

IN THE THIRTEENTH JUDICIAL CIRCUIT
FOR THE STATE OF FLORIDA
GENERAL CIVIL DIVISION

BENITO BERRIOS,
Petitioner,

CASE NO.:20-CA-8270

vs.

DIVISION: J

DEPARTMENT OF HIGHWAY SAFETY
AND MOTOR VEHICLES,
Respondent.

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

This case is before the court on Benito Berrios's Petition for Writ of Certiorari filed October 21, 2020. The petition, which seeks review of the Department's September 21, 2020, final order, is timely, and this court has jurisdiction. Rule 9.100(c)(2), Fla. R. App. P.; Rule 9.030(c)(3), Fla. R. App. P.; §322.31, Fla. Stat. Petitioner contends that the hearing officer departed from the essential requirements of law when he applied the requirements in section 322.2615, Florida Statutes, rather than those in 322.64 to uphold the suspension of Petitioner's driving privilege. Because the hearing officer set aside the disqualification of Petitioner's driving privilege under section 322.64 (commercial driver's license, or CDL), and because a refusal by a CDL holder does not preclude the suspension of a person's driving privilege under section 322.2615, the Department's suspension of Petitioner's driving privilege under section 322.2615 will be upheld and the petition denied.

JURISDICTION

Jurisdiction to review a decision of the Department upholding or invalidating a suspension is by petition for writ of certiorari to the circuit court in the county in which formal or informal review was held. § 322.31, Fla. Stat. Therefore, this court has jurisdiction to review the decision upholding the suspension of Petitioner's driving privilege.

FACTS

Petitioner does not dispute the lawfulness of the arrest. Petitioner was stopped after law enforcement observed his pickup truck cross the fog line and drive into the grass, then over correct and swerve into the opposite lane. Petitioner did this about three times before he was stopped. The law enforcement officer who initiated the stop observed physical signs of intoxication. In addition, he observed an empty can of beer on the passenger floor and a bottle of Crown Royal Vanilla in the passenger seat. After refusing to perform field sobriety exercises, Petitioner was arrested on suspicion of driving under the influence. Petitioner subsequently refused both a breath and urine test. At the time of his arrest, Petitioner held a Class A Commercial Driver's License (CDL) and had a previous DUI conviction. Because he refused a breath and urine test, his CDL privilege was disqualified and his regular driving privilege was administratively suspended in accordance with sections 322.64 and 322.2615, Florida Statutes, respectively. Petitioner requested a formal review of both actions, and an evidentiary hearing before a hearing officer was held September 10, 2020. The hearing officer issued a decision September 21, 2020, sustaining the suspension of Petitioner's driving privilege and setting aside the disqualification of his CDL.

STANDARD OF REVIEW

When a person's driving privileges are suspended as the result of refusing to submit to a test to determine his or her blood alcohol level, the administrative hearing officer is to determine whether the following elements have been established by a preponderance of the evidence: 1. whether the law enforcement officer had probable cause to believe that the person whose license was suspended was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances; 2. whether the person whose license was suspended refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer; 3. whether the person whose license was suspended was told that if he or she refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months. See §322.2615(7)(b)1-3, Fla. Stat.

When a person's CDL is disqualified for refusing to submit to a breath, and, in this case, a urine test, the hearing officer must determine the same elements as set forth above. The difference is that the CDL holder must have been driving or in actual physical control of a *commercial* motor vehicle at the time. §322.64(7)(b), Fla. Stat. In addition, the CDL holder must be told that he or she would be disqualified from operating a commercial motor vehicle for one year, or, if previously disqualified under the statute, permanently. §322.64(7)(b)(3).

This court reviews an administrative decision to determine whether Petitioner received due process, whether competent, substantial evidence supports the decision, and whether the decision departs from the essential requirements of law. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). It is the hearing officer's responsibility as trier of fact to weigh the record evidence, assess the credibility of the witnesses, resolve any conflicts in the evidence, and make findings of fact. *Dep't of Highway Safety & Motor Vehicles v. Allen*, 539 So. 2d 20, 21 (Fla. 5th DCA 1989).

DISCUSSION

Petitioner's only argument in this proceeding is that the decision to uphold the suspension of Petitioner's driving privilege departs from the essential requirements of law because it applies the requirements in section 322.2615, Florida Statutes, which pertains to the regular driving privilege, rather than those in 322.64, which governs CDLs. This argument is without merit. The order upholding the suspension found evidentiary support for the conclusion that there was probable cause to find that Petitioner was operating a motor vehicle in this state while under the influence of alcohol. Moreover, Petitioner was read implied consent and refused requests for either a breath or urine test. What is admittedly lacking in the record is any evidence that Petitioner was 1) operating a *commercial* motor vehicle and 2) that he was warned of the possible disqualification of his CDL privilege in accordance with section 322.64. The hearing officer's invalidation of the initial CDL disqualification concedes the lack of evidence on this point. Even if Petitioner were operating a commercial vehicle such that his CDL privilege could be disqualified, section 322.24(15) is clear that it would not preclude suspension under section 322.2615. But it does not follow that because his

CDL privilege remains unaffected that he is somehow immunized against suspension of his regular driving privilege.

Petition DENIED.

ORDERED in Tampa, Hillsborough County, Florida, on the date imprinted with the Judge's signature.

Electronically Conformed 6/23/2021

Rex Barbas

REX M. BARBAS, CIRCUIT JUDGE

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