reviews. There is no “mailbox” rule or rule that extends from the time the request is mailed.

Motion 2: To invalidate the suspension for violation of Rule 15A-6.009 FAC because the formal review hearing was not held in the office nearest to the arrest location.

Ruling Motion 2: Denied. Rule 15A-6.009 requires “Hearings shall be held at the nearest Department Hearing Office assigned to the county where the arrest occurred or the notice of suspension or disqualification was issued. The Hearing Officer is authorized to conduct all hearings using communications technology approved by the department.” Due to COVID-

19 restrictions all hearings held by the Department are being conducted telephonically. Petitioner did not subpoena any witnesses for the formal review hearing and therefore there is no confrontation issue that could have affected Petitioner's due process rights. In the interest of providing Petitioner the most timely formal review hearing, holding the hearing telephonically from a Department office in Clearwater, Florida has a de minimis impact and furthers the interest of both the Petitioner and the Department.

Motion 3: To invalidate the suspension of the basis of the documents coming from Tallahassee on a Tampa arrest because there is no law enforcement oath or affidavit.

Ruling Motion 3: Denied. DDL#2 page 2 of 23 is entitled "Criminal Report Affidavit/Hillsborough County, Florida" and constitutes a probable cause affidavit supporting the arrest. The affidavit is sworn to and digitally signed by the arresting officer. The affidavit is attested to through digital signature by Cpl. Simms, badge number provided.

The final order was rendered February 26, 2021. Petitioner timely filed the instant Petition for Writ of Certiorari.

Standard of Review

“[U]pon first-tier certiorari review of an administrative decision, the circuit court is limited to determining (1) whether due process was accorded, (2) whether the essential requirements of the law were observed, and (3) whether the administrative findings and judgment were supported by competent, substantial evidence.” *Wiggins v. Dep't of Highway Safety & Motor Vehicles*, 209 So. 3d 1165, 1174 (Fla. 2017). When exercising certiorari review, the court is not permitted to reweigh the evidence or substitute its judgment for that of the agency. See *Department of Highway Safety and Motor Vehicles v. Trimble*, 821 So. 2d 1084, 1085 (Fla. 1st DCA 2002).

Discussion

Petitioner asserts the hearing officer departed from the essential requirements of law and denied him due process when the hearing was not conducted at the nearest Department Bureau of Administrative Review offices in the county where the arrest occurred or where the notice of suspension or disqualification was issued.

Respondent argues that the telephonic hearing was timely held in Clearwater, Florida rather than in Hillsborough County in accordance with its administrative rules.

This Court finds that the Department complied with the essential requirements of law and afforded Petitioner due process in the conduct and timelines of the administrative hearing from Clearwater, Florida.

The hearing officer committed no error in relying upon the date stamp determine that the applicable date of receipt was January 19, 2021. In *Sloas v. State, Dep't of Highway Safety & Motor Vehicles*, 5 Fla. L. Weekly Supp. 570a (Fla. 9th Cir. Ct. May 26, 1998) the court stated:

“Regarding the date-stamp contained on the request for formal review hearing, it follows that a date-stamp placed on a document by the Department’s office is similar to a date-stamp placed on a document by the Officer of the Clerk of the Court. Hence, just as the date-stamp placed on a document by the Clerk of the Court (rather than the date placed on the document by the party filing the document) constitutes the date on which the document was filed, the date-stamp placed on a request for formal review hearing by the Department’s office (rather than the date that was placed on the document by the petitioner filing the request) constitutes the date on which the request was filed.”

The hearing officer’s order may only be quashed if the record lacked competent substantial evidence for the hearing officer’s findings. The hearing officer committed no error in relying upon the date stamp of the Department to determine that the applicable date of receipt was January 19, 2021. This Court is not tasked with weighing the pros and cons of conflicting evidence. “While contrary evidence may be relevant to the wisdom of the decision, it is irrelevant to the

lawfulness of the decision. 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. Metropolitan Dade County Board of County Commissioners*, 794 So. 2d 1270, 1276 (Fla. 2001). There is competent substantial evidence in the record to support the hearing officer's findings.

