STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Spring Champion, Appellant, v. South Carolina Department of Motor Vehicles, Respondent.	)	Docket No. 13-ALJ-21-0447-AP **FINAL ORDER**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed by Spring Champion (Appellant) on September 16, 2013. The Appellant seeks review of a Final Order and Decision issued by the Respondent South Carolina Department of Motor Vehicles' (Department) Office of Motor Vehicle Hearings (OMVH) on August 21, 2013, in which the suspension of the Appellant's driver's license or privilege was sustained upon a finding that the Appellant is a habitual offender.

The Appellant does not dispute her driving record at the time she was found to be a habitual offender and her driver's license or privilege suspended. The Appellant submits that since the suspension, she has changed, and gotten a good job and housing for her and her daughter. The Appellant asserts that she needs her driver's license in order to continue working and to provide for her daughter.

The court has jurisdiction to hear this matter pursuant to Section 1-23-660 of the South Carolina Code (Supp. 2009) and Section 56-9-363 of the South Carolina Code (Supp. 2008). Upon review of record and the briefs of the parties, the court finds that the Final Order and Decision of the Hearing Officer is supported by substantial evidence and is affirmed.

BACKGROUND

By letter dated May 14, 2010, the Department advised the Appellant that under the Habitual Offender Law, any person who is convicted of three major violations or is convicted of a combination of ten minor and/or major violations within a three year period will be classified

as a habitual offender and his or her driving privileges will be suspended. The letter outlined what offenses constituted major and minor violations. The letter continued by advising the Appellant that the Department's records indicated that she had accumulated two major violations and that if she should be convicted of a third, she would be classified as a habitual offender and her driving privileges suspended. The letter encouraged the Appellant to improve her driving habits and to protect her privilege to drive.

By letter dated October 27, 2011, the Department advised the Appellant that she had been declared to be a habitual offender pursuant to Sections 56-1-1030 and -1090 of the South Carolina Code (Supps. 2008 and 2009) for having accumulated the following major violations in a three year period: (1) a conviction dated October 12, 2011 for a reckless driving violation on September 12, 2011; (2) a conviction dated May 4, 2010 for a driving under suspension violation on April 8, 2010; and (3) a conviction dated July 25, 2009 for a driving under the influence violation on September 3, 2009. The Appellant was advised that her driver's license or privilege would be suspended for a five year period from November 26, 2011 through November 26, 2016 and that no special driving privileges would be available to her. On November 22, 2011, the Appellant requested a contested case hearing as to the Department's declaration that she was a habitual offender.

An OMVH Hearing Officer conducted a hearing on February 16, 2012. At the hearing, the Appellant did not dispute the violations but stated that she believed that the most recent conviction for reckless driving should not be considered a major offense since it was a result of dismissal of a driving under the influence violation. The Appellant's two witnesses testified that since the Appellant's last conviction, she had turned her life around. The Appellant had since entered treatment, was no longer drinking alcohol, and was working two jobs. The Appellant and one of her witnesses stated that she needed a license to drive to and from work and to transport her daughter to and from school and activities.

On August 21, 2013, the OMVH Hearing Officer issued a Final Order and Decision sustaining the habitual offender suspension of the Appellant's driver's license or driving privilege. In reaching his decision, the Hearing Officer outlined the dates of the Appellant's "three separate and distinct" major traffic violations and convictions that occurred within a three year period as outlined hereinabove and noted that the Appellant did not challenge any of the convictions. As to the Appellant's argument that the reckless driving conviction should not be

considered a major offense, the Hearing Officer noted that Section 56-1-1020(3) of the South Carolina Code (Supp. 1996) specifically provided otherwise. In conclusion, the Hearing Officer noted that while the facts established that the Appellant had been seeking to improve her life, the only issue before him for consideration was whether the Department properly declared the Appellant to be a habitual offender by statute and that it did. We agree with the Hearing Officer.

ISSUE ON APPEAL

Whether the OMVH Hearing Officer erred in sustaining the Department's designation of the Appellant as a Habitual Offender.

STANDARD OF REVIEW

The OMVH is authorized by law to determine contested cases arising from the Department. S.C. Code Ann. § 1-23-600 (Supp. 2012). The ALC has jurisdiction to hear appeals of OMVH decisions pursuant to S.C. Code Ann. § 1-23-660(D) (Supp. 2009). As the OMVH is an "agency" under the South Carolina Administrative Procedures Act (APA), the APA's standard of review governs appeals from the decisions and orders of the APA. S.C. Code Ann. §§ 1-23-310(2) and 1-23-380 (Supp. 2008); See also Byerly Hosp. v. South Carolina State Health & Human Services Finance Com'n, 319 S.C. 225, 229, 460 S.E.2d 383, 385 (1995). Section 1-23-380(5) of the South Carolina Code provides the standard of review to be utilized by appellate bodies, including the ALC, when reviewing agency decisions:

> 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 if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (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. Ann. § 1-23-380(5) (Supp. 2008); See also S.C. Code Ann. §1-23-600(E) (Supp. 2012) (directing administrative law judges to conduct appellate review in the same manner prescribed in Section 1-23-380).

