

of Hearing was issued on February 22, 2017 for a hearing to take place on April 25, 2017.

Subsequently, on April 24, 2017 at 4:07pm, Appellant requested a continuance because he had an unrelated scheduled appearance at a hearing in the Court of Common Pleas on April 25, 2017. The Hearing Officer denied Appellant's request for continuance on April 24, 2017 at 4:18pm, pursuant to OMVH Rule 10(B) requiring motions for continuances be made a least two business days prior to the scheduled hearing date. The Hearing Officer also stated that because Appellant was aware of the conflict hearing since April 3, 2017 and failed to explain his delay in requesting the continuance, the request for continuance was being denied at the time.

The OMVH hearing proceeded on April 25, 2017. The MPPD's arresting officer and DataMaster operator were present. Neither Appellant nor his attorney appeared. On May 3, 2017, the Hearing Officer issued an Order of Dismissal sustaining the license suspension pursuant to OMVH Rule 13, for Appellant's failure to appear at the hearing without proper consent of the hearing officer. On May 15, 2017, Appellant filed a Notice of Motion and Motion to Reconsider and For a Stay of the Final Order. In his motion, Appellant contended that he was unfamiliar with Rule 10(B), OMVH, and a scheduling oversight caused him to file the motion for continuance less than 48 hours prior to the hearing. The Department filed a response in opposition to Appellant's motion on May 19, 2017.

On June 6, 2017, the Hearing Officer issued an Order denying Respondent's Motion for Reconsideration and Stay of Suspension. In the order, the Hearing Officer explained she denied Appellant's Motion for Reconsideration because Rule 10(B), OMVH, requires continuance request be filed at least 48 hours before the scheduled hearing or as soon as the party is aware of the conflict. The Hearing Officer also noted that Rule 601(c), SCACR, requires an attorney requesting a continuance based upon tribunal priority, to file the request as soon as the party becomes aware of the conflict. On, July 6, 2017, Appellant filed an appeal with this Court.

ISSUE ON APPEAL

Whether the OMVH Hearing Officer's decision to deny Appellant's request for a continuance is characterized by an abuse of discretion or clearly unwarranted exercise of discretion.¹

¹ Appellant states two additional issues on appeal: Whether the OMVH Hearing Officer erred in: (1) denying the motion for reconsideration (2) and relying on a rigid application of the procedural rule regarding continuances. Because this case is being reversed and remanded for a hearing on the merits, the Court finds it is not necessary to address Appellant's remaining two issues. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) ("[An] appellate court need not address remaining issues when [resolution] of prior issue is dispositive.").

STANDARD OF REVIEW

This Court has jurisdiction to hear this appeal in its appellate capacity under the Administrative Procedures Act (APA). S.C. Code Ann. § 1-23-600(D) (Supp. 2017). Under the appellate standard of the APA, the court's review is confined to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2017). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. Id. at § 1-23-380(5) (Supp. 2017). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.

Substantial evidence is "not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached" Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (citation omitted).

DISCUSSION

Appellant argues the Hearing Officer's denial of Appellant's motion requesting a continuance amounts to an abuse of discretion. This Court agrees.

State agencies are creatures of statute and may not act outside the authority granted to them by the legislature. See Bazzle v. Huff, 319 S.C. 443, 445, 462 S.E.2d 273, 274 (1995) (citing Triska v. Dep't of Health & Envtl. Control, 292 S.C. 190, 355 S.E.2d 531 (1987)) ("An administrative agency has only such powers as have been conferred by law and must act within the authority granted for that purpose."). While this State has long held that "motions for a continuance are addressed to the sound discretion of the trial judge," the ruling on the motion can be reversed if it clearly appears there was an abuse of discretion to the prejudice of appellant. Williams v. Bordon's, Inc., 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980) (citation omitted).

In this instance, Appellant's Attorney filed a motion requesting a continuance less than 24 hours prior to the scheduled hearing because he was simultaneously scheduled to appear before a higher Court. While Appellant's attorney should have been aware of the conflicting

appearances as of April 3, 2017, Appellant also pointed out that absent a reversal, he would be prejudiced by the denial of his constitutional right of due process. While the Department disagrees, Appellant has shown good cause as to why the motion for continuance should have been granted, and the Hearing Officer abused her discretion in failing to grant it. Even though Appellant notified the Court later than desired due to the scheduling oversight, he notified the Hearing Officer as soon as the oversight became apparent. He could not have notified it earlier if he was not "aware" of the conflict. Appellant is not able to appear in two courts at once, and in accordance with Rule 601, SCACR, he attended the hearing at the tribunal with greater priority.


While the Court understands the inconvenience to OMVH and MPPD to continue this matter,² Appellant will be severely prejudiced if it is not. Given the Hearing Officer's denial of the motion, Appellant is left without recourse before being bound by a state agency action and it is within the parameters of this Court's responsibility to ensure all litigants are provided with due process. The purpose of administrative proceedings is derived from the constitutional requirement that citizens of South Carolina receive due process before being bound by state agency action. See Engaging & Guarding Laurens County's Env't (EAGLE) v. S.C. Dep't of Health & Envtl. Control, 407 S.C. 334, 344, 755 S.E.2d 444, 449 (2014) (citations omitted).

Based upon the foregoing and under these particular facts, this Court finds the Hearing Officer's denial of Appellant's request for continuance, amounts to an abuse of discretion. Additionally, this decision is in accordance with Micronics, Inc. v. S.C. Dep't of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) (noting South Carolina courts favor deciding cases on the merits rather than on technicalities).

ORDER

THEREFORE, IT IS HEREBY ORDERED that the decision of the OMVH Hearing Officer is **REVERSED** and **REMANDED** for a hearing on the merits.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

December 15, 2017
Columbia, South Carolina

² The Court notes that this matter had been continued twice before at the request of the MPPD.

CERTIFICATE OF SERVICE

This is to certify that the undersigned, on this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail postage paid, or in the (interagency Mail Service addressed to the party(ies) or their attorney(s).

This 15 day of December 2017

By: [Signature]
Judicial Law Clerk