

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

MICHAEL MUROSKI,

Petitioner,

v.

DEPARTMENT OF HIGHWAY  
SAFETY & MOTOR VEHICLES,

Respondent.

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CASE NO.: 2013-CA-14266-O

Writ No.: 13-99

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

Michael Muroski, *pro se*,

Kimberly A. Gibbs, Assistant General Counsel,  
for Respondent.

BEFORE MUNYON, MCDONALD, HIGBEE, J.J.

PER CURIAM.

**FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI**

Petitioner, Michael Muroski (Petitioner), seeks certiorari review of the Department of Highway Safety and Motor Vehicles' (Department) final order denying his request for early reinstatement of his driver's license. This Court has jurisdiction pursuant to section 322.31, Florida Statutes and Florida Rule of Appellate Procedure 9.030(c)(3).

On September 27, 2010, Petitioner received an order of license revocation informing him that his license was permanently revoked due to four convictions for driving under the influence (DUI). The dates of the four DUI convictions listed in the order are December 13,

1979; January 8, 1992; May 20, 2002; and November 1, 2004. The order states that Petitioner's license was permanently revoked effective May 20, 2002. Petitioner requested a hardship license, a hearing was held, and his request was denied on October 31, 2013.

At the hearing, the hearing officer reviewed Petitioner's driving record. Petitioner's driving record lists convictions for DUI on December 13, 1979; January 8, 1992; May 20, 2002; and November 1, 2004 and the most recent violation was a conviction for unlawful speed that occurred on July 7, 2009. The hearing officer stated that Petitioner's license should have been permanently revoked in 2004 and he was not sure why he was not notified until 2010, but it was likely due to a bureaucratic error. Petitioner initially testified that he stopped drinking one year ago. He later testified that he last consumed an alcoholic beverage or a chemical substance before his father died about 14 months ago. He stated his father died in August 2010. He then claimed that he last had a drink over a year ago at his nephew's wedding in September 2012. He also testified that he immediately stopped driving when he received the order that his license was permanently revoked. The hearing officer determined that based on Petitioner's citation for speeding on July 7, 2009 and his testimony that he last consumed alcohol in September 2012, he did not qualify for a hardship license because section 322.271 states that the applicant must not have operated a vehicle or consumed any type of alcoholic beverage or chemical or controlled substance for five years prior to applying for a hardship license.

"The duty of the circuit court on a certiorari review of an administrative agency is limited to three components: Whether procedural due process was followed, whether there was a departure from the essential requirements of law, and whether the administrative findings and judgment were supported by competent substantial evidence." *Dep't of Highway Safety & Motor Vehicles v. Satter*, 643 So. 2d 692, 695 (Fla. 5th DCA 1994).

Section 322.271(5) states:

[A] person whose driving privilege has been permanently revoked because he or she has been convicted four or more times of violating s. 316.193 or former s. 316.1931 may, upon the expiration of 5 years after the date of the last conviction or the expiration of 5 years after the termination of any incarceration under s. 316.193 or former s. 316.1931, whichever is later, petition the department for reinstatement of his or her driving privilege.

(a) Within 30 days after receipt of a petition, the department shall provide for a hearing, at which the petitioner must demonstrate that he or she:

1. Has not been arrested for a drug-related offense for at least 5 years prior to filing the petition;
2. Has not driven a motor vehicle without a license for at least 5 years prior to the hearing;
3. Has been drug-free for at least 5 years prior to the hearing; and
4. Has completed a DUI program licensed by the department.

§ 322.271(5), Fla. Stat. (2013).

Petitioner argues that the hearing officer incorrectly denied his request for reinstatement because he operated a motor vehicle less than 5 years prior to the hearing. He asserts that he was not timely notified that his license was permanently revoked, and therefore was driving with a valid license until he received notice of the revocation in September 2010. Petitioner also argues that the hearing officer incorrectly denied his request for reinstatement because he consumed alcohol in September 2012. He contends that section 322.271(5)(a)3. only prohibits consumption of drugs not alcohol and he last consumed alcohol prior to his father's death on July 22, 2008, which was more than five years prior to the hearing. He claims that he misspoke when he testified that his father died in 2010.

Based on the record, Petitioner testified that he last consumed alcohol in September 2012 at his nephew's wedding. The hearing officer's decision that an applicant must be

alcohol-free for five years prior to the hearing is a reasonable interpretation of the statute. *State, Dept. of Highway Safety & Motor Vehicles v. Abbey*, 745 So. 2d 1024 (Fla. 2d DCA 1999) (finding that the Department’s interpretation of the statute as including “alcohol-free” within the definition of “drug-free” was reasonable and a person whose license has been permanently revoked for several DUI convictions should expect “drug-free” in this context to include alcohol). Therefore, even if Petitioner had not operated a motor vehicle without a license for five years prior to the hearing, there was competent substantial evidence that Petitioner consumed alcohol less than five years prior to the hearing. Accordingly, the hearing officer did not depart from the essential requirements of the law by denying Petitioner’s request for a hardship license.

Based on the foregoing, 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, this 29th day of August, 2014.

/S/ \_\_\_\_\_  
**LISA T. MUNYON**  
**Presiding Circuit Judge**

MCDONALD and HIGBEE, J.J., concur.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished on this 29th day of August, 2014 to: **Michael Muroski**, 3872 Seminole Drive, Orlando, Florida 32812; **Kimberly A. Gibbs, Assistant General Counsel**, Department of Highway Safety and Motor Vehicles, P.O. Box 570066, Orlando, Florida 32857.

/S/ \_\_\_\_\_  
Judicial Assistant