

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

SALOOMEH FARSAD,

Petitioner,

CASE NO.: 2006-CA-2044-O

WRIT NO.: 06-25

v.

**STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES, DIVISION OF DRIVER'S LICENSES,
BUREAU OF ADMINISTRATIVE REVIEWS,**

Respondent.

Petition for Writ of Certiorari
from the Florida Department of
Highway Safety and Motor Vehicles,
J. Kuritz, Hearing Officer.

Grady Ayers, Esquire,
for Petitioner.

Judson Chapman, General Counsel and
Jason Helfant, Assistant General Counsel,
for Respondent.

Before GRINCEWICZ, TURNER, and FLEMING, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner Salomeh Farsad timely filed this amended petition seeking certiorari review of the Florida Department of Highway Safety and Motor Vehicles' (the Department) Final Order Denying the Petitioner's Request for Early Reinstatement,

pursuant to section 322.271, Florida Statutes (2005). This Court has jurisdiction.
322.2615, 322.31, Fla. Stat. (2005); Fla. R. App. P. 9.030(c)(3); 9.100.

On June 14, 2004, the Petitioner's license was revoked for five years due to her status as a habitual traffic offender per section 322.27(5), Florida Statutes. Section 322.271(1)(b) of the Florida Statutes permits a person whose license has been revoked to petition the department for reinstatement of her driving privilege before the period of revocation ends. Pursuant to that statute the Petitioner sought early reinstatement in November of 2005 and subsequently requested an administrative review of her request. An administrative hearing was held on February 10, 2006. At the hearing, the Petitioner was questioned regarding her employment, mode of transportation and driving record. The Petitioner stated that while she worked part time at L.A. Fitness she needed a license to go back to work with Marriott. She also stated that she needed a license in order to return to community college.

The Hearing Officer went through the Petitioner's driving history in great detail, focusing on a previous license revocation in October of 2000. The previous five year revocation was a result of the Petitioner's status as a Habitual Traffic Offender. Upon eligibility, the Petitioner sought a hardship license which was granted in November of 2001. In the subsequent years the Petitioner continued to commit traffic infractions, including three more violations for driving while license suspended, which eventually led to the current revocation. The Hearing Officer also noted that on August 9, 2004 the Petitioner was put under suspension for not having any bodily injury insurance coverage. In arguing for early reinstatement, Petitioner claimed that at the time of the hearing she had not driven in over a year and a half, in part because she was ordered by the court to

sell her car. After considering the Petitioner's driving record, qualifications, fitness and need to drive, the Hearing Officer denied the Petitioner's application for early reinstatement via an order sent in the mail.

The Court's review of an administrative agency decision is governed by a three-part standard of review: (1) whether procedural due process was accorded; (2) whether the essential requirements of the law were observed; and (3) whether the decision was supported by competent substantial evidence. City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982). "It is neither the function nor the prerogative of a circuit judge to reweigh evidence and make findings [of fact] when [undertaking] a review of a decision of an administrative forum." Dep't of Highway Safety & Motor Vehicles v. Allen, 539 So. 2d 20, 21 (Fla. 5th DCA 1989). The Supreme Court has held that the circuit court is not permitted to reweigh the evidence nor to substitute its judgment for that of the agency. Educ. Dev. Ctr., Inc. v. City of West Palm Beach Board of Appeals, 541 So. 2d 106, 108 (Fla. 2d DCA 1979) (citing Bell v. City of Sarasota, 371 So. 2d 525).

Petitioner argues that there was a lack of competent substantial evidence to support the Hearing Officer's finding that Petitioner was not entitled to an early reinstatement of her driver's license because the Hearing Officer did not limit his investigation of the Petitioner's fitness to her actions between the current revocation and the hearing date. Petitioner then concludes that the denial was a departure from the essential requirements of the law.

Section 322.271(1)(b) of the Florida Statutes provides in relevant part:

A person whose driving privilege has been revoked under s. 322.27(5) may, upon expiration of 12 months from the date of such revocation, petition the department for reinstatement of his or her driving privilege. Upon such petition and after investigation of

the person's qualification, fitness, and need to drive, the department shall hold a hearing pursuant to chapter 120 to determine whether the driving privilege shall be reinstated on a restricted basis solely for business or employment purposes.

