STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James Winston Davis, Jr., Appellant, v. South Carolina Department of Motor Vehicles, Respondent.	Docket No. 15-ALJ-21-0112-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 James Winston Davis, Jr. (Appellant) on March 10, 2015. 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 February 13, 2015 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.

On appeal, the Appellant argues that the suspension of his drivers' license more than six years after his last qualifying traffic conviction violates the standards of fairness and thus, that he was denied due process. The court has jurisdiction to hear this matter pursuant to Section 1-23-660(D) of the South Carolina Code (Supp. 2009). Upon review of the record, the parties' briefs and the law, the Hearing Officer's Final Order and Decision of February 13, 2015 is reversed.

BACKGROUND

By letter dated June 28, 2005, the Department advised the Appellant that under the habitual offender laws, any person who is convicted of a minimum number of major or minor violations within a three year period will be classified as a habitual offender and his or her driving privileges will be suspended. The letter continued by advising the Appellant that the Department's records indicated that he had accumulated two major violations and that a third conviction of any additional major or minor violations which would classify him as a habitual offender would result in his driving privileges suspended for a period of five years.

On May 17, 2005, the Appellant was charged with driving under suspension. He was subsequently convicted of the offense on October 20, 2006. Evidence in the record establishes that the Department actually received the Appellant's conviction information on September 22, 2011 but was unable to verify some of the information. The Department waited until April 20, 2012 to send a letter to the Lexington County Sheriff's Department requesting clarification. Then, nearly six months later, on October 25, 2012, the Department received the requested information and finally posted the Appellant's 2006 conviction on December 5, 2012, more than six years after it had occurred.

On December 5, 2012, the Department sent a letter to the Appellant stating that he 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 20, 2006 for a driving under suspension violation on May 17, 2005; (2) a conviction dated May 5, 2005 for a driving under suspension violation on April 21, 2005; and (3) a conviction dated February 19, 2004 for a driving under suspension violation on January 29 2004. The Appellant was advised that his driver's license or privilege would be suspended for a mandatory five year period commencing January 4, 2013 and concluding on January 4, 2018. By letter dated December 13, 2012, the Appellant requested a contested case hearing as to the Department's declaration that he was a habitual offender.

An OMVH Hearing Officer conducted a hearing on March 19, 2013. The Appellant did not dispute his convictions but argued that the Department should not have been permitted to apply his conviction of October 20, 2006 because of the inordinate delay in its posting on December 5, 2012. In support of his argument, the Appellant referenced Section 15-3-540(2) of the South Carolina Code (1976) which provides for a three year statute of limitations for any type of forfeiture and also argued a lack of fundamental fairness.

On February 13, 2015, the Hearing Officer issued a Final Order and Decision sustaining the suspension of the Appellant's driver's license. 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 above. In support of his decision, the Hearing Officer stated that while Section 56-7-30 of the South Carolina Code (Supp. 2005) requires that the a ticket must be forwarded to the Department within ten days, the statute provides

no penalty for not doing so and in particular, does not prohibit the Department from posting a disposition including a conviction that was not timely received.[1]

In the Final Order and Decision, the Hearing Officer engaged in a lengthy analysis of Hipp v. S.C. Dep't. of Motor Vehicles, 381 S.C. 323, 673 S.E.2d 416 (2009) and State v. Chavis, 261 S.C. 408, 200 S.E.2d 390 (1973). In deciding that the present case was more akin to Chavis, the Hearing Officer sustained the suspension. In doing so, the Hearing Officer concluded that the Appellant was aware of the law as further evidenced by the Appellant's argument that if he had known he could have served his suspension earlier, it would have been completed. The Final Order and Decision noted that the there was an absence of any evidence that the Appellant attempted to rectify the situation.

The Appellant filed a Notice of Appeal with this court on March 10, 2015. The basis of the appeal is that the Department's substantial delay in posting his third conviction and suspending his license is so fundamentally unfair that it is tantamount to a denial of due process.

ISSUE ON APPEAL

Whether the suspension of the Appellant's drivers' license as a habitual offender more than six years after his third qualifying traffic conviction violates the standards of fundamental fairness and due process.

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] Section 56-70-30(A) provides that the disposition of traffic citations must be forwarded to the Department within ten days of the disposition of the case by final trial court action or nolle prosequi. As Section 56-70-30(A) sets forth no penalty for non-compliance, the Department is not deprived of its jurisdiction to post the disposition or suspend a license. Johnston v. S.C. Dep't. of Labor, Licensing & Regulation, S.C. Real Estate Appraisers Bd., 365 S.C. 263, 617 S.E.2d 363 (2005) (failure by the Board to serve written notice of decision on licensee within the statutory time limit did not affect Board's jurisdiction because the statute did not set forth consequences for failure to serve written notice of decision within statutory time limit). While not jurisdictional, the requirement of Section 56-70-30(A) that the disposition be forwarded to the Department within ten days is instructive that the process is to be completed in a timely manner.

