

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO.: 2021-AP-000006-O

EVELIO SALVADOR ONGAY PEREZ,

Petitioner,

v.

DEPARTMENT OF HIGHWAY SAFETY
AND MOTOR VEHICLES,

Respondent.

Petition for Writ of Certiorari
from the decision of the Department
of Highway Safety and Motor Vehicles
Shavonya Poole, Hearing Officer.

Andrew B. Greenlee, Esquire, for Petitioner.

Elana J. Jones, Esquire, for Respondent.

Before KRAYNICK, CARSTEN, and YOUNG, J.J.

Petitioner seeks review of the Final Order issued by a hearing officer of the Department of Highway Safety and Motor Vehicles (“DHSMV”) which affirmed an order suspending Petitioner’s driving privilege for knowingly having been a party to obtaining a driver’s license by fraud, under section 322.12(5)(a), Florida Statutes (2021). The Court, having reviewed the Petition, the Response of DHSMV, and Petitioner’s Reply, and being otherwise advised of the premises, finds as follows:

STANDARD OF REVIEW

The Court’s certiorari review of the administrative decisions of a DHSMV hearing officer requires a three-prong determination. The Court must determine “whether (1) procedural due

process has been accorded; (2) the essential requirements of law have been observed; and (3) the administrative findings and judgment are supported by competent, substantial evidence.” *Nader v. Dep’t of Highway Safety & Motor Vehicles*, 87 So. 3d 712, 723 (Fla. 2012).

ANALYSIS

In the instant case, Petitioner does not question whether he was afforded procedural due process. Instead, Petitioner argues that DHSMV departed from the essential requirements of law by applying the incorrect statutory standard regarding Petitioner’s knowledge of the alleged fraudulent scheme. In addition, Petitioner argues that DHSMV’s decision was not supported by competent, substantial evidence. For the reasons discussed below, the Court finds that DHSMV did not depart from the essential requirements of law and that the hearing officer’s decision was supported by competent, substantial evidence.

Section 322.27(1)(d), Florida Statutes, authorizes DHSMV to suspend the driving license of any person who “has permitted an unlawful or fraudulent use of the license or identification card or has knowingly been a party to the obtaining of a license or identification card by fraud or misrepresentation.” Similarly, section 322.212 makes it unlawful for any person to “knowingly” possess or display an unlawfully issued driver license.

Essential Requirements of the Law

Petitioner concedes that the motorcycle endorsement card which he submitted to and was accepted by DHSMV was indeed counterfeit. However, Petitioner contends that he did not have actual knowledge that the card he submitted was counterfeit and argues that DHSMV erroneously concluded that he had constructive knowledge of the card’s counterfeit nature. In support of this argument, Petitioner points to two instances in the transcript of the hearing where counsel for DHSMV seems to invoke a constructive knowledge standard. First, counsel for Respondent stated, “any reasonably prudent person knew - - would have known or should have

known . . . that something was hinky.” Then again, a few paragraphs further down counsel states, “. . . this further shows that there is an ongoing source of fraud here, which again, Mr. Velez and Mr. Perez should have known.”

DHSMV contends that in spite of these references to a constructive knowledge standard, the hearing officer ultimately applied the correct actual knowledge standard. Petitioner argues in his Reply that the Court should conclude that based on the cited evidence, as well as DHSMV’s references to constructive knowledge at the hearing, that the hearing officer implicitly applied a constructive knowledge standard. *See Orix Capital Markets, LLC v. Park Avenue Assoc., Ltd.*, 881 So. 2d 646, 650 (Fla. 1st DCA 2004) (reversing denial of attorney’s fees where trial court “implicitly” applied “net judgment” rule to determine who was the prevailing party). In support of this argument, Petitioner states that while the final order makes no reference to a “constructive knowledge” standard it also does not make any reference to an “actual knowledge” standard. However, this is incorrect. The final order states that based on the “preponderance of the evidence, the Petitioner has knowingly been a party to the obtaining a diver license by fraud.” This conclusion explicitly and correctly invokes the appropriate “actual knowledge” standard. Accordingly, the Court finds that the hearing officer did not depart from the essential requirements of law by implicitly applying a constructive knowledge standard relating to the alleged fraud.

