STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shante Michele Eugene, Appellant, vs. South Carolina Department of Motor Vehicles, Respondent.	)	Docket No. 19-ALJ-21-0158-AP **FINAL ORDER**

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed by Shante Michele Eugene (Appellant) on April 25, 2019. After a contested case hearing was held in this matter on April 6, 2018, Appellant seeks review of the Final Order and Decision issued by the South Carolina Department of Motor Vehicles' (Department or Respondent) Office of Motor Vehicle Hearings (OMVH) sustaining the suspension of Appellant's driver's license and driving privileges upon a finding that Appellant is a habitual offender.

During the contested case, Appellant did not dispute her convictions or the resulting habitual offender status but argued that the Department should not be permitted to suspend her driver's license as a habitual offender approximately two years after the date of her last conviction for Driving Under Suspension (DUS) on January 13, 2016. On April 1, 2019, OMVH Hearing Officer Brigette Autry issued a Final Order and Decision sustaining the habitual offender suspension. Hearing Officer Autry concluded that the two-year delay in imposing the suspension did not violate the standards of fundamental fairness so as to deny Appellant due process.

On appeal, Appellant renews her argument that the delayed suspension of her driver's license more than two years after her last qualifying traffic conviction is fundamentally unfair and denies her due process. Appellant also argues that the Final Order and Decision regarding the two-year delay sets a bright line rule that is against public policy. Upon review of the Record on Appeal (ROA), the briefs of both parties, the statutes, and the case law, the Court affirms the suspension of Appellant's driver's license and driving privilege as modified.

BACKGROUND

Appellant was arrested for DUS on May 31, 2013, and was convicted of this offense on August 20, 2013. Appellant received another DUS charge on June 1, 2013, and was convicted of this offense on February 4, 2014. By letter dated February 21, 2014, the Department notified Appellant she had accumulated two major and three minor traffic violations and warned her that if she accrued another major violation within a three-year period, she could be declared a habitual offender resulting in a five-year suspension of her driving privileges.[1] On April 7, 2015, Appellant was charged with a subsequent DUS (Ticket Number 57873GO) and later pled guilty to DUS 2nd on January 13, 2016.[2]

Despite the explicit statutory instructions of S.C. Code Ann. § 56-7-30(A) (2016) requiring courts to notify the Department of such convictions within five business days of the date of trial, the Beaufort County Magistrate's Court did not notify the Department of Appellant's 2016 DUS conviction. However, two years later, the Beaufort County Sheriff's Office sent the Department a ticket inventory including Appellant's January 2016 conviction for Ticket Number 57873GO. After receiving notice of the conviction on January 18, 2018, the Department notified Appellant on January 24, 2018, that she was declared a habitual offender and that her driving privileges would be suspended for the statutory five-year period ending in January 2023. Appellant timely filed a request for a contested case hearing with OMVH asserting that the two-year delay in imposing the suspension was fundamentally unfair and a violation of her right to due process.

Due to previous convictions, Appellant had been declared a habitual offender, and her driving privileges were suspended for a five-year period beginning October 18, 2012, and ending October 18, 2017.[3] When the previous habitual offender suspension ended in October 2017, the Department notified Appellant that she met the requirements for reinstatement and was eligible to obtain a South Carolina driver's license as of October 31, 2017. Upon receipt of this notice from the Department, Appellant paid all fines and fees and obtained the necessary SR-22 insurance. Upon

[1] *See* S.C. Code Ann. § 56-1-1020 (Supp. 2016) (a person convicted of DUS three or more times within a three-year period is a habitual offender). Upon classifying a driver as a habitual offender, the Department must suspend his or her driver's license for five years.

[2] Appellant was originally charged with DUS 3rd and Habitual Traffic Offender (HTO) but pled guilty to the reduced charge of DUS 2nd in January 2016. The accompanying HTO charge was dismissed pursuant to the plea agreement.

