

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

TRAVIS WALLER,

Petitioner,

Case No.: 23-CA-1513

Division: C

vs.

DEPARTMENT OF HIGHWAY SAFETY
AND MOTOR VEHICLES,

Respondent.

**ORDER GRANTING PETITION FOR WRIT OF CERTIORARI AND
QUASHING AMENDED ORDER DENYING EARLY REINSTATEMENT**

THIS MATTER is before the Court on the Petition for Writ of Certiorari (“Petition”) filed by Petitioner, Travis Glenn Waller (“Petitioner” or “Waller”), proceeding *pro se*. The Court has jurisdiction. See Art. V, § 5(b), Fla. Const.; § Section 322.31, Fla. Stat.; Fla. R. App. P. 9.030(c)(3).

The Court has carefully reviewed the Petition, the response filed by Respondent, Department of Highway Safety and Motor Vehicles (“Respondent” or “Department”), the parties’ respective appendices, the record, and applicable law. Because, among other things, the Hearing Officer departed from the essential requirements of law in rendering his decision, the Petition is granted, and the order that denied Waller early reinstatement of certain driving privileges through the issuance of a hardship license is quashed.

I. Factual and Procedural Background.¹

Between 2016 and 2019, Waller accumulated three convictions for driving a motor vehicle while his license was suspended. (Resp. App., Ex. 1.) As a result, Waller was designated a habitual traffic offender under Florida Statute Section 322.264(1)(d). This designation resulted in Waller losing his driving privileges for a period of five years beginning on December 24, 2019. *See* § 322.27(5)(a), Fla. Stat (2023).²

One night in November 2021—close to two years after Waller’s license was revoked based upon the habitual traffic offender designation—Waller drove to Wal-Mart to get a COVID test. (Tr. p. 7.) He was pulled over and cited for driving with a suspended license. (*Id.*, Resp. App., Ex. 1.)

Another year went by. By this time, Waller had learned that he could apply for a “hardship license” that would allow him to drive on a limited basis for employment and other statutorily-authorized purposes. To this end, Waller filed an Application for an Administrative Hearing pursuant to Florida Statute 322.271(b). (Resp. App., Ex. 2).

The Application advised Waller that—in order to receive hardship consideration—he must first enroll in or complete the applicable driver training course pursuant to Florida Statute Section 322.271(2)(b). Waller did so by

¹ References to the documents contained in the parties’ appendices will be referred to as “Pet. App.” and “Resp. App.” References to “Tr.” are to the transcript of Waller’s administrative hearing.

² Section 322.27(5)(a) provides, in pertinent part:

(a) The department shall revoke the license of any person designated a habitual offender, as set forth in s. 322.264, and such person is not eligible to be relicensed for a minimum of 5 years from the date of revocation, except as provided for in s. 322.271.

completing—before the hearing—a 12-hour Advanced Driver’s Improvement course sponsored by the American Safety Council that met the statutory requirements under Florida Statute Section 322.291. (Pet. App., Ex. 5.)

A 10-minute, telephonic hearing on Waller’s request for a hardship license was held on December 19, 2022 before Hearing Officer Tevnald Ulysse (“Hearing Officer”) with the Bureau of Administrative Reviews. The Hearing Officer began by advising Waller that Florida Statute Section 322.271 gives the Department the authority to conduct the hardship hearing, and further advised Waller that the hearing would allow Waller and the Department “the opportunity to evaluate [Waller’s] driving record and to determine whether or not a hardship license should be granted.” (Tr., p. 3.) Waller, who appeared *pro se*, was then placed under oath.

The Hearing Officer explained to Waller that

at this time in front of me I do have your driving record. We are going to go ahead and briefly discuss exactly what it is that I’m seeing from there and we’ll move forward with the rest of this hearing.

(Tr., pp. 4-5.)

In conducting his review of Waller’s driver record, the Hearing Officer identified several violations going back more than two decades, including speeding and other violations for which adjudication was withheld. (Tr., pp. 5-6, 14-15; Resp. App., Ex. 1.) When asked whether he had any violations, conditions, revocations, or suspensions that had not been mentioned, Waller responded, “Not that I’m aware of. Not that I can think of.” (Tr., p. 7.) It is apparent from the transcript that Waller did not have access to the driving record from which the Hearing Officer was reading. Further, the transcript of the hearing does not

indicate that any document was submitted into evidence or otherwise placed in the record.³

Upon further questioning, Waller confirmed his understanding that he had been designated a habitual traffic offender based upon three driving while license suspended violations. Waller characterized these violations as “without knowledge;” meaning, Waller contends that, at the relevant times, he was not aware that his license has been suspended for failure to meet his child-support obligations.⁴

In this vein, Waller offered testimony that, following a difficult divorce, everything “went downhill” and he experienced depression for which he received therapy. He fell behind in his child-support obligations as a result. In the end, Waller took personal responsibility for placing himself in the position of having his license suspended. Waller further acknowledged that he did, in fact, drive on November 5, 2021, knowing that his license was suspended.

