

**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**

WILLIAM MICHAEL EGGERS,

Petitioner,

vs.

Case No.: 22-000006-AP

SUNCOAST SAFETY COUNCIL,
et. al.,

Respondents.

ORDER AND OPINION

Opinion filed: April 27, 2023

PER CURIAM.

THIS CAUSE is before the Court on a Petition for Writ of Certiorari (“Petition”) filed by Petitioner, WILLIAM EGGERS (“Eggers”) on April 2, 2022 seeking review of a final order issued by Respondent, SUNCOAST SAFETY COUNCIL (“Suncoast”) on March 4, 2022. Because Suncoast failed to afford procedural due process to Eggers, the Petition is hereby **GRANTED**.

I. Jurisdiction

This Court has jurisdiction to issue a writ of certiorari pursuant to article V, section 5(b), Florida Constitution and Florida Rule of Appellate Procedure 9.030(c)(3).

II. Facts and Procedural History

In 1986, Eggers had his driving privileges permanently revoked after being convicted for his fourth DUI offense. In 1992, Eggers became eligible to obtain a driving privilege restricted to employment purposes only (“hardship license”). In order to obtain his hardship license, Eggers enrolled in a DUI monitoring program (“SSSP”) based in Pasco County. The Pasco County SSSP (“Pride”) required complete abstinence from alcohol and drug use as a condition for continued enrollment.

On November 4, 2021, Eggers provided a random urine sample for drug testing to Pride which tested positive for marijuana. Pride responded by issuing a letter to Eggers on November 24, 2021 (“the Pride Order”) indicating that Pride had terminated his enrollment in its program and recommended cancellation of Eggers’s hardship license to the Florida Department of Highway Safety and Motor

Vehicles (“Department”) due to the results of his drug test. Thereafter, the Department issued an order which revoked Eggers’s hardship license effective December 27, 2021. Eggers failed to seek a hearing with the Department or otherwise timely appeal the Department’s order.¹ However, Eggers availed himself of the SSSP appeal process as to the Pride Order.

Florida Administrative Code Rule 15A-10.031(2) states, in pertinent part: “Any client in the program who wishes to contest an unfavorable recommendation of termination by the DUI program shall be allowed to appeal such recommendation to any DUI program licensed by the Department in that circuit or any adjacent circuit, excluding its own program.” Eggers appealed the Pride Order to Suncoast, the SSSP which operates in Pinellas County. Florida Administrative Code Rule 15A-10.031(2)(a)-(b) states that an SSSP handling an appeal is required to “review all the written documentation related to the issue or issues resulting in termination” and “provide an opportunity for a face to face meeting with the client.”

¹ As such, this Court granted the Department’s Motion to Dismiss on August 1, 2022. The Department is no longer a party to these proceedings.

Pursuant to Florida Administrative Code Rule 15A-10.031(5)(c), a client who elects to have a face to face meeting with the reviewing SSSP “shall be given the opportunity to present information in person to the second program.”

Suncoast conducted a face to face meeting with Eggers on March 3, 2022. Prior to the hearing, the Suncoast hearing officer who conducted the SSSP appeal stated the following to Eggers’s retained attorney in an email message: “Mr. Eggars (sic) is the only person permitted to speak during the appointment. You are allowed to be present but cannot participate in the appointment. [Eggers] may provide me with any information he feels is important for the second program to have.” Eggers’s App. at 35. The hearing officer provided no authority for the preclusion of attorney representation at the hearing. During the Suncoast hearing, Eggers was denied the opportunity to have his counsel speak, argue, or make any presentation on behalf of Eggers. Eggers’s Pet. at 10-11. Eggers’s counsel was limited to being present, being able to advise Eggers outside the record, and upon request, to hand Eggers documents during the hearing. Eggers’s Pet. at 10.

Following the meeting, Suncoast issued a decision dated March 4, 2022 (“the Suncoast Order”) which affirmed the Pride Order. The instant Petition followed on April 2, 2022. This Court ordered Suncoast to show cause on August 1, 2022. Suncoast responded on August 29, 2022. Eggers filed his Reply on September 15, 2022.

III. Analysis

In reviewing this matter, the Court is limited to determining (1) whether procedural due process has been accorded, (2) whether the essential elements of law have been observed, and (3) whether the administrative findings are supported by competent, substantial evidence. *Vichich v. Dep't of Highway Safety & Motor Vehicles*, 799 So. 2d 1069, 1073 (Fla. 2d DCA 2001) (citation omitted). Procedural due process guarantees the opportunity to be heard at a meaningful time and in a meaningful manner. *Keys Citizens for Responsible Gov't, Inc. v. Florida Keys Aqueduct Auth.*, 795 So. 2d 940, 948 (Fla. 2001) (citations omitted).