[3] During the contested case hearing, Appellant testified that she was not aware that she was already under a habitual offender suspension until she was charged with DUS 3rd on April 7, 2015.

meeting these requirements for reinstatement, the Department reissued Appellant's license on November 13, 2017.

Two days later, Appellant received another letter from the Department indicating her driver's license would be cancelled effective January 14, 2018, if she did not clear up outstanding issues with the Georgia DMV. (ROA, p. 115). Appellant resolved the Georgia issues, including the payment of fines and fees in the approximate amount of $1,000. Subsequently, on December 14, 2017, Appellant went to a branch of the SCDMV to ensure she had cleared up all outstanding issues to protect her license from any impending suspension. While at the branch, the Department issued Appellant an Amended Notice of Driving Status indicating that her pending suspension(s) had been cleared and her driving privileges had been fully restored. (ROA, p. 116). Appellant maintained fully restored driving privileges until she received notice of the habitual offender suspension at issue in this case on January 24, 2018.

During the contested case hearing, Appellant testified that, in May 2016, after her last DUS conviction in January 2016, she got a job with the U.S. Postal Service at a mail processing center in North Charleston, South Carolina. Appellant testified that when she got the job, she was living with a relative in North Charleston who was able to give her rides to and from work while her license was still under suspension from her previous habitual offender determination. At that time, Appellant anticipated having only about a year and a half left on her habitual offender suspension scheduled to end in October 2017 and believed she would be able to find transportation to work during the remaining suspension period because she lived close to work.

However, Appellant's circumstances changed when the relative moved and Appellant had to relocate to Beaufort County where she now resides. She has a significant daily commute of approximately 1.5 hours, each way, to get to and from her place of employment. Appellant testified that without her driving privileges, she has no other means of transportation to get to and from work and will lose the job she has held since May 2016. Appellant has submitted multiple requests to be transferred to a similar job in Beaufort County to eliminate the commute, but her request has not been granted.

Appellant has also been a member of the National Guard since 2013 and must travel approximately two hours once each month to report for duty in Hopkins, South Carolina. Appellant testified that there are other National Guard units throughout the state and some closer to home but transfer to

any particular unit is based upon interest, experience, and slot availability. Additionally, Appellant is the single mother of two children, ages 2 and 3, who both attend daycare while she works. Finally, Appellant testified that she would not have spent the money, effort, and time to get her driver's license reissued in November 2017 or to clear up the issues with the Georgia DMV if she had been aware that her license would be suspended for an additional five years beginning in January 2018 due to her last DUS conviction from January 2016.

Finding no fundamental unfairness to Appellant due to the delayed suspension, Hearing Officer Autry sustained the suspension and compared the facts and circumstances of Appellant's case to those discussed in *Davis v. S.C. Dep't of Motor Vehicles*, 420 S.C. 98, 800 S.E.2d 493 (Ct. App. 2017), and *Wilson v. S.C. Dep't of Motor Vehicles*, 419 S.C. 203, 796 S.E.2d 541 (Ct. App. 2017).

In those cases, the delayed imposition of the suspensions were found to be fundamentally unfair in violation of Davis' and Wilson's respective due process rights. Concluding that Appellant's situation did not reach the levels of injury or prejudice present in *Davis* and *Wilson*, the Final Order and Decision noted several timing differences between those cases and Appellant's. Further, the Final Order and Decision concluded that Appellant failed to present specific evidence to show that she would suffer severe economic hardship if she lost her job due to her inability to commute to work as a result of the suspension.

ISSUES ON APPEAL

I. Did the Hearing Officer err in concluding that the imposition of the habitual offender suspension after a two-year delay was not fundamentally unfair and did not constitute a violation of due process?

II. Did the Hearing Officer's conclusion that the two-year delay does not exceed the five-year suspension establish a bright line rule that is against public policy?

STANDARD OF REVIEW

The OMVH is authorized by S.C. Code Ann. § 1-23-660(A) (Supp. 2018) to hear contested cases involving the suspension, cancellation, or revocation of driver's licenses by the Department. Pursuant to §1-23-660(D), the Court has jurisdiction to hear appeals from the OMVH. When acting in an appellate capacity, the ALC must apply the criteria of § 1-23-380(5) which 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 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.