³ Upon direction from the Court, the Department included in its appendix a copy of the driver record relied upon by the Hearing Officer. (Resp. App., Ex. 1.)

⁴ Waller’s driver record indicates that the initial suspension of his driving privileges stemmed from a violation of Florida Statute Section 322.058. That section provides:

322.058. Suspension of driving privilege due to support delinquency; reinstatement.—

(1) When the department receives notice from the Title IV-D agency or depository or the clerk of the court that any person licensed to operate a motor vehicle in the State of Florida under the provisions of this chapter has a delinquent support obligation or has failed to comply with a subpoena, order to appear, order to show cause, or similar order, the department shall suspend the driver license of the person named in the notice and the registration of all motor vehicles owned by that person.

The Hearing Officer asked Waller about his need for a hardship license. Waller explained that the loss of his license affected his earning capacity because he was forced to take a “serious pay cut” due to his inability to drive. At the time of the hearing, Waller was working as a landscaper making \$16.00 per hour, and was utilizing a bicycle in lieu of driving. Waller further explained that his inability to drive affects his ability to spend time with his two children, for which he has a 50-50 timesharing parenting plan in place. He noted, for example, that he is unable to drive them back and forth to school.

Finally, Waller stated that the loss of his license had been a humbling experience from which he learned, and he expects not to put himself in the same position again. He would do this, he said, by following all safety and traffic laws, and remaining current in paying child support, which amounts to \$185.00 weekly. Waller testified that he was requesting a license only to go to work and to church, where he volunteers. (Tr., pp. 9-11.)

At the conclusion of the hearing, the Hearing Officer told Waller that he would “take [Waller’s] testimony, along with [his] driving record, along with this information, all into consideration” and would render a decision. On December 28, 2022, Officer Ulysse issued an “Amended⁵ Final Order Denying Early Reinstatement,” which found that Waller was “not eligible for hardship consideration.” (Resp. App., Ex. 3.) Waller timely filed the instant Petition.⁶

II. Procedure Surrounding the Issuance of a “Hardship License.”

The Legislature has enacted a regulatory regime governing driver licenses intended to “[p]rovide maximum safety for all persons who travel or otherwise use

⁵ The Court notes that the original order was not made part of the record; it is therefore unclear why it was in need of amendment.

⁶ The Petition was first pending in the Second District of Appeal, Case No. 2D23-0169. It was transferred to this Court by order dated February 2, 2023.

the public highways of the state.” § 322.42, Fla. Stat. (2023). To this end, the law provides for the deprivation of a driving privilege for those “persons who, by their conduct and record, have demonstrated their indifference for the safety and welfare of others and their disrespect for the laws of the state.” § 322.263, Fla. Stat. (2023). Like Waller here, a person may be designated a habitual traffic offender for reasons enumerated by statute, and encounter the loss of driving privileges for a specified period of time.

The Legislature has also empowered the Department—in its discretion—to issue a what is colloquially known as a “hardship license” to persons who have lost their driving privilege, provided certain conditions are met. *See* § 322.271(4), Fla. Stat. (2023). A person whose driving privilege has been revoked under Section 322.27(5)—as Waller’s was here—may petition for such a license upon expiration of 12 months from the date of revocation. *See* § 322.271(1)(b), Fla. Stat. (2023).

Section 322.271(b) provides for a hearing, pursuant to chapter 120, in which a hearing officer will determine whether the driving privilege shall be reinstated on a restricted basis solely for business or employment purposes.⁷ At the hearing, a petitioner may show, among other things, that the license revocation causes a

⁷ These terms are further defined in Section 322.271(c) as follows:

For the purposes of this section, the term:

1. “A driving privilege restricted to business purposes only” means a driving privilege that is limited to any driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and for medical purposes.
2. “A driving privilege restricted to employment purposes only” means a driving privilege that is limited to driving to and from work and any necessary on-the-job driving required by an employer or occupation.

serious hardship and precludes the applicant from carrying out his normal business occupation, trade, or employment and, further, that the use of his license in the normal course of his business is necessary to the proper support of himself and his family. *See* § 322.271(2), Fla. Stat. (2023). The Department’s role, as provided by statute, is to consider the applicant’s “qualification, fitness, and need to drive,” and then exercise discretion with respect to reinstatement. *See* § 322.271(4)(b), Fla. Stat. (2023).

