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DEC 10 2015

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC Court of Appeals

Melissa Spalt,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Motor)
Vehicles and South Carolina Department)
of Public Safety)
)
Respondents.)

Docket No.: 15-ALJ-21-0431-AP

**FINAL ORDER
AND
ORDER OF REMAND**

FILED

DEC 01 2015

SC ADMIN. LAW COURT

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the Notice of Appeal filed by Melissa Spalt ("Appellant") on July 10, 2015. Appellant seeks review of the Order of Dismissal from the Office of Motor Vehicle Hearings ("OMVH").

On appeal, Appellant argues that the Hearing Officer for OMVH committed reversible error in denying Appellant's Motion for Continuance under Rule 601(c), SCACR, and OMVH Rule 10(B), and dismissing the case for Appellant's failure to appear at the hearing.

BACKGROUND

Appellant was arrested on April 5, 2015, and refused to submit to a breath sample. Appellant was found to be in violation of S.C. Code Ann. § 56-5-2950 (Supp. 2014), and the arresting officer issued a Notice of Suspension form pursuant to S.C. Code Ann. § 56-5-2951 (Supp. 2014). Appellant timely requested a contested case hearing on April 10, 2015.

OMVH e-mailed a Notice of Hearing to all parties on April 14, 2015, for a hearing scheduled for June 23, 2015. The attorney for Appellant requested a continuance of the hearing on June 18, 2015, due to a conflicting court appearance.¹ OMVH e-mailed an Order of Continuance and Notice of Hearing on June 24, 2015, rescheduling the hearing for August 11, 2015.

The attorney for Appellant requested another continuance on August 7, 2015, due to a conflicting court appearance. Counsel for Appellant had a trial before the Magistrate Court also scheduled for August 11, 2015. The summons from Magistrate's Court was sent on July 15, 2015. Appellant's

¹ The Record is unclear as to how this request was made and processed.

Motion for Continuance was not signed by the attorney, nor was the Motion served on all parties.

OMVH e-mailed Appellant the denial of the request for a continuance on August 10, 2015.² The attorney for Appellant asked the Hearing Office to reconsider the Motion for Continuance.

OMVH issued an Order of Dismissal on August 12, 2015. OMVH determined that Counsel for Appellant "did not follow the requirement of Rule 601 or the procedure for requesting a continuance at the OMVH pursuant to Rule 10 (B)." Specifically, the Hearing Officer noted that "the motion was not even made with at least two full business days as required by Rule 10 (B)..." The Hearing Officer also noted that Counsel for Appellant did not notify OMVH when the conflict became apparent. Because neither Appellant nor Counsel for Appellant appeared at the hearing, the Hearing Officer dismissed the case.

Appellant filed a Motion to Reconsider on August 17, 2015, which was dismissed as moot on September 16, 2015. Appellant filed a notice of appeal to the ALC on September 11, 2015.

ISSUE ON APPEAL

- 1) Whether the Hearing Officer's decision was made upon unlawful procedure, affected by error of law, or characterized by an abuse of discretion.

STANDARD OF REVIEW

The ALC has jurisdiction to hear appeals of OMVH decisions pursuant to S.C. Code Ann. § 1-23-660(D) (Supp. 2014). The OMVH is authorized by law to determine contested cases arising from the Department. S.C. Code Ann. § 1-23-600 (Supp. 2014). 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 of OMVH. *See* S.C. Code Ann. § 1-23-310(2) (Supp. 2014). The standard used by appellate bodies, including the ALC, to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5) (Supp. 2014). This Section provides:

The court may reverse or modify the decision [of an 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;

² There is no proof in the Record that OMVH served the denial of the Motion for Continuance on all parties to the proceeding.

- (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.

“The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *S.C. Nat. Bank v. Cent. Carolina Livestock Mkt., Inc.*, 289 S.C. 309, 313, 345 S.E.2d 485, 488 (1986) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct 1187, 1191, 14 L.Ed.2d 62 (1965)). “[D]ue process is a flexible concept, and the requirements of due process in a particular case are dependent upon the importance of the interest involved and the circumstances under which the deprivation may occur.” *Id.* (citations omitted).

An agency’s conclusions of law are freely reviewable. Typically, a Court defers to the agency’s construction of their own rules and regulations; however, if the plain language of the rules are contrary to the agency’s interpretation, the Court will reject the agency’s interpretation. *Brown v. S.C. Dep’t of Health and Envtl. Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 415 (2002).

“An abuse of discretion occurs when the decision is controlled by some error of law or is based on findings of fact that are without evidentiary support.” *Eason v. Eason*, 384 S.C. 473, 479, 682 S.E.2d 804, 807 (2009) (citing *Degenhart v. Burriss*, 360 S.C. 497, 500, 602 S.E.2d 96, 97 (Ct. App. 2004)).

“The granting or refusal of a motion for continuance is within the discretion of the trial judge and his disposition of such a motion will not be reversed on appeal unless it is shown that there was an abuse of discretion to the prejudice of appellant.” *State v. Lytchfield*, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957).