Id. (Supp. 2018). *See also* S.C. Code Ann. § 1-23-600(E) (Supp. 2018) (directing administrative law judges to conduct appellate review in the same manner prescribed in §1-23-380).

Thus, this Court's review is limited to deciding whether the OMVH's Final Order and Decision is unsupported by substantial evidence or is affected by an error of law, an abuse of discretion, or is arbitrary or capricious. *Bass v. Kenco Group*, 366 S.C. 450, 457, 622 S.E.2d 577, 581 (Ct. App. 2005). The findings of the agency are presumed correct and must be affirmed if supported by substantial evidence. "Substantial evidence, when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the [OMVH] and is more than a mere scintilla of evidence." *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008).

It is axiomatic that the ALC may reverse because of an error of law. *See, e.g., Olsen v. S.C. Dep't of Health & Envtl. Control*, 379 S.C. 57, 63, 663 S.E.2d 497, 501 (Ct. App. 2008) (finding an appellate court may reverse the decision of a lower court "[i]f the findings are affected by an error of law, are not supported by substantial evidence, or are characterized by abuse of discretion or clearly unwarranted exercise of discretion."). An abuse of discretion occurs when an administrative agency's ruling is based upon an error of law, such as the application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or, when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious. *State v. Allen*, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006). The burden is on the appellant to show convincingly that the order of the

agency is without evidentiary support or is arbitrary or capricious as a matter of law. *Hamm v. South Carolina Public Service Commission*, 294 S.C. 320, 364 S.E.2d 455 (1998).

DISCUSSION

In this case, the record contains unrefuted evidence that within a three-year period, Appellant was convicted of three distinct offenses justifying the imposition of a five-year suspension of her driver's license and driving privileges under the habitual offender statute. *See* S.C. Code Ann. § 56-1-1020 (Supp. 2016). Appellant asserts, however, that the imposition of the license suspension more than two years after the triggering conviction violates the principles of fairness and due process. "A person's interest in his driver's license is property that a state may not take away without satisfying the requirements of due process. Due process is violated when a party is denied fundamental fairness." *Hipp v. S.C. Dep't of Motor Vehicles*, 381 S.C. 323, 325, 673 S.E.2d 416, 417 (2009). In response, the Department argues Appellant failed to show any injury or prejudice that violates due process when imposing the suspension belatedly in January 2018 as opposed to applying the suspension in January 2016 when the triggering conviction occurred.

This issue has been addressed by the South Carolina Supreme Court and Court of Appeals on multiple occasions. In *State v. Chavis*, the Supreme Court found that the suspension of Chavis' license after a one-year delay did not violate due process when Chavis failed to present evidence to show that he suffered any prejudice as a result of the delay and had simply kept quiet and continued to drive in the hope that his suspension would be overlooked. 261 S.C. 408, 200 S.E.2d 390 (1973). Noting that the Department was not at fault in the delay, the Supreme Court held that an unexplained delay on the part of reporting officials unaccompanied by a showing of real prejudice to the driver was insufficient to warrant relief from the imposition of the suspension. *Id.* at 412, 200 S.E.2d at 392. However, while Chavis was not granted relief, the Supreme Court stated "there might 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...." *Id.* at 411, 200 S.E.2d at 391.

Addressing the same issue thirty years later, the Supreme Court found that a twelve-year delay in imposing the suspension of a driver's license constituted fundamental unfairness resulting in a violation of due process in *Hipp v. S.C. Dep't of Motor Vehicles*, 381 S.C. 323, 673 S.E.2d 416, (2009). While refraining from establishing a bright line rule as to what length of time would

constitute the "long delay" envisioned in *Chavis*, the Supreme Court did note that neither Hipp nor the SCDMV was at fault for the delay. *Id.* at 325, 673 S.E.2d at 417.