III. Standard of Review.

When conducting certiorari review, the court is limited to determining whether procedural due process is accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent, substantial evidence. *Wiggins v. Dep’t of Highway Safety & Motor Vehicles*, 209 So. 3d 1165, 1170 (Fla. 2017); *Moore v. Dep’t of Highway Safety & Motor Vehicles*, 169 So. 3d 216, 219 (Fla. 2d DCA 2015). A court may not reweigh the evidence contained in the record; *see Dep’t of Highway Safety & Motor Vehicles v. Rose*, 105 So. 3d 22, 24 (Fla. 2d DCA 2012), nor may it substitute its judgment with respect to the determination reached; *see Dept. of Highway Safety & Motor Vehicles v. Stenmark*, 941 So. 2d 1247, 1249 (Fla. 2d DCA 2006).⁸

IV. Analysis.

Driving is not a right, but a “valuable privilege” that may be lost through suspension or revocation for failing to comply with certain conditions.⁹ When that

⁸ In this vein, the Court notes that Waller recently submitted a letter from his employer in support of his Petition. As it was not part of the record below, such material cannot be considered by the Court in connection with the instant Petition.

⁹ *See Thornhill v. Kirkman*, 62 So.2d 740, 742 (Fla. 1953); *Dep’t of Highway Safety & Motor Vehicles v. Degrossi*, 680 So. 2d 1093, 1094 (Fla. 3d DCA 1996).

privilege is lost, substantial and personal hardship may result. *See, e.g., Bolware v. State*, 995 So. 2d 268, 275 (Fla. 2008) (citing cases).¹⁰ While the Legislature has passed laws that result in the deprivation of the driving privilege for habitual and other serious traffic law offenders, it also saw fit to provide a mechanism to those who have lost that privilege to apply for a hardship license that would permit one to drive on a limited basis. That is what Waller did here, but his application was denied based upon the finding that he was “not eligible for hardship consideration.” This was error, as nothing in the statutory provisions that governs Waller’s case would render him ineligible on the facts presented.

In its response, the Department essentially concedes that Waller was in fact eligible to be considered for early reinstatement of his driving privilege by way of hardship license. (Resp., p. 4.) But it instead argues that the Hearing Officer’s decision should be upheld because the law affords a hearing officer broad discretion in determining whether to grant a hardship license.

The Department misses the mark. This is not a case like those cited by the Department in which the hearing officer recognized that the petitioner was *eligible*

¹⁰ Dissenting in *Bolware*, Justice Quince observed:

In today’s society, it is difficult, if not impossible in some locales, to travel from place to place without a driver’s license. In many areas there is inadequate or no public transportation. We have come to rely more and more on the use of personal motor vehicles to get to work, to shop, to attend recreational activities, and to attend many other activities that are a part of daily life. It is sometimes virtually impossible to perform the ordinary functions of life without ready access to a motor vehicle. Thus, having a driver’s license is often not just a desire but a necessity.

Id. at 285. *See also Bell v. Burson*, 402 U.S. 535, 539 (1971) (“Once licenses are issued . . . their continued possession may become essential in the pursuit of a livelihood.”)

for hardship consideration, but for the various reasons indicated, a determination was made to deny the application based upon the particular facts and circumstances presented.¹¹ Whether Waller is eligible for hardship consideration under the statute is a markedly different question from whether, as a person eligible for relief, Waller's application should have been granted or denied in the exercise of the Hearing Officer's discretion. Here, the only conclusion that may be drawn from the Hearing Officer's decision—which is devoid of any citation to statutory or other authority—is that the Hearing Officer erroneously concluded that Waller was statutorily ineligible for hardship consideration in the first instance.