Although Eggers offers arguments for all three prongs of the standard of review, the due process issue is dispositive. Eggers argues that Suncoast failed to afford him procedural due process by

denying him the right to be represented by his retained counsel at the Suncoast hearing. Eggers further argues that this preclusion of attorney representation amounts to the denial of a meaningful opportunity to be heard. In support of these arguments, Eggers cites to section 120.62(2), Florida Statutes (2022), which provides in pertinent part: “Any person compelled to appear, or who appears voluntarily, before any presiding officer or agency in an investigation or in any agency proceeding has the right, at his or her own expense, to be accompanied, represented, and advised by counsel or by other qualified representatives.”

Eggers cites to three prior appellate decisions by this Court in support of his argument. In *Wilson v. Dep't of High. Saf. & Motor Veh.*, 14 Fla. L. Weekly Supp. 913a (Fla. 6th Cir. Ct. April 24, 2007), this Court found no due process violation where an SSSP told Wilson that he did not “need” an attorney to represent him at the hearing for his SSSP appeal. This Court noted the petitioner there “[did] not argue that he was told that he could not be represented by an attorney or that he was prevented from bringing an attorney to the hearing.” As Eggers points out, this language suggests, albeit in *dicta*, that a due

process violation would exist had Wilson been prevented from being represented by retained counsel at the SSSP appeal hearing.

In *Keeling v. Suncoast Safety Council*, 17 Fla. L. Weekly Supp. 952a (Fla. 6th Cir. Ct. April 16, 2010), the petitioner argued he was denied procedural due process after Suncoast failed to directly advise him that he could be represented by an attorney during his SSSP appeal hearing. After citing to section 120.62(2), this Court noted: “[T]he petitioner has a right to have an attorney present during an administrative hearing[.]” However, unlike the case at bar, Keeling was not explicitly denied the opportunity to be represented by retained counsel. Rather, he was merely unaware of his rights. Although this Court stated it was “troubled” that the document provided to Keeling entitled “Client Rights/Appeal Process” failed to notify Keeling of his right to attorney representation at the hearing, this Court ultimately found that such lack of notice did not constitute a due process violation on its own.

In *Bellnier v. Dep’t of High. Saf. & Motor Veh.*, 24 Fla. L. Weekly Supp. 197c (Fla. 6th Cir. Ct. May 9, 2016), this Court stated the following in rejecting a procedural due process argument: “Petitioner

does not allege that [the SSSP] denied any request by Petitioner to be represented by counsel, or to present witnesses or evidence ... Nothing in the record demonstrates Petitioner was denied an opportunity to be represented by counsel, or to present evidence or witnesses during the review by [the SSSP].” Once again, this language suggests that the Court would have found a due process violation had Bellnier been denied the opportunity to be represented by counsel at the hearing. Unlike the petitioners, in *Wilson*, *Keeling*, and *Bellnier*, Eggers was in fact denied the right to representation by counsel during the Suncoast hearing.

Notably, Suncoast’s Response to the Petition completely fails to address Eggers’s due process argument based on Suncoast’s preclusion of attorney representation at the Suncoast hearing. Suncoast’s failure to identify any authority which permits it to preclude attorney representation in SSSP appeal hearings is telling. Eggers’s retained counsel should have been permitted to represent Eggers at the hearing. By refusing to allow Eggers to be represented by his attorney, Suncoast denied Eggers the opportunity to be heard in a meaningful manner as required by procedural due process.

IV. Conclusion

In conclusion, the Court finds that Suncoast failed to afford procedural due process to Eggers by precluding his attorney from representing him at the SSSP appeal hearing. This determination is in keeping with section 120.62(2), procedural due process, and the prior decisions of this Court.

Accordingly, it is

ORDERED and ADJUDGED that the Petition is **GRANTED**. The Suncoast Order is hereby quashed and the matter is remanded for a new SSSP appeal hearing before Suncoast pursuant to Florida Administrative Code Rule 15A-10.031(2) wherein Eggers is permitted to be represented by his attorney.

DONE and ORDERED in Chambers, in St. Petersburg, Pinellas County, Florida, this 27th day of April, 2023. A true and correct copy of the foregoing has been furnished to the parties listed below.

Original Order entered on April 27, 2023 by Circuit Judges Thomas M. Ramsberger, Pamela A.M. Campbell, and Steve D. Berlin.

Copies furnished to:

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