More recently, the Court of Appeals held that a five-year delay in the imposition of a suspension after a triggering DUI conviction also fell under the circumstances envisioned by the Supreme Court in *Chavis* and constituted a denial of fundamental fairness in violation of due process. In *Wilson v. S.C. Dep't of Motor Vehicles*, the Court of Appeals found that Wilson demonstrated a high likelihood of injury or potential prejudice if the DMV suspended her license after a five-year delay, including the possible loss of employment leading to the inability to pay two mortgages. 419 S.C. 203, 208, 796 S.E.2d 541, 543 (2017). Wilson testified that after her DUI conviction, she spent two years looking for work and was required to travel as part of the employment she eventually found as an office manager. *Id.* Wilson further testified that because of the license suspension she might lose her job and the loss of steady income would cause severe economic hardship since she had two mortgage payments. *Id.* Based on those statements, the Court found the record contained "evidence of specific injuries and prejudice, which were absent from *Chavis*, that Wilson believed would result from a suspension five years after her conviction." *Id.* Thus, the Court of Appeals found Wilson had "demonstrated a high likelihood of injury or potential prejudice if her driver's license [was] suspended." *Id.* Additionally, neither party was at fault for the delay. *Id.* The Court of Appeals also noted that Wilson did not simply "keep quiet" about her suspension, unlike Chavis, and actively sought to resolve her suspension by contacting the DMV shortly after her conviction to find out how to obtain a restricted license in lieu of the suspension. *Id.* at 208-09, 796 S.E.2d at 543-44. Concluding that sufficient evidence of prejudice existed in the record and that neither party was at fault for the delay, the Court held that the imposition of the suspension after a five-year delay was a denial of fundamental fairness in violation of due process. *Id.* at 209, 796 S.E.2d at 544.

Finally, the Court of Appeals also found that substantial evidence existed to support a finding by the ALC that a suspension after a six-year delay was fundamentally unfair in *Davis v. S.C. Dep't of Motor Vehicles*, 420 S.C. 98, 800 S.E.2d 493 (2017). First, the Court of Appeals agreed that Davis would suffer prejudice and injury since, by the time he was notified of his suspension six years after the triggering conviction, he had already paid reinstatement fees and met the DMV requirements for reinstatement and his license had, in fact, been reinstated for twenty months. *Id.* at 106-07, 800 S.E.2d at 497. The Court also noted that the six-year delay exceeded the total time

of Davis' five-year suspension had it been timely imposed. *Id.* Second, the Court of Appeals found that neither party was at fault for the delay. *Id.* at 107, 800 S.E.2d at 497. Citing its previous ruling, the Court of Appeals stated "[a]s in *Wilson*, evidence exists to support a finding Davis would suffer prejudice if his license were suspended, and neither he nor the DMV were at fault for the delay." *Id.* at 106, 800 S.E.2d at 497 (citing *Wilson*, 419 S.C. at 207-08, 796 S.E.2d at 543).

In the present matter, Hearing Officer Autry found the facts of Appellant's case distinguishable from those in both *Davis* and *Wilson*. The Final Order and Decision points out that Davis' license had been reinstated for twenty months before he received his notice of suspension. In comparison, Hearing Officer Autry found that Appellant's license had only been reinstated for just over one month after her previous habitual offender suspension ended in October 2017 and her license was reissued on November 13, 2017.[4] Additionally, the Final Order and Decision states that in *Davis*, the Court of Appeals found it "significant" that the six-year delay exceeded the total time of the five-year suspension, whereas the delay in Appellant's case was only two years. (Final Order and Decision, p. 8).[5] The Court finds that while Hearing Officer Autry may be correct in her findings on these two points of distinction, this comparison falls short of the analysis in *Davis*. There, although the Court of Appeals recognized that the delay exceeded the total time of the suspension, more importantly, the Court identified two major factors leading to the finding of fundamental unfairness in violation of due process.

