

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Lisa Soto,)
)
 Appellant,)
 v.)
)
 South Carolina Department of Motor)
 Vehicles and South Carolina Department)
 of Public Safety,)
)
 Respondents.)

Docket No. 13-ALJ-21-0249-AP

ORDER

STATEMENT OF THE CASE

This matter is an appeal by Appellant Lisa Soto (“Appellant”) from a Final Order and Decision of the South Carolina Office of Motor Vehicle Hearings (“OMVH”) dated May 13, 2013. In the decision, the OMVH Hearing Officer sustained the Respondent South Carolina Department of Motor Vehicles’ (“Department”) determination that Appellant is a habitual offender as defined in S.C. Code Ann. § 56-1-1020. This determination resulted in the suspension of Appellant’s driver’s license for a five-year period. The ALC has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 1-23-660. Upon careful review of the matter, OMVH’s decision is affirmed.

BACKGROUND

On October 9, 2010, Appellant was charged with driving under suspension, and she was convicted on November 11, 2010. This violation occurred while Appellant was serving the mandatory suspension for cancellation of insurance. On February 5, 2011, Appellant was charged with driving under suspension, and she was convicted on September 30, 2011. This violation occurred while Appellant was serving the mandatory suspension period for the driving under suspension violation of October 9, 2010. This was Appellant’s second driving under suspension violation, and her driver’s license was suspended from March 5, 2011 until June 2, 2012. On September 2, 2011, Appellant committed the offense of driving with unlawful alcohol concentration (“DUAC”), and she was convicted on April 20, 2012. Based upon this violation, Appellant’s driver’s license was suspended from January 25, 2013 until July 25, 2013.

On January 10, 2013, the Department sent Appellant an official notice indicating that, as a result of the three convictions, she was declared a habitual offender and her driver’s license was

suspended from February 9, 2013 until February 9, 2018. Appellant subsequently requested an administrative hearing to challenge the habitual offender declaration and the suspension of her driving privileges. The hearing was held on May 6, 2013. On May 13, 2013, the OMVH Hearing Officer issued a Final Order and Decision sustaining Appellant's suspension. Appellant then filed this appeal with the ALC on June 3, 2013.

STANDARD OF REVIEW

The OMVH is authorized by law to determine contested cases arising from the Department. See S.C. Code Ann. § 1-23-660. Therefore, the OMVH is an "agency" under the Administrative Procedures Act ("APA"). See S.C. Code Ann. § 1-23-310(2). As such, the APA's standard of review governs appeals from decisions of the OMVH. See S.C. Code Ann. § 1-23-380; see also Byerly Hosp. v. S.C. State Health & Human Servs. Fin. Comm'n, 319 S.C. 225, 229, 460 S.E.2d 383, 385 (1995). The standard used by appellate bodies, including the ALC, to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5). This section provides:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision [of the agency] 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.

S.C. Code Ann. § 1-23-380(5).

A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion reached by the agency. Bilton v. Best W. Royal Motor Lodge, 282 S.C. 634, 641, 321 S.E.2d 63, 68 (Ct. App. 1984). A decision will not be set aside simply because reasonable minds may differ on the judgment. Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307. The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's

findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996); Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. Rodney v. Michelin Tire Co., 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (citing Kearse v. State Health and Human Servs. Fin. Comm'n, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995)). The party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 321 S.C. at 226, 467 S.E.2d at 917.

ISSUE ON APPEAL

Did the Hearing Officer err in finding that an exception to a habitual offender declaration as provided for under § 56-1-1020(a)(4) did not apply to Appellant?

DISCUSSION

South Carolina law defines a habitual offender as “any person whose record as maintained by the Department of Motor Vehicles shows that he has accumulated the convictions for separate and distinct offenses described in subsections (a) (b) and (c) committed during a three year period . . .” S.C. Code Ann. § 56-1-1020 (emphasis added). In order to be declared a habitual offender, a person must have accumulated convictions for three or more separate and distinct major offenses, or ten or more separate and distinct minor offenses, committed within the three year period. Id. Major offenses include driving under suspension and operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, narcotics or drugs. § 56-1-1020(a)(2) and (4).¹ A motorist is deemed to have been convicted of an offense on the date the offense was committed if he is subsequently convicted of committing the offense. § 56-1-1020(d). Furthermore, when a motorist is convicted of one or more of the offenses listed in § 56-1-1020, the Department must review the motorist's driving record, and if the record reveals that the person is a habitual offender, the Department must revoke or suspend the person's driver's license for a five-year period. S.C. Code Ann. §§ 56-1-1030, 56-1-1090.

In this appeal, Appellant's driving record indicates that she was charged with and convicted

¹A DUAC conviction constitutes a conviction for operating a motor vehicle “while under the influence of intoxicating liquors, narcotics or drugs” under Section 56-1-1020(a)(2). S.C. Dep't of Motor Vehicles v. Blackwell, 389

in three separate and distinct major traffic offenses committed within a three-year period: she was charged with DUAC on September 1, 2011 and convicted on December 18, 2012; she was charged for driving under suspension on October 9, 2010 and convicted on November 11, 2010; and, she was charged for driving under suspension on February 5, 2011 and was subsequently convicted of this charge on September 30, 2011.

Appellant disputes that her driving record, as maintained by the Department, reflects convictions for three separate and distinct major offenses which were committed during a three year period. Specifically, Appellant argues that the driving under suspension violation on October 9, 2010, should not be used as it falls under § 56-1-1020(a), which provides the following:

Driving a motor vehicle while his license, permit, or privilege to drive a motor vehicle has been suspended or revoked, except a conviction for driving under suspension for failure to file proof of financial responsibility[.]

§ 56-1-1020(a)(4) (emphasis added).