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;

(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 unrefuted evidence that within a three year period, the Appellant was convicted of three distinct offenses arising out of separate acts pursuant to Section 56-1-1020(a). Thus, the Department met its burden of proof in establishing that the Appellant qualified under the statute as a habitual offender. The Appellant argues however, that the imposition of the license suspension more than six years after the last conviction violates the principles of fairness and due process. This court agrees.

This issue has been addressed by the South Carolina Supreme Court. In State v. Chavis, supra, Chavis argued that the suspension of his license one year after his refusal to submit to a breathalyzer test and conviction for driving under the influence violated his due process rights. For reasons not appearing in the record, the Department was not timely notified of either Chavis' breathalyzer refusal or conviction. After remarking that upon notification the Department effected the license suspension without unreasonable delay, the Supreme Court stated that fundamental fairness and due process were not violated by the one year delay. However, the Supreme Court stated that there may be circumstances under which it could be successfully argued or soundly held that the State had no right to suspend a driver's license after a long delay and that such was not the case in Chavis.

This issue was addressed again by the South Carolina Supreme Court more than thirty years later in Hipp, supra. Hipp argued that a twelve year gap between Hipp's Georgia DUI conviction and the Department's suspension denied him due process. In Hipp, the court noted that a person's interest in his drivers' license is property that the state may not take away without satisfying the requirements of due process. (citing Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1991)); see also S.C. Dep't. of Motor Vehicles v. McCarson, 391 S.C. 136, 148, 705 S.E.2d 425, 431 (2011). In likening the facts of Chavis to Hipp, the court restated that while it found fundamental fairness was not violated by a suspension after a one year delay, it allowed for a circumstance under which it could be soundly held that the State had no right to suspend a driver's license after a lengthy delay. While the Supreme Court failed to set forth a bright line rule in Hipp,

it found that the imposition of a suspension after more than twelve years where Hipp bore no fault for the delay, constituted a manifest denial of fundamental fairness.

The facts of this case lie somewhere between those of Chavis and those of Hipp. Based on the Appellant's testimony that had he known he could have served his suspension earlier such that it would already have been completed, the Hearing Officer likened this case to Chavis. The Hearing Officer then concluded that the Appellant was charged with knowledge of the law that his license was to be suspended yet did nothing to try to rectify the matter.

The court disagrees and find that the hearing officer's conclusions of law are affected by error of law, are clearly erroneous and are violative of the Appellant's constitutional rights. Through no fault of either the Appellant or the Department, it is uncontroverted that the Appellant's conviction for driving under suspension dated October 6, 2006 was not posted and that the Appellant was not advised of the suspension until more than six years later on December 5, 2012. While the Hearing Officer was correct that in concluding that the Appellant is charged with knowledge of the law, the court contrarily finds as a matter of law that there is no statutory or other obligation imposing a duty upon the Appellant to take any affirmative action, including "rectify[ing] the matter." While it may have been suggested in Chavis, there is no mention of any obligation on the part of the licensee in Hipp to take any affirmative action. The Supreme Court's opinion in Hipp is devoid of any language that remotely insinuates the need for any compulsory action on the part of the licensee. In Hipp, the court further stated that, "we find that the imposition of a suspension after more than twelve years delay,[2] where [the licensee] bears no fault for the delay, is manifestly a denial of due process." Hipp, 381 S.C. at 325, 673 S.E.2d at 417.

Based upon Hipp, the analysis set forth above and under the specific facts of this case, the delay in the Appellant's suspension, which exceeds the total time within which the suspension would have run had it been timely imposed, violates the Appellant's Constitutional rights to due process under the Fourteenth Amendment of the United States Constitution. This is particularly true since application of the suspension now would prejudice the Appellant.[3] While the court is reluctant to rule in this manner, as the undisputed evidence establishes that his multiple violations of the motor vehicle laws caused him to qualify as a habitual offender subject to suspension of

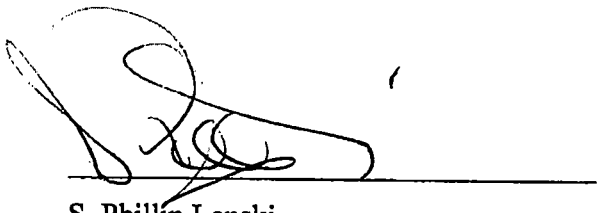
[2] The court notes that the parties responsible for reporting are not parties to this action.
[3] By the time the Appellant was notified of the suspension, he had already paid all reinstatement fees and completed all of the Department's requirements to regain his license in 2010.

driver's license, to reach any other result under the circumstances here would be a manifest denial of fundamental fairness, and would place a non-existent affirmative burden upon the Appellant and any other licensee to shepherd through the suspension of his driver's license.

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' suspension of the Appellant's driver's license and privileges as a habitual offender is **REVERSED** and that the Appellant's drivers' license and privileges shall be reinstated at no cost to the Appellant.

AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

July 16, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Edye U. Moran, 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).

Edye U. Moran
Judicial Law Clerk

July 16, 2015
Columbia, South Carolina