Max Nieto v. Dep't of Highway Safety & Motor Vehicles, Fla. 6th Jud. Cir. Ct., Pinellas County, Case No. 11-222 AP, July 11, 2012—a decision not cited by the Department—is both persuasive and on-point. There, as here, the hearing officer determined that the petitioner was not eligible for hardship consideration even though the statute provided otherwise. Observing that the hearing officer apparently applied the wrong statutory provision to the petitioner's case, the circuit

¹¹ See, e.g., *Bosecker v. Dep't of Highway Safety & Motor Vehicles*, 24 Fla. L. Weekly Supp. 404a (Fla. 6th Cir. Ct. June 14, 2016) (record evidence supported hearing officer's discretionary decision to deny early reinstatement); *Brown v. Dep't of Highway Safety & Motor Vehicles*, 29 Fla. L. Weekly Supp. 697a (Fla. 2nd Cir. Ct. Dec. 6, 2021) (hearing officer declined to recommend early reinstatement where petitioner received a citation for driving while his license was suspended one month before the hearing); *Sawyer v. Dep't of Highway Safety & Motor Vehicles*, 30 Fla. L. Weekly Supp. 2a (Fla. 5th Cir. Ct. Feb. 14, 2022) (hearing officer's discretionary decision supported by competent, substantial evidence). Only *Ware v. Dep't of Highway Safety & Motor Vehicles*, 11 Fla. L. Weekly Supp. 791a (Fla. 12th Cir. Ct. Apr. 12, 2004) arguably supports the Department's position. But *Ware* is distinguishable for a number of reasons, most notably because the hearing officer's additional findings were supported by the record evidence. That is not the case here, as further discussed below.

court reversed and quashed the decision accordingly. The same relief is warranted here.¹²

In addition to the departure from the essential requirements of law, the record reflects a lack of fairness in some respects, which raises due process concerns. For example, Waller—who appeared *pro se*—apparently did not have access to the driver record from which the Hearing Officer was reading, which may have affected Waller’s ability to point out mitigating parts of the record, such as the withholding of adjudication for a number of historical violations included in the Hearing Officer’s review.

But apart from that, the Hearing Officer’s primary focus on Waller’s driver record—which took into account past violations from decades ago—seems at odds with what the statute requires. More specifically, the statute requires consideration of Waller’s “qualification, fitness, and need to drive.” It makes no mention of the review of one’s driver record, nor does it suggest—as the Hearing Officer indicated at the hearing—that the determination as to whether a hardship license should be granted essentially hinges upon an evaluation of that record.

The Court recognizes—as the Department points out—that a hearing officer is entitled to broad discretion in making the determination as to whether to grant a hardship license, and this may include consideration of one’s driver record. But due process also requires the application of the correct legal standards in the exercise of discretion. *See, e.g., Branton v. State*, 187 So. 3d 382, 385 (Fla. 5th DCA 2016). The record reflects a number of shortcomings in this regard.

¹² *See Haines City Community Development v. Heggs*, 658 So. 2d 523, 527 (Fla. 1995); *Kohl’s Dep’t Store, Inc. v. Young*, 335 So. 3d 210, 212 (Fla. 5th DCA 2022) (trial court departed from the essential requirements of law when it applied the incorrect legal standard).

Finally, for the reasons discussed above, the Court finds that the Hearing Officer's decision is not supported by competent, substantial evidence with respect to the determination that Waller was not eligible for hardship consideration. Moreover, the record does not support the Hearing Officer's finding that Waller engaged in "continuous driving." The record shows that Waller drove one time in the three years between the time he was designated a habitual traffic offender and the time of the hearing. Given that the common, dictionary definition of "continuous" means "without pause or interruption,"¹³ it cannot be said that competent, substantial evidence in the record supports the Hearing Officer's finding that Waller's driving was "continuous." In addition, the ostensible engrafting of a "continuous driving" standard onto the statute further compounded the errors surrounding the Hearing Officer's decision in this case.

V. Conclusion.

Based on the foregoing, the Petition is **GRANTED** and the Amended Order Denying Early Reinstatement is **QUASHED**. The Hearing Officer is directed to enter an appropriate order consistent with the requirements of the statute and this Order. Given the time that has elapsed since the filing of the Petition, the Court encourages the Department to expedite the handling of this matter as reasonably practicable, so that Petitioner may have a meaningful opportunity to drive for business and employment purposes as the statute permits.¹⁴

¹³ *Continuous*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/continuous>.

¹⁴ It bears noting that close to 15,000 cases have been filed in the Civil Division alone since the time Waller filed his Petition. Adjudications of extraordinary petitions—in addition to the Court's substantial civil docket—take time and judicial resources while parties await their decisions. Given the decision here, the interests of justice would certainly be furthered by the Department advancing the resolution of this matter on remand.

DONE and **ORDERED** in Chambers in Tampa, Hillsborough County, Florida, on the _____ of December, 2023.

23-CA-001513 12/1/2023 10:14:15 AM

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HONORABLE MELISSA M. POLO
CIRCUIT JUDGE

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