322.271(1)(b), Fla. Stat. (2005) (emphasis added).

Section 322.271(2)(a) asserts in relevant part:

Upon such hearing, the person whose license has been suspended, canceled, or revoked may show that such suspension, cancellation, or revocation of his or her license causes a serious hardship and precludes the person's carrying out his or her normal business occupation, trade, or employment and that the use of the person's license in the normal course of his or her business is necessary to the proper support of the person or his or her family. Except as otherwise provided in this subsection, the department shall require proof of the successful completion of the applicable department-approved driver training course operating pursuant to s. 318.1451 or DUI program substance abuse education course and evaluation as provided in s. 316.193(5). Letters of recommendation from respected business persons in the community, law enforcement officers, or judicial officers may also be required to determine whether such person should be permitted to operate a motor vehicle on a restricted basis for business or employment use only and in determining whether such person can be trusted to so operate a motor vehicle.

Section 322.271(1)(b), Florida Statute, directs the Hearing Officer to determine whether the Petitioner's driving privilege shall be reinstated on a restricted basis solely for business or employment purposes after investigating the person's qualifications, fitness, and need to drive. Section 322.271(2)(a) lists documents that may be required to assist in determining whether such person can be trusted to so operate a motor vehicle. Therefore the Hearing Officer is ultimately charged with determining if the Petitioner can be trusted to operate a motor vehicle on a restricted basis. In this case the Hearing Officer determined that the Petitioner was not fit and could not be trusted to so operate a motor vehicle. In making his decision he considered the Petitioner's qualifications,

fitness, need, and driving record, which included fifteen previous convictions, one motor vehicle crash, eight previous suspensions and two previous revocations and determined that the Petitioner's continued disrespect for the laws of Florida and disregard for the safety of other motorists rendered her unfit for early reinstatement.

Florida Statute section 322.271 does not specify the time period that the Hearing Officer is required to consider nor does it limit the Hearing Officer to only consider the Petitioner's actions between the current revocation and the hearing date as the Petitioner argues. It stands as only logical that the Hearing Officer consider the Petitioner's behavior during a previous revocation in which the Petitioner was granted early reinstatement in determining her fitness for the current petition for early reinstatement. Petitioner has offered no argument or case law to the contrary.

A denial in itself is not a departure from the essential requirements of the law. Section 322.271, Florida Statutes, merely gives the Petitioner the right to seek a hardship license, not the right to have one granted. Petitioner is correct that the Circuit Court must determine whether competent substantial evidence existed to support the Hearing Officer's findings. Educ. Dev. Ctr., Inc. v. City of West Palm Beach Board of Appeals, 541 So. 2d 106, 108. However, that same case warns that the circuit court is not permitted to reweigh the evidence nor to substitute its judgment for that of the agency. Id. (citing Bell v. City of Sarasota, 371 So. 2d 525 (Fla. 2d DCA 1979)). The record provides competent substantial evidence to deny the Petitioner's petition for early reinstatement. Any further inquiry would result in second-guessing the Hearing Officer's determination and reweighing the evidence.

Thus, the Petitioner has failed to demonstrate that the decision of the Hearing Officer was either a departure from the essential requirements of the law or that it was not supported by competent substantial evidence.

Accordingly, it is hereby

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this the __31st__ day of __July_____, 2006.

_____/S/_____
DONALD E. GRINCEWICZ
Circuit Judge

_____/S/_____
THOMAS W. TURNER
Circuit Judge

_____/S/_____
JEFFREY M. FLEMING
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. mail to: **Grady G. Ayers, Esquire**, 120 E. Marks Street, Ste. 200, Orlando, Florida 32803; and **Judson Chapman, General Counsel and Jason Helfant, Assistant General Counsel**, Department of Highway Safety and Motor Vehicles, 2515 West Flagler Street, Miami, Florida 33135 on this __1st__ day of August, 2006.

_____/S/_____
Judicial Assistant