A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Public Service Com'n of South Carolina, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010); Bilton v. Best Western Royal Motor Lodge, 282 S.C. 634, 641, 321 S.E.2d 63, 68 (Ct. App. 1984). The fact that the record 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 Resources Conservation Com'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); Bilton, 282 S.C. at 641, 321 S.E.2d at 68 (citing Lark v. Bi-Lo, 276 S.C. 130, 276 S.E.2d 304 (1981)).

A court cannot weigh the evidence and substitute its judgment for that of the agency upon a question as to which there is room for a difference of intelligent opinion. Byerly Hosp., supra. The limited substantial evidence standard of review is intended only to assure that the agency's action is properly supported and that, therefore, no abuse of delegated authority occurred. See Fowler v. Lewis, 260 S.C. 54, 194 S.E.2d 191 (1973) (citing Fast Stops, Inc. v. Ingram, 276 S.C. 593, 281 S.E.2d 118 (1981). An appeal from an action of an administrative agency must be sustained if supported by substantial evidence. Hamm v. American Telephone & Telegraph Co., 302 S.C. 212, 394 S.E.2d 842 (1990).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. Rodney v. Michelin Tire Corp., 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (citing Kearse v. State Health & Human Services Fin. Com'n, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995)). A reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark, 276 S.C. at 136, 276 S.E.2d at 307 (1981)). 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.

DISCUSSION

Section 56-1-1030 of the South Carolina Code (Supp. 2008) provides that when a person is convicted of one or more of the offenses outlined in Section 56-1-1020(a), the Department must review its records for that person. If the Department determines after review of its records

that the person is a habitual offender as defined in Section 56-1-1020, the Department must revoke or suspend the person's driver's license. The suspension shall last five years. S.C. Code Ann. § 56-1-1090 (Supp. 2009). A person is a habitual offender if he or she is convicted of any three of the following offenses within a three year period:

> (1) Voluntary manslaughter, involuntary manslaughter or reckless homicide resulting from the operation of a motor vehicle;
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> (2) Operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, narcotics or drugs;
>
> (3) Driving or operating a motor vehicle in a reckless manner;
>
> (4) 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;
>
> (5) Any offense punishable as a felony under the motor vehicle laws of this State or any felony in the commission of which a motor vehicle is used;
>
> (6) Failure of the driver of a motor vehicle involved in any accident resulting in the death or injury of any person to stop close to the scene of such accident and report his identify ...

S.C. Code Ann. § 56-1-1020(a) (Supp. 1996).

Here, the record contains substantial evidence that in a three year period, the Appellant was convicted of three separate and distinct offenses arising out of separate acts pursuant to Section 56-1-1020(a) including (1) a conviction dated October 12, 2011 for a reckless driving violation on September 12, 2011;[1] (2) a conviction dated May 4, 2010 for a driving under suspension violation on April 8, 2010;[2] and (3) a conviction dated July 25, 2009 for a driving under the influence violation on September 3, 2009.[3] Thus, the Hearing Officer correctly concluded the Department's classification of the Appellant as a habitual offender warranting suspension of her driving privileges was proper. The court concurs with the Hearing Officer's finding that there is no legal basis for the Appellant's argument that her arrest and conviction for reckless driving should not be considered a major violation and included in the list

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[1] S.C. Code Ann. § 56-1-1020(a)(3) (Supp. 1996).
[2] S.C. Code Ann. § 56-1-1020(a)(4) (Supp. 1996).
[3] S.C. Code Ann. § 56-1-1020(a)(2) (Supp. 1996).

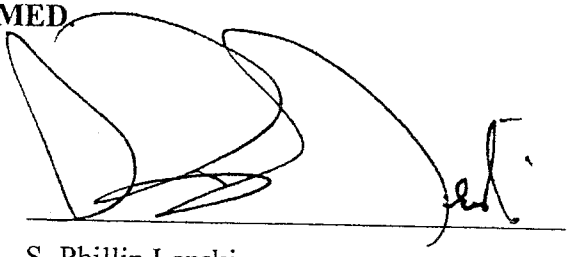
of offenses for which one can be found to be a habitual offender. See S.C. Code Ann. § 56-1-1020(a)(1) (Supp. 1996).

Finally, the court notes that the Appellant's efforts to rehabilitate her life are admirable and understands her need for a driver's license but as previously determined by the Hearing Officer, this issue was not properly before him. The only issue before the Hearing Officer was the propriety of the Department's determination that the Appellant was a habitual offender. See S.C. Code Ann. § 56-1-1030 (Supp. 2008). Similarly, this issue not properly before this court for review.[4]

ORDER

IT IS HEREBY ORDERED that the Order and Decision of the Office of Motor Vehicle's Hearing Officer sustaining the Department of Motor Vehicles' Finding that the Appellant is a habitual offender is **AFFIRMED**.

AND IT IS SO ORDERED.



December 10, 2014
Columbia, South Carolina

S. Phillip Lenski
Administrative Law Judge

[4] The court notes that if the Appellant meets the conditions of Section 56-1-1090 of the South Carolina Code (Supp. 2008), she may submit a request for restoration of her license to the Department on its designated form.

CERTIFICATE OF SERVICE

I, Leah E. Garland, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Leah Garland

Leah E. Garland
Law Clerk

December 10, 2014
Columbia, South Carolina

FILED

DEC 10 2014

SC ADMIN. LAW COURT