

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Darryl Kinloch,

Appellant,

v.

South Carolina Department of Motor
Vehicles and South Carolina Department of
Public Safety,

Respondent.

Docket No. 25-ALJ-21-0394-AP

FINAL ORDER AND DECISION

RECEIVED

JUL 27 2026

SC Court of Appeals

STATEMENT OF THE CASE

This matter is pending before the South Carolina Administrative Law Court (“ALC” or “Court”) pursuant to an appeal filed by Darryl Kinloch (“Appellant”). Appellant seeks reversal of a determination of the South Carolina Office of Motor Vehicle Hearings (“OMVH”) dismissing a contested case in which Appellant challenged the administrative suspension of his driver’s license under the implied consent law because Appellant filed his request for a contested more than a year after the deadline to file the request had passed.

OMVH filed the Record on Appeal on January 7, 2026. Appellant’s brief was thus due on or before February 6, 2026. *See* Rule 37(A), SCALCR (providing a brief should be filed within 30 days of the filing of the record on appeal). That date passed without the filing of a brief by Appellant, and, on February 26, 2026, the South Carolina Department of Motor Vehicles (“Department”) moved to dismiss the appeal because no brief had been filed. Appellant responded on March 12, 2026. He admitted that he did not timely file his brief sought permission for late filing of his brief, a copy of which was attached to the motion. The Court granted Appellant’s motion to allow late filing of his brief and denied the motion to dismiss. The Department has now filed its brief and Appellant has submitted his reply, making the matter ripe for decision.

BACKGROUND

On August 3, 2024, Trooper Daniel R. Coon stopped Appellant Kinloch for speeding. Trooper Coon believed there was cause to suspect Appellant was intoxicated and asked Kinloch to perform field sobriety tests. Appellant performed poorly.



Trooper Coon transported Appellant to the Beaufort County Detention Center for additional testing. Appellant consented to and performed a breath test, but refused the officer's request for a subsequent urine test.

Trooper Coon issued a Notice of Suspension to Appellant on August 4, 2024. The Notice informed Appellant that if he desired to challenge the suspension, he was required to submit a request for a contested hearing to OMVH within thirty days of the issuance of the Notice. The language describing the thirty-day deadline is printed in bold print and underlined type for emphasis. The Notice also informed Appellant of the specific physical address at which the request for a contested case must be filed.

Appellant did not file a request for a contested case hearing until October 14, 2025, more than a year beyond the thirty-day time limit. On June 17, 2025, Respondent SCDMV filed a Motion to Dismiss asserting the OMVH lacks jurisdiction to consider this matter because Appellant failed to timely file his request for a contested case hearing. The OMVH granted Respondent DMV's Motion to Dismiss on October 21, 2025. Appellant filed a Motion to Reconsider which the OMVH denied on November 5, 2025. The Appellant then timely filed this appeal.

ISSUES ON APPEAL

Appellant's brief raises the following issues on appeal:

1. Did OMVH improperly dismiss his request for a contested case without considering equitable tolling?
2. Does the administrative record demonstrate compliance with chemical testing requirements?
3. Was administrative suspension improper because the refusal related only to secondary blood or urine testing?
4. Do allegedly contradictory documents undermine the suspension?
5. Are there procedural irregularities in the refusal documentation?
6. Was the case improperly dismissed before an evidentiary hearing occurred?

STANDARD OF REVIEW

The OMVH is an agency under the Administrative Procedures Act. *S.C. Dep't of Motor Vehicles v. McCarson*, 391 S.C. 136, 144, 705 S.E.2d 425, 429 (2011). The Administrative

Procedures Act, S.C. Code Ann. §§ 1-23-300, *et seq.* (2005 & Supp. 2025), therefore establishes the standard of review the Court must apply. Specifically, section 1-23-380(5) of the South Carolina Code (Supp. 2025), provides the following:

The [C]ourt may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The [C]ourt may affirm the decision of the agency or remand the case for further proceedings. The [C]ourt may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

“When appealing an agency's decision, the burden rests squarely on the appellant to prove that substantive rights were prejudiced based on one of six statutory criteria listed above.” *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 260, 659 S.E.2d 233, 235 (Ct. App. 2008); *see also Pressley v. Lancaster County*, 343 S.C. 696, 704, 542 S.E.2d 366, 370 (Ct. App. 2001) (“The party challenging a governmental body's decision bears the burden of proving the decision is arbitrary.”); *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996) (“The burden is on appellants to prove convincingly that the agency's decision is unsupported by the evidence.”).

DISCUSSION

As a preliminary matter, the Court sits in an appellate capacity and may only review findings and conclusions made by the Hearing Officer. The OMVH dismissed the contested case below on the ground that Appellant delayed too long in requesting a contested case. It did not conduct a hearing at which evidence on the merits was taken or make any findings of fact or conclusions of law regarding the underlying merits of Appellant's challenge to the suspension.

Because the Hearing Officer found no facts and made no rulings with respect to the underlying merits of Appellant's challenge, there are no findings or conclusions with respect to such matters for this Court to review. Points of alleged error raised by Appellant which relate to the underlying merits of his challenge are therefore not properly before the Court.

Two of the six issues enumerated in Appellant's brief do relate to the ruling made by OMVH. They are: (1) did OMVH improperly dismiss his request for a contested case without considering equitable tolling? and (2) was the case improperly dismissed before an evidentiary hearing occurred. The Court will address these arguments in turn.

