

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

SETH ETTINGER,

Petitioner,

APPELLATE DIVISION (CIVIL)

CASE NO.: 502006CA008136XXXXMB

Division: 'AY'

v.

DEPARTMENT OF HIGHWAY SAFETY
AND MOTOR VEHICLES,

Respondent.

Opinion filed: **JAN 24 2007**

Appealed from the Department of Highway Safety and Motor Vehicles, Hearing Officer Elaina Ortolivo.

For Petitioner: Valerie Masters, Esq., 301 Clematis St., #3000, West Palm Beach, FL, 33401

For Appellee: Heather Rose Cramer, Esq., Assistant General Counsel, 6801 Lake Worth Rd., Suite 230, Lake Worth, FL, 33467

PER CURIAM

Petitioner, Seth Ettinger, seeks a review of a final order issued by Hearing Officer Elaina Ortolivo on July 12, 2006, denying his application for early reinstatement. For the reasons detailed below, we grant the Petition for Writ of Certiorari and remand this case to the Department of Highway Safety and Motor Vehicles in order to conduct another hearing for early reinstatement.

On July 12, 2006, Petitioner filed an application with the Department of Highway Safety and Motor Vehicles for early reinstatement of his license. A hearing was held before Hearing Officer Elaina Ortolivo on July 12, 2006. At the hearing, Hearing Officer Ortolivo told Petitioner that his

attitude would determine her decision. The hearing officer then terminated the hearing without consideration of the merits of the Petitioner's application and entered a final order denying the application for early reinstatement. This final order recited the Petitioner's driving statistics, but also detailed the Petitioner's bad attitude and threatening behavior. Petitioner then sought review of the final order via a Petition for Writ of Certiorari.

"In reviewing the decisions of lower tribunals the circuit court's scope of review is limited to a determination of whether procedural due process has been accorded, whether the essential requirements of law have been observed, and whether the decision is supported by substantial competent evidence." Campbell v. Vetter, 392 So. 2d 6 (Fla. 4th DCA 1980). "The circuit court in this process performs a 'review'; it does not sit as a trial court to consider new evidence or make additional findings." Vichich v. DHSMV, 799 So. 2d 1069 (Fla. 2d DCA 2001).

Section 322.271, Florida Statutes, sets forth the requirements and procedures for early reinstatement of a suspended driver's permit. This section directs that at the hearing on the petition for reinstatement, the department shall determine the Petitioner's qualification, fitness, and need to drive, and that upon such a determination, the department may in its discretion, reinstate a petitioner's driver's license. These hearings are discretionary and it is the applicant's burden to prove his or her qualification, fitness, and need to drive; a driver, although eligible, may be denied a hardship license at the discretion of the hearing officer.

However, the discretionary nature of this proceeding does not displace the requirement that a hearing officer base her decision on the essential requirements of the law, and not on an applicant's behavior. The hearing officer must be guided by the appropriate statutory considerations, and the decision must be supported by competent substantial evidence.

In the instant case, no evidence was presented to support Hearing Officer Ortolivo's decision. Accordingly, the final order was not supported by substantial and competent evidence and the decision departed from the essential requirements of the law. Based on the foregoing, it is

ORDERED that the Petition for Writ of Certiorari is GRANTED. Respondent shall hold a new hearing on Petitioner's application. At this time, we make no ruling regarding which hearing officer the Petitioner should be reassigned to, and trust that we may leave that decision to the sound discretion of the DHSMV.

GERBER, LEWIS, CROW JJ., concur.