Appellant asserts that her first driving under suspension conviction, resulting from the October 9, 2010 violation, was actually a conviction for “failure to file proof of financial responsibility” and therefore should be excluded in the determination of accumulated offenses in determining her habitual offender status pursuant to § 56-1-1020(4). The Court disagrees. Appellant provided no evidence to establish this, and the Hearing Officer correctly found and concluded that the Appellant’s “suspension was a result of the cancellation of insurance on August 12, 2010 rather than the Appellant’s failure to file proof of financial responsibility within the meaning of § 56-1-1020.

Appellant’s suspension for “cancellation of insurance” was made pursuant to § 56-10-240, which provides, in pertinent part:

Upon receiving information to the effect that a policy is canceled or otherwise terminated on a motor vehicle registered in South Carolina, the department shall suspend the owner’s driving privileges, license plate, and registration certificate and shall initiate action as required within fifteen days of the notice of cancellation to pick up the license plate and registration certificate. A person who has had his driving privileges, vehicle license plate, and registration certificate suspended by the department, but who at the time of suspension possesses liability insurance coverage sufficient to meet the financial responsibility requirements as set forth in this chapter, has the right to appeal the suspension immediately to the Director of the Department of Insurance. If the Director of the Department of Insurance

determines that the person has sufficient liability insurance coverage, he shall notify the department and the suspension is voided immediately.

Pursuant to § 56-10-10, every owner of a motor vehicle registered in South Carolina is required to maintain minimum security as required by § 56-20-20. Section 56-10-30 provides for the automatic suspension of the owner's driving privileges at any time the security required under § 56-10-20 lapses or terminates. Suspensions for cancellation of insurance are triggered by the notice to the Department of the cancellation; and suspensions for failure to file proof of financial responsibility are triggered by the failure of the driver to comply with the requirements to verify or file proof of insurance with the Department. "Cancellation of insurance" suspensions are based upon the driver's non-compliance with the requirement to maintain the statutory minimums of motor vehicle insurance. Suspensions for "failure to file proof of financial responsibility" are based upon the driver's non-compliance with the requirement to certify or provide verification of the required insurance coverage.

Moreover, while there are several statutes that refer to providing and/or maintaining "proof" of financial responsibility and which provide for suspensions for non-compliance, these are separate and distinct from Appellant's suspension for "cancellation of insurance" – verification of which had previously been supplied to the Department. See S.C. Code Ann. §§ 56-9-540 to 570 (2006) ("Proof of financial responsibility when required... may be given by filing [with the Department]: (1) [a] certificate of insurance... [or] (2) [a] bond..."); see also S.C. Code Ann § 56-9-361 (providing that the Department may allow a suspended driver to keep a license to operate a vehicle owned by an employer if the employer "furnishe[s] proof of financial responsibility..."); S.C. Code Ann §§ 56-9-440 to 470 (providing that if a judgment creditor of a motor vehicle accident consents, the judgment debtor who was uninsured at the time of the accident may retain driving privileges so long as the judgment debtor "furnishes proof of financial responsibility," and if the judgment creditor does not so consent, the judgment debtor's license will remain suspended until the debtor fully satisfies every judgment and "gives proof of financial responsibility..."); S.C. Code Ann § 56-10-540 ("Whenever any proof of financial responsibility filed by a person as required by [the Act] no longer fulfills the purpose for which required, the director shall require other proof of financial responsibility...").

In her brief, Appellant acknowledges that her insurance lapsed. Further, the Record is clear that Appellant was subject to suspension of her driving privileges when the Department received notice of the cancellation of her insurance coverage on August 12, 2010. The Record also reflects

that this suspension began on September 23, 2010 and ended on October 11, 2010. The driving under suspension violation occurred on October 9, 2010, while Appellant was under suspension for “cancellation of insurance” or failure to maintain insurance as required by state law.

Appellant also cites South Carolina Department of Motor Vehicles v. Carter, 06-ALJ-21-0875-AP, as support for her assertion that the cancellation of insurance falls under the exception set forth in § 56-1-1020(a)(4). However, Carter is distinguishable from the present case. In Carter, there was testimony that, prior to the date of the driving under suspension violation, the driver had obtained insurance from a different company and was therefore “insured” on the violation date, and her conviction resulted solely from the insurance being cancelled after she failed to pay the premium. Also, in Carter, it appears from the Order that the Department neither appeared at the administrative hearing nor did it file any documents with the OMVH prior to the hearing to be included in the record and that the only evidence presented to the OMVH was from the driver.²

In this case, there is nothing in the Record to support the Appellant’s challenge of the findings and conclusions of the Hearing Officer. During the hearing, the Appellant did not testify or present other evidence to establish that her suspension was for failure to file proof of financial responsibility. As an exhibit to her brief, the Appellant attempts to provide this Court with evidence which purports to establish that Appellant was properly insured on the date of her traffic stop on October 9, 2010. S.C. Code Ann. § 1-23-380(3) (Supp. 2013) provides a method for presenting the evidence Appellant describes as “exhibit B,” (“[i]f a timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court.”). Also, see Brown v. Peoplease Corp., 402 S.C. 476, 741 S.E.2d 761 (Ct. App. 2013). Because the additional evidence Appellant attempts to provide to this Court was not presented to the OMVH Hearing Officer at the time of the hearing, and the Appellant has not applied to this Court for leave to present additional evidence, the Court cannot consider any evidence not included in the Record in reviewing this matter.³

² Judge Anderson noted that the Department’s attachment of Carter’s driving record to the Notice of Appeal was insufficient to make the driving record a part of the Record.

³ See, S.C. Code Ann. § 1-23-380(4) (Supp. 2013) “[t]he review must be conducted by the court and must be confined to the record.”