Competent, Substantial Evidence

The remaining question then is whether the hearing officer’s conclusion was based on competent, substantial evidence. The final order contains several findings of fact. The first of these facts are related to the testimony of Sergeant Nathan Stidham of Florida Highway Patrol who testified regarding his own investigation in which he contacted, paid, and received a counterfeit motorcycle endorsement for \$300 from a Mr. Santos Davila. The order connects

Sergeant Stidham's investigation to Petitioner based on the fact that Mr. Davila's cellphone contained text messages from Petitioner (among 370 other text or picture messages from various people), as well as a photograph of Petitioner's driver's license. The order then finds that Petitioner presented a counterfeit motorcycle endorsement card, which contained a serial number associated with another person's driving record, at a driver license issuance office. The order states that "authentic motorcycle endorsement cards have perforated edges, and the edges of the card the Petitioner presented were smooth." Furthermore, the order finds that Petitioner traveled from Orange County to Pasco County to pay \$300 to Mr. Davila, which was more than the cost of local motorcycle safety courses.

Petitioner challenges whether competent, substantial evidence existed to support the hearing officer's conclusion that he knowingly obtained a license by fraud. It is true that much of the evidence cited to by the hearing officer was circumstantial in nature. Although the endorsement card did not have the perforated edges indicative of a legitimate card, there was no evidence that a lay person would be able to discern between a counterfeit and a legitimate card on this basis. The fact that the DHSMV official took and scanned the card supports this conclusion. Further, the fact that the price was higher and that Petitioner drove further than necessary to obtain the card does not necessarily indicate that Petitioner knew he was obtaining a fraudulent card. Petitioner may have had any number of reasons to travel to Pasco County to obtain the card and may have believed the price to reflect a certain level of convenience. However, these pieces of circumstantial evidence were not central to the hearing officer's conclusion.

Ultimately, the presentation of a counterfeit motorcycle endorsement card enabled Petitioner to obtain the privilege of driving a motorcycle without completion of the required motorcycle safety course or examination. The face of the counterfeit card stated that "the bearer

has successfully completed a rider skills training course” and referenced the requirements of section 322.12(5)(a), Florida Statutes. Therefore, when the only evidence of compliance with section 322.12(5)(a) provided by Petitioner was ultimately determined to be counterfeit, DHSMV was entitled to suspend Petitioner’s driver’s license for fraud. Due to the suspension, Petitioner was entitled to a show cause hearing, at which he was permitted to “present evidence showing why [his] driving privilege should not have been cancelled, suspended, or revoked.” Rule 15A-1, F.A.C. (2021). Petitioner requested such a hearing and therefore had an opportunity to present evidence that he had, in fact, complied with the statutory requirements despite his presentation of a counterfeit motorcycle endorsement card. He did not do so, and therefore the only evidence of statutory compliance before DHSMV remained the counterfeit endorsement card submitted by Petitioner. This fact, in conjunction with the circumstantial evidence described above, constitutes competent, substantial evidence to support the hearing officer’s decision.

Accordingly, the Court **DENIES** Petitioner’s Petition for Writ of Certiorari, filed August 18, 2021. Further, the Court **DENIES** Petitioner’s Motion for Appellate Costs.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 15TH day of February, 2024.



02/15/2024 13:46:26

eSigned by Michael Kraynick 02/15/2024 13:46:26 SFvV-TAh

MICHAEL KRAYNICK
Presiding Circuit Judge

CARSTEN and YOUNG, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: Andrew B. Greenlee, Esq., Andrew B. Greenlee, P.A., 401 East 1st Street, Unit 261, Sanford, FL 32772 at andrew@andrewgreenleelaw.com; Elana J. Jones, Esq., Assistant General Counsel, Dept. of Highway Safety & Motor Vehicles, 2900 Apalachee Parkway, #A-432, Tallahassee, FL 32399 at elanajones@flhsmv.gov and melissahowland@flhsmv.gov, on this 15TH day of February, 2024.

Anita Berrios
Judicial Assistant