I. Equitable Tolling

Appellant asserts that equitable tolling is proper where a procedural delay results from government misdirection. As supporting authority for this proposition, Appellant cites *Roper v. S.C. Dept. of Motor Vehicles*, which Appellant describes as an Administrative Law Court decision in which an Administrative Law Judge allowed review where an agency's actions contributed to the delay in filing.¹ Appellant appears to argue that he initially contacted the South Carolina Department of Public Safety about requesting a contested case and received confusing instructions from SCDPS.

The Department counters that there is no factual basis on which estoppel could rest. It contends that Appellant failed to follow what are relatively simply directions. It also argues that Appellant's attempts to contact the SCDPS occurred in October of 2025, and therefore, even Appellant received misleading advice from the SCDPS, Appellant did not initiate any attempt to request a contested case for more than a year after the deadline had passed.

"Equitable tolling is a nonstatutory tolling theory which suspends a limitations period." *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009) (citing *Ocana v. Am. Furniture Co.*, 91 P.3d 58, 66 (2004)). It is a judicially created doctrine. *Id.* The party claiming a limitation should be tolled bears the burden of establishing sufficient facts to justify its use. *Id.* Equitable tolling may be applied where it is justified under all the circumstances; however, it should be used sparingly and only when the interests of justice compel its use. *Id.*

¹ Appellant did not provide a case citation for *Roper v. S.C. Dept. of Motor Vehicles*. The Court has been unable to locate any case with such a name, raising the possibility that the case citation is a hallucination produced by artificial intelligence. **Appellant is hereby warned that citation to fictitious cases may be cause for sanctions, up to and including dismissal of an appeal.**

After review of the record and consideration of the parties' arguments, the Court rejects Appellant's argument. Appellant argues to the Court that it was improper for OMVH to dismiss the appeal without considering equitable tolling. The record, however, indicates that the Hearing Officer did consider tolling Appellant's factual basis for the application of tolling is that he was mistakenly in contact with the SCDPS with regard to challenging the suspension of his driving privileges. The Hearing Officer addressed this argument, stating in the original order of dismissal that:

In his response, Respondent asserts that he was unaware of the procedure to file a request for a contested case hearing and that he had mistakenly been in contact with the South Carolina Department of Public Safety with regard to the implied consent suspension. However, the notice of suspension form, a copy of which Respondent filed with his request for a contested case hearing, clearly sets forth the procedure and time frame for requesting a contested case hearing with the OMVH to challenge the implied consent suspension.

(Order of Dismissal at pp. 1-2). The Hearing Officer also noted that the time limit stated in South Carolina Code Section 56-2-2591(B)(1) is mandatory and may not be waived. Accordingly, Appellant's argument that the Hearing Officer failed to consider equitable tolling lacks merit.

Appellant's argument can possibly be viewed as one challenging the Hearing Officer's actual conclusions, and, accordingly, the Court will address the Hearing Officer's findings and conclusions. Assuming without deciding that the OMVH and/or the Administrative Law Court may employ inherent equitable power, the Court agrees with the Hearing Officer that there is no basis for application of equitable tolling. The Notice of Suspension clearly informed Appellant that a request for a contested case hearing should be filed with OMVH rather than SCDPS and provided the specific address at which such a request must be filed. Moreover, Appellant waited more than a year after the deadline passed before he began his efforts to request a contested case. The interests of justice do not require tolling under these facts.

II. Dismissal Prior to Evidentiary Hearing

Appellant argues that his contested case was dismissed before an evidentiary hearing was held. As a result, Appellant contends that no testimony was taken, no cross-examination occurred, and that the evidence was not scrutinized. The Department did not address this specific argument in its brief.

The Court has reviewed the applicable statute and concludes that Appellant's argument is not well taken. A request for a contested case following an administrative suspension under the

implied consent law is governed by S.C. Code Section 56-5-2951, which provides in pertinent part that:

The Department of Motor Vehicles shall suspend the driver's license, permit, or nonresident operating privilege of, or deny the issuance of a license or permit to, a person who drives a motor vehicle and refuses to submit to a test provided for in Section 56-5-2950 or has an alcohol concentration of fifteen one-hundredths of one percent or more. The arresting officer shall issue a notice of suspension which is effective beginning on the date of the alleged violation of Section 56-5-2930, 56-5-2933, or 56-5-2945 . . .

Within thirty days of the issuance of the notice of suspension, the person may:
(a) request a contested case hearing before the Office of Motor Vehicle Hearings pursuant to its rules of procedure . . .

S.C. Code Ann. §§ 56-5-2951(A), (B)(1) (Supp. 2025). It also expressly states that “[i]f a person does not request a contested case hearing, the person waives the person's right to the hearing, and the person's suspension must not be stayed but continues for the period provided for in subsection (I)” S.C. Code Ann. § 56-5-2951(D) (Supp. 2025) (emphasis added). Because a person who fails to timely requested a contested case hearing waives his or her right to a hearing, the OMVH did not err in dismissing the contested case without a hearing.

ORDER

IT IS THEREFORE ORDERED that the decision of OMVH is hereby **AFFIRMED**.
AND IT IS SO ORDERED.



The Honorable Robert L. Reibold
Administrative Law Judge

June 10, 2026
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Jared Thompson, hereby certify that I have on this date served this order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

A handwritten signature in blue ink that reads "Jared Thompson". The signature is written in a cursive style with a long, sweeping underline.

Jared Thompson
Judicial Law Clerk

June 10, 2026
Columbia, South Carolina