First, the Court of Appeals found Davis would suffer prejudice and injury if his license were suspended because he had already paid the reinstatement fees, met the DMV's requirements for reinstatement, and his license had been reinstated for twenty months. While Appellant's license had not been reinstated for twenty months, the Final Order and Decision only compares the difference in the amount of time both drivers had their licenses back and fails to recognize that,

[4] The Hearing Officer calculates this one-month period to run from the date Appellant received her Amended Notice of Driving Status on December 14, 2017, after resolving the issues with the Georgia DMV until she was notified of the suspension on January 24, 2018.

[5] Appellant's second issue on appeal claims that upholding the ruling of the Hearing Officer would create a bright line rule that the delay in the imposition of the suspension would be fair anytime it does not exceed the time period of the suspension imposed. Appellant essentially argues that such a bright line rule goes against public policy by preventing an aggrieved driver from establishing fundamental unfairness in any case where the period of delay is less than the period of the suspension. However, the Court finds that the *Davis* decision only *noted* that the delay exceeded the time period of the suspension but set forth two other distinct deciding factors in its analysis. Therefore, the Court declines to separately address Appellant's argument on this issue as it is discussed above in the context of the first issue on appeal.

like Davis, Appellant also paid the reinstatement fees and met the DMV requirements for reinstatement, including obtaining SR-22 insurance and the payment of $1,000 in fines and fees to Georgia. Additionally, Appellant testified that had she known her license would be suspended again soon thereafter, she would not have spent so much time, effort, and money to get the short-lived reinstatement.

Second, in *Davis*, the Court of Appeals established that the other major factor leading to a finding of fundamental unfairness was that neither Davis nor the DMV was at fault for the delay. However, in the *Davis* comparison, the Final Order and Decision fails to recognize that the second factor considered by the Court of Appeals in *Davis* is also present and relevant in Appellant's case: neither party was at fault for the delay. Moreover, the Court of Appeals also established fault as a primary consideration in *Wilson*. 419 S.C. 203, 209, 796 S.E.2d 541, 545 (finding a due process violation "when sufficient evidence of prejudice exists in the record and neither party is at fault for the delay"). However, when comparing Appellant's circumstances to those set forth in *Wilson*, the Hearing Officer again ignored this fault factor altogether.

As to the remainder of the *Wilson* analysis undertaken in Appellant's case, the Court finds the Final Order and Decision to be affected by an error of law and to be clearly erroneous in view of the substantial evidence on the record. Hearing Officer Autry correctly stated that the Court of Appeals considered that it took Wilson two years to find a job after her DUI arrest and that she was expected to travel on behalf of her employer in her position as an office manager. Distinguishing Appellant's case from *Wilson*, Hearing Officer Autry found that unlike Wilson, Appellant had no "significant change in personal or professional circumstances in the two years between her conviction and the imposition of the suspension." (Final Order and Decision, p. 8). However, based upon Appellant's testimony and the Findings of Fact set forth in the Final Order and Decision, it is clear that Appellant did, in fact, have significant changes in both her personal and professional circumstances during the two-year delay.

Appellant testified that she got her job with the U.S. Postal Service in North Charleston in May 2016, approximately four to five months after her conviction in January 2016. At the time she got the job, she was living with a relative in North Charleston and could rely on others to get to and from work locally while her license was suspended under the habitual offender designation that ended in October 2017. Since that time, Appellant has had to move to Beaufort County and now

faces an approximate hour and a half commute to and from work each way. Appellant has tried to transfer to a similar job in Beaufort but, thus far, transfer has been unavailable. Appellant also presented evidence she is the sole caregiver for her children, ages two and three, who are in daycare while she is at work.

