

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

SEAN SMITH,
Petitioner,

CASE NO.:20-CA-5630

vs.

DIVISION: F

DEPARTMENT OF HIGHWAY SAFETY
AND MOTOR VEHICLES,
Respondent.

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

THIS MATTER is before the Court on a Petition for Writ of Certiorari filed July 13, 2020. Petitioner asks this Court to quash the order denying early reinstatement of his driving privilege on a hardship basis arguing that the record lacks competent, substantial evidence to support the denial because the July 17, 2019, citation issued to Petitioner for leaving the scene of an accident—fewer than 12 months before he sought hardship reinstatement—was dismissed. Petitioner contends that the dismissal of the citation suggests a lack of competent, substantial evidence that he had driven while his license was revoked. A determination of whether evidence supports Petitioner’s argument on this point is unnecessary, however. Petitioner’s admission that he may have consumed alcohol within 12 months of seeking reinstatement in violation of section 322.271(2)(c), is, by itself,

competent, substantial evidence to support the denial of reinstatement. Accordingly, the petition must be denied.

In the lower tribunal, the purpose of the hardship hearing is to investigate and determine a person's "qualification, fitness, and need to drive." § 322.271(1)(b), Fla. Stat. If eligible, the hearing officer may reinstate the driving privilege on a restricted basis solely for business or employment purposes. *Id.* On review in certiorari, circuit courts must determine (1) whether procedural due process was accorded; (2) whether the essential requirements of the law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence." *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). Petitioner does not argue, and this Court does not find, a denial of due process in the underlying proceeding. The transcript reflects that Petitioner had notice and an opportunity to be heard and participated in the underlying proceeding.

Petitioner's driving privileges were revoked effective June 28, 2018, for sustaining two convictions for driving under the influence (DUI) within five years. On June 11, 2020, a hearing was held on Petitioner's application for hardship reinstatement of his driving privilege. Petitioner testified as to his need for hardship driving privileges, what he learned in DUI school, and

answered questions as to when he last drove a motor vehicle and consumed alcohol. Section 322.271(2)(c), Florida Statutes, mandates that "...the department shall require such persons upon reinstatement to have not driven *and* to have been drug free for *at least* 12 months immediately before the reinstatement...".¹

Although resolution of this issue is not necessary to support the decision, the Court finds noteworthy that Petitioner answered vaguely when questioned as to when Petitioner last operated a motor vehicle. He answered "the night I got arrested." He did not provide a specific date. Though one might assume he meant October 4, 2017 (his second DUI), his driving record reflects that he was cited for leaving the scene of an accident during the revocation period on July 17, 2019, less than a year before he applied for reinstatement. The circumstances that led to the issuance of the citation are not part of the record. The charge for leaving the scene was ultimately dropped for reasons that are not explained.

When asked the last time Petitioner consumed alcohol, he again responded somewhat vaguely, that it had been 11-and-a-half to 12 months

¹ For purposes of section 322.271, alcohol is a drug. *Dept. of Highway Safety and Motor Vehicles v. Abbey*, 745 So. 2d 1024, 1025-26 (Fla. 2d DCA 1999); *Dept. of Highway Safety and Motor Vehicles v. Chakrin*, 304 So. 3d 822, 829 (Fla. 2d DCA 2020).

before the hearing. Based on the totality of Petitioner's testimony, the hearing officer denied reinstatement. Petitioner argues that the fact that the charge for leaving the scene of an accident in 2019 was dropped leaves no competent, substantial evidence to sustain the denial of the hardship reinstatement. This is incorrect. Petitioner's testimony as to when he last consumed alcohol did not confirm that he had abstained for even the minimum period required for hardship reinstatement pursuant to section 322.271(2)(c). This alone provided the hearing officer competent, substantial evidence to support denying the reinstatement.

It is therefore ORDERED that the petition is **DENIED** in Tampa, Hillsborough County, Florida, on the date imprinted with the Judge's signature.

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Jennifer Gabbard, CIRCUIT JUDGE

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