

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

ROBERT OLIVER,

Petitioner,

CASE NO.: 2012-CA-9364-O

Writ No.: 12-47

v.

**STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY & MOTOR
VEHICLES,**

Respondent.

Petition for Writ of Certiorari from the Florida
Department of Highway Safety and Motor Vehicles,
Ronald Barnes, Hearing Officer.

D. Riccardo Paige, Sr. Esquire,
for Petitioner.

Richard M. Coln, Assistant General Counsel,
for Respondent.

BEFORE LUBET, EGAN, ROCHE, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, Robert Oliver (“Oliver”) seeks certiorari review of Respondent, the Department of Highway Safety and Motor Vehicles’ (“Department”) final order denying reinstatement of his driver’s license. This Court has jurisdiction pursuant to section 322.31, Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(3).

Facts and Procedural History

On January 11, 1993, Oliver's driver's license was permanently revoked due to his fourth conviction for DUI as required under section 322.28, Florida Statutes. On May 7, 2012, Oliver applied to the Department for reinstatement of his driving license and a formal review hearing was held.

At the hearing, Oliver testified that he needed reinstatement of his driver's license in order to drive to the doctor, the VA, and church. He explained that for many years his spouse drove him to these places, but in 2010 she was in an automobile accident, became bed ridden and thus, could no longer provide him with transportation. He also stated that his brother-in-law who resided in his home provided him with transportation, but his brother-in-law was moving out of their home and could no longer do so. The hearing officer asked Oliver several questions including whether he was employed. Oliver answered that he was retired and not seeking employment. The hearing officer denied the reinstatement of Oliver's driver's license based on his testimony that he was retired and was not seeking employment and thus, he did not meet the requirements for reinstatement of his driver's license in accordance with section 322.271, Florida Statutes.

Standard of Review

“The duty of the circuit court on a certiorari review of an administrative agency is limited to three components: Whether procedural due process was followed, whether there was a departure from the essential requirements of law, and whether the administrative findings and judgment were supported by competent substantial evidence.” *Dep't of Highway Safety & Motor Vehicles v. Satter*, 643 So. 2d 692, 695 (Fla. 5th DCA 1994).

Argument

In the Petition for Writ of Certiorari, Oliver argues that under section 322.271, Florida Statutes, he qualifies for a driver's license reinstatement because of his need for medical care for both he and his wife and transportation to church.

Analysis

Oliver bases his argument specifically on subsections 322.271(1)(b), (c)1., and (2), Florida Statutes. Subsection 322.271(1)(b), Florida Statutes (2012), provides:

A person whose driving privilege has been revoked under s. 322.27(5) may, upon expiration of 12 months from the date of such revocation, petition the department for reinstatement of his or her driving privilege. Upon such petition and after investigation of the person's qualification, fitness, and need to drive, the department shall hold a hearing pursuant to chapter 120 to determine whether the driving privilege shall be reinstated on a restricted basis solely for business or employment purposes.

Subsection 322.271(1)(c)1., Florida Statutes (2012), provides that for the purposes of this section, the term:

1. "A driving privilege restricted to business purposes only" means a driving privilege that is limited to any driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and for medical purposes.

Subsection 322.271(2), Florida Statutes (2012), provides that:

At such hearing, the person whose license has been suspended, canceled, or revoked may show that such suspension, cancellation, or revocation causes a serious hardship and precludes the person from carrying out his or her normal business occupation, trade, or employment and that the use of the person's license in the normal course of his or her business is necessary to the proper support of the person or his or her family.

However, those statutes that Oliver bases his argument on are not applicable for reinstatement of his driver's license that was permanently revoked due to his fourth conviction for DUI. Instead, subsection 322.271(5), Florida Statutes (2012) is applicable to Oliver's application for reinstatement of his driver's license and provides:

Notwithstanding the provisions of s. 322.28(2)(e), a person whose driving privilege has been permanently revoked because he or she has been convicted four or more times of violating s. 316.193 or former s. 316.1931 may, upon the expiration of 5 years after the date of the last conviction or the expiration of 5 years after the termination of any incarceration under s. 316.193 or former s. 316.1931, whichever is later, petition the department for reinstatement of his or her driving privilege.

(a) Within 30 days after receipt of a petition, the department shall provide for a hearing, at which the petitioner must demonstrate that he or she:

1. Has not been arrested for a drug-related offense for at least 5 years prior to filing the petition;
2. Has not driven a motor vehicle without a license for at least 5 years prior to the hearing;
3. Has been drug-free for at least 5 years prior to the hearing; and
4. Has completed a DUI program licensed by the department.

(b) At the hearing, the department shall determine the petitioner's qualification, fitness, and need to drive, and **may**, after such determination, reinstate the petitioner's driver's license. The reinstatement shall be subject to the following qualifications:

1. The petitioner's license **must be restricted for employment purposes** for not less than 1 year; and

2. The petitioner must be supervised by a DUI program licensed by the department and must report to the program for supervision and education at least four times a year or more, as required by the program, for the remainder of the revocation period. The supervision shall include evaluation, education, referral into treatment, and other activities required by the department.

[Emphasis added]

From review of the record including the transcript from the formal review hearing, the hearing officer correctly followed subsection 322.271(5), Florida Statutes. First, the hearing officer correctly followed the statutory requirements through his detailed questions to Oliver, including the questions pertaining to Oliver's employment status as required under subsection 322.271(b)1., Florida Statutes, that restricts a license reinstatement only for employment purposes. There is no mention under the applicable portion of the statute that the license may also be restricted for business purposes as argued by Oliver. Accordingly, Oliver's testimony that he was retired and was not seeking employment provided competent substantial evidence in support of the hearing officer's decision to deny reinstatement of his driver's license.

Further, subsection 322.271(5)(b), Florida Statutes, provides hearing officers with discretion as the statute states that upon determining petitioner's qualification, fitness, and need to drive, "may" reinstate the driver's license subject to the qualifications including employment. *See Dep't of Highway Safety & Motor Vehicles v. Fountain*, 883 So. 2d 300 (Fla. 1st DCA 2004); *Johnson v. Dep't of Highway Safety & Motor Vehicles*, 10 Fla. L. Weekly Supp. 668a (Fla. 9th Cir. Ct. 2003). Lastly, the construction given a statute by the administrative agency charged with its enforcement and interpretation is entitled to great weight, and the court should not depart there from except for the most cogent reasons and unless clearly erroneous. *Daniel v. Florida State Turnpike Authority*, 213 So. 2d 585, 587 (Fla. 1968).

Based on the foregoing, procedural due process was followed, the hearing officer followed the essential requirements of the law, and there was competent substantial evidence to support the hearing officer's findings and decision. Accordingly, it is hereby **ORDERED AND ADJUDGED** that Petitioner, Robert Oliver's Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 11th day of April, 2013.

/S/

MARC L. LUBET
Circuit Judge

/S/

ROBERT J. EGAN
Circuit Judge

/S/

RENEE A. ROCHE
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: **D. Riccardo Paige, Sr., Esquire**, The Paige Law Firm, P.A., 257 MLK Blvd. SE, Belle Glade, Florida 33430 and **Richard M. Coln, Assistant General Counsel**, Department of Highway Safety and Motor Vehicles, P.O. Box 570066, Orlando, Florida 32857 on this 11th day of April, 2013.

/S/

Judicial Assistant