Petitioner's reliance on the "mail-box" rule is misplaced as it does not apply to hearings held pursuant to § 322.2615. *Dep't of Highway Safety and Motor Vehicles*, 114 So. 3d 266, 271-272 (Fla. 3d DCA 2013).

Circuit courts have quashed administrative orders when the review hearings were not conducted in the county where the notice of suspension was issued. However, those rulings were under the earlier version of Rule 15A-6.009 which provided

Hearings shall be held in the judicial circuit where the notice of suspension was issued, unless otherwise ordered by the hearing officer with the consent of the driver." The rule was amended April 7, 2013, and now provides:

"Hearings shall be held at the nearest Department Hearing Office assigned to the county where the arrest occurred or the notice of suspension or disqualification was issued. The Hearing Officer is authorized to conduct all hearings using communications technology approved by the department." Fla. Admin. Code R-15-6.009(2013).

The first sentence in this provision, which contains the venue requirement clearly contemplates an “in person” hearing. The second sentence authorizes the Department to conduct telephone hearing without venue limitations. The Notice of Proposed Rule published when the rule was amended on April 7, 2013, notes the intent of adding the second sentence and provides the following:

“PURPOSE AND EFFECT: The Department seeks a proposed change to this rule in order to clarify jurisdiction for hearings at Bureau of Administrative Review (BAR) office. This proposed language could provide cost-savings by providing greater flexibility for Hearing Officers and witnesses to appear telephonically in lieu of personal appearances at BAR offices.”

If the venue requirement applied to the telephonic portion of the administrative rule, there would not be greater flexibility afforded to hearing officers, along with witnesses as contemplated by the change. Hearing officers would still be obligated to conduct all hearings in the nearest Department Hearing Office, even if they are telephonic. Such a construction would defeat the stated intent of the rule amendment and should not be read to do so. *Dep’t of Highways Safety & Motor Vehicles v. Patrick*, 895 So. 2d 1131, 1136 (Fla. 5th DCA 2005); *Celaj v. Dep’t Highway Safety & Motor Vehicles*, 29 Fla. L. Weekly Supp. 566a

Although this Court does not read the rule to include a venue requirement for telephonic hearings, Executive Order 20-52 issued by the Office of the governor in response to the COVID-19 pandemic and extended by Executive Order 21-45 which was in effect at the time of Petitioner's hearing, gave the Department the authority to suspend the venue requirement. Executive Order 20-52 § 4(B) states:

“Each State agency may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of that agency, if strict compliance with the provision of any such statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency. This includes, but is not limited to, the authority to suspend any and all statutes, rules, ordinances, or orders which affect leasing, printing, purchasing, travel, and the condition of employment and the compensation of employees.”

Given the increased challenges facing courts and tribunals due to the pandemic, the Department has the authority to suspend the venue requirement to fulfill its statutory mandate to schedule requests for hearings within 30 days pursuant to § 322.2615(9), Fla. Stat.

Petitioner was able to have his hearing and present evidence and argument. Petitioner did not subpoena witnesses. The appearance of the hearing officer in Clearwater, rather than in Hillsborough did not impact his

ability to file his appeal in the county where he resides pursuant to § 322.31, Fla. Stat.

Petitioner did not address the issue of invalidated the suspension as the documents used to support the suspension laced a law enforcement oath and/or affidavit. The Court deems the issue abandoned.

Conclusion

The Hearing Officer's decision to uphold the license suspension did not depart from the essential requirements of law and is supported by competent, substantial evidence. Accordingly, it is

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

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

TRUE COPY

Original Order entered on October 12, 2022, by Circuit Judges Sherwood Coleman, Patricia A. Muscarella, and George M. Jirotko.

Copies furnished to:

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