The Court finds that the addition of another child to the household, obtaining new employment, and moving to another county approximately 1.5 hours away from her place of employment do constitute significant changes in personal and professional circumstances. In the Final Order and Decision, all of these changes were acknowledged in the Findings of Fact but were later ignored in the Hearing Officer's comparison of Appellant's circumstances to the facts set forth in *Wilson*. Thus, despite the substantial evidence of significant changes in Appellant's circumstances to show injury and prejudice caused by the two-year delay, the Hearing Officer concluded to the contrary and found that Appellant presented no evidence of specific injuries and prejudice. That conclusion does not comport with the Findings of Fact contained in the Final Order and Decision and is clearly erroneous in view of the reliable, probative, and substantial evidence in the record.

Further, the Hearing Officer stated that "[w]hile Respondent testified that she will lose her job if unable to get back and forth to work, which would undoubtedly result in *some* economic hardship, Respondent also did not present specific evidence to show that she would suffer a *severe* economic hardship, as in *Wilson*, as a result. Therefore, based upon the evidence presented, I conclude that the imposition of the habitual offender suspension after a two-year delay would not be fundamentally unfair or constitute a violation of due process." (Final Order and Decision, p. 9) (emphasis added). The Court finds that in this conclusion, the Hearing Officer applied the wrong legal principle and, thus, committed an error of law.

The Court of Appeals noted that the record in *Wilson* contained evidence of specific injuries and prejudice, which were absent in *Chavis*,[6] that Wilson believed would result from the delayed suspension. *Id.* at 208, 796 S.E.2d at 543. Based on Wilson's statement that losing her job would cause severe economic hardship because of the inability to pay her two mortgages, the Court of Appeals found "Wilson demonstrated a high likelihood of injury or potential prejudice if her

[6] Specifically, in *State v. Chavis* the Supreme Court noted there was no inference or indication in the record that Chavis suffered any prejudice as a result of the one-year delay and held that a driver is not entitled to relief when an unexplained delay is unaccompanied by a showing of real prejudice to the driver. 261 S.C. 408, 411-12, 200 S.E.2d 390, 391-92 (1973).

driver's license [was] suspended." *Id.* The Court then concluded by finding a denial of fundamental fairness in violation of due process "when sufficient evidence of prejudice exists in the record and neither party is at fault for the delay." *Id.* at 209, 796 S.E.2d at 544. Thus, the findings by the Court of Appeals in *Wilson* do not establish that Appellant must present specific evidence to show she would suffer *severe* economic hardship as stated in the Final Order and Decision.

Like Wilson, Appellant testified her inability to make the commute to work as a result of the delayed suspension would cause her to lose the job she has held for approximately three years. Appellant also testified she is the single mother of two young children who attend day care while she works. Hearing Officer Autry was correct in her finding that the loss of Appellant's job "would undoubtedly result in *some* economic hardship."[7] (emphasis added). However, in concluding that Appellant failed to present specific evidence that she would suffer a "severe" economic hardship, as in *Wilson*, the Hearing Officer required a heightened showing of injury and prejudice not established in any case law addressing this issue.

The Court of Appeals in *Wilson* did not adopt a level of economic hardship as the requisite evidentiary standard but, instead, found "Wilson demonstrated a high likelihood of injury or potential prejudice." *Id.* at 208, 796 S.E.2d at 543. Moreover, in *Chavis*, the only language used by the Supreme Court that relates in any way to a degree of injury or prejudice was that Chavis failed to make any showing of "real prejudice" and the record contained no inference or indication that he had suffered any prejudice as a result of the delayed suspension. *State v. Chavis*, 261 S.C. 408, 411-12, 200 S.E.2d 390, 391-92 (1973). Finally, the Court of Appeals in *Davis* only found that Davis would suffer "prejudice and injury" if his license was suspended after he paid the reinstatement fees and completed the requirements to regain his license. *Davis v. S.C. Dep't of Motor Vehicles*, 420 S.C. 98, 106, 800 S.E.2d 493, 497 (2017).