DISCUSSION

Appellant argues that the Hearing Officer’s decision dismissing the case was an error of law. This Court agrees. The issue in this case involves the interpretation of OMVH Rule 10(B) and Rule 601(c), SCACR.

OMVH Rule 10(B) reads, in part:

A motion for continuance shall be in writing, state with specificity the reasons therefor, and be signed by the requesting party or representative. All motions must

be filed at least two business days prior to the scheduled hearing. Motions filed less than two business days prior to the scheduled hearing will be granted only for good cause shown. Motions not served upon all parties will not be granted except in an emergency. Attorneys with court conflicts must include documentation of the call to court with the motion and the documentation must include the case name, the court, the county, the docket number, the presiding judge's name and telephone number, and the date the attorney received notice of the conflicting court appearance. Attorneys must notify the Office as soon as possible when a court conflict occurs.

Rule 601(c), SCACR, states that "[a]n attorney who cannot make a scheduled appearance because of the priority established by paragraph (a) of this rule shall notify the affected tribunals as soon as the conflict becomes apparent." Magistrate's Court has priority over OMVH Hearings. *See* Rule 601(a), SCACR.

In the Order of Dismissal, the Hearing Officer concluded that the attorney for Appellant did not follow the requirement of Rule 601, SCACR, or OMVH Rule 10(B). The Hearing Officer noted that the attorney for Appellant did not notify the OMVH until well after receiving notice of the conflict between Magistrate's Court and OMVH. The Hearing Officer further noted that the attorney for Appellant did not make the motion "with at least two full business days."

The summons to the jury trial for Magistrate's Court was sent on July 15, 2015. However, court schedules change, and a conflict may only become apparent when it becomes clear that neither of the cases will be rescheduled. Further, the purpose of Rule 601, SCACR, is to prevent an individual from being deprived of counsel in situations similar to the one before the Court in which an attorney is forced to abandon responsibility to one client in order to serve another. In denying the Motion for Continuance, the Hearing Officer was denying Appellant representation at the OMVH hearing. Therefore, the Hearing Officer abused his discretion by denying a Motion for Continuance in the face of a documented priority conflict under Rule 601, SCACR.

The OMVH Hearing Officer also found that the attorney for Appellant did not comply with OMVH Rule 10(B) because the Motion for Continuance was not filed with at least two full business days remaining before the hearing. The Motion for Continuance was filed on August 7, 2015, and the hearing was to be held on August 11, 2015. While the Hearing Officer is correct in noting that the Motion for Continuance was filed less than two business days prior to the hearing, OMVH Rule 10(B) is not that rigid. OMVH Rule 10(B) allows for a Motion filed less than two business days if good cause is shown. Here, there is good cause evidenced by the documented priority conflict. Although attorney for Appellant did not satisfy all of the technicalities of OMVH Rule 10(B), the

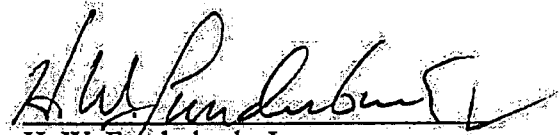
Motion was sufficient to inform the Hearing Officer of a genuine conflict that prevented Appellant's attorney from attending the OMVH hearing. The Hearing Officer committed error by concluding that a Motion for Continuance could only be filed with at least two full business days prior to the hearing and by not considering whether good cause for a continuance had been shown when the request is made less than two business days prior to the hearing.

Respondent, in its brief, contends that this case is similar to *Brockman v. S.C. Dep't of Motor Vehicles and Mauldin Police Dep't*, Docket No. 13-ALJ-21-0049-AP, 2014 WL 2895374 (Admin Ct. 2014). In *Brockman*, the ALC concluded that the Hearing Officer's denial of a Motion for Continuance was not an abuse of discretion. *Id.* However, in *Brockman*, Appellant was represented by substitute counsel and was not prejudiced by the denial of the Motion for Continuance, because a full hearing was held. *Id.* Here, there was no substitute counsel, and Appellant's case was not decided on the merits, but rather dismissed because counsel was not able to appear. Therefore, *Brockman's* facts are substantially different.

The OMVH Hearing Officer's decision to deny the Motion for Continuance and, ultimately, to dismiss the case, was made by unlawful procedure, controlled by an error of law, and characterized by an abuse of discretion, any one of these would justify reversal and remand for a hearing on the merits. It is therefore,

ORDERED that the decision of the Office of Motor Vehicles Hearings is **REVERSED**, and the case is **REMANDED** for a hearing on the merits.

AND IT IS SO ORDERED.


H. W. Fynderburk, Jr.
Administrative Law Judge

December 1, 2015
Columbia, South Carolina

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CERTIFICATE OF SERVICE

SC Court of Appeals


I, Julia M. Miller, 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).

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December 1, 2015
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Julia M. Miller
Judicial Law Clerk

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