In collectively analyzing the cases addressing this issue, it is clear no specified level of economic hardship, degree of injury, or amount of prejudice must be shown in order to establish fundamental unfairness violating due process. Appellant must only show that the delay would result in injury and prejudice. Therefore, in concluding that Appellant failed to present "specific evidence that she

[7] The Court finds the record contains substantial evidence that the loss of Appellant's job with benefits due to the delayed imposition of the suspension after having already established a residence that requires a lengthy commute (and the license necessary to accomplish that commute) would result in *significant* economic hardship for Appellant and her family.

would suffer a severe economic hardship," Hearing Officer Autry applied a heightened standard of injury and prejudice and based her decision on an incorrect legal principle resulting in an error of law.

However, while the Court finds the imposition of the delayed suspension does result in fundamental unfairness under the circumstances presented in Appellant's case, the Court is reluctant to rule in a manner which would reward Appellant based on an error not attributable to either party. Additionally, the Court also recognizes the record contains undisputed evidence establishing that Appellant committed multiple violations of the motor vehicle laws subjecting herself to a five-year habitual offender suspension of her driver's license and driving privileges in South Carolina. In fact, if the Department had received proper notice of Appellant's triggering DUS conviction within the statutorily prescribed 5-day period and timely apprised Appellant of her ensuing suspension, Appellant's driver's license and privilege to drive would remain under suspension until January 2021.[8] In this respect, the Court is mindful that the two-year delay in this case is significantly shorter than those discussed in the previous line of cases. Of note, as of the date of this Order, Appellant would still have just under one year left to serve the remainder of her suspension had it been imposed timely, whereas Davis and Wilson would have completed their suspensions by the time the Department sought to enforce them.

Thus, in this instance, the Court concludes it proper to modify the suspension sustained by OMVH as follows. Congruent with the terms of a timely suspension, Appellant's driver's license and full driving privileges shall remain suspended until January 18, 2021, five days after the fifth anniversary of the triggering conviction. However, to alleviate the most significant injury and prejudice suffered by Appellant as a result of the delay, pursuant to S.C. Code Ann. § 56-1-170 (2016), the Department shall issue a special route-restricted driver's license to Appellant to allow her to operate a motor vehicle to and from her residence in Beaufort County to her place of employment and to and from her monthly National Guard duty in Hopkins, South Carolina.[9] The Department shall waive the $100 fee associated with the issuance of the restricted driver's license and, in order to establish restrictions on the times and routes of travel, Appellant shall promptly

[8] Had Appellant's suspension been imposed timely, she would have served approximately one year and ten months of the suspension concurrent with her previous habitual offender suspension ending in October 2017. (*See* ROA, p. 40).

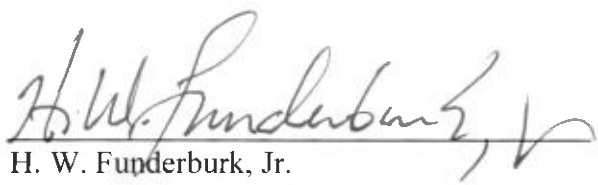
[9] As part of the route restriction, Appellant shall also be permitted to pick up and drop off her children at school or daycare during her daily commute to work.

notify the Department of her current address along with: (1) her place of employment and work hours; (2) the hours and location(s) from which she will be picking up and dropping off her children as part of her daily commute to work; and, (3) the location and dates of her National Guard duty. Appellant shall also immediately notify the Department of any changes in her residence, employment, or any other changes affecting the routes and times of necessary travel to allow the Department to establish new restrictions pursuant to § 56-1-170. Upon serving the remainder of her suspension ending on January 18, 2021, the Department shall reinstate Appellant's driving privileges in full and reissue her driver's license waiving all fees and costs associated therewith.

It is therefore,

ORDERED that the suspension of Appellant's driver's license and driving privileges is **AFFIRMED** as **MODIFIED**.

AND IT IS SO ORDERED.



February 6, 2020
Columbia, South Carolina

H. W. Funderburk, Jr.
Administrative Law Judge

CERTIFICATE OF SERVICE

Docket No. 19-ALJ-21-0158-AP

I, Elizabeth A. Perkins, hereby certify that I have this date served the **FINAL ORDER** in this case 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 parties and their attorneys.

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