

**STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.**

**DISTRICT COURT
SIXTH DIVISION**

Brent McIntyre

v.

Division of Motor Vehicles

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:
:
:

A.A. No. 15 - 066

ORDER

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings and Recommendations of the Magistrate.

After a de novo review of the record, the Court finds that the Findings and Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto. It is, therefore,

ORDERED, ADJUDGED AND DECREED that the Findings and Recommendations of the Magistrate are adopted by reference as the decision of the Court and the decision of the Appeals Panel is AFFIRMED.

Entered as an Order of this Court at Providence on this 26th day of February, 2016.

By Order:

_____/s/_____
Stephen C. Waluk
Chief Clerk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc. DISTRICT COURT
SIXTH DIVISION

Brent McIntyre :
 :
 v. : A.A. No. 2015 – 066
 :
 R.I. Division of Motor Vehicles :

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this appeal, Mr. Brent McIntyre urges that the hearing officer of the Rhode Island Division of Motor Vehicles (DMV) erred when he denied Mr. McIntyre’s application for a chauffeur’s license. Jurisdiction for the instant appeal is vested in the District Court by Gen. Laws 1956 § 31-2-19 and the applicable standard of review is found in subsection 42-35-15(g). This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. After a review of

the entire record I find that — for the reasons explained below — the decision of the Registry in this case is supported by reliable, probative, and substantial evidence of record and is not clearly erroneous and it should therefore be affirmed; I so recommend.

I

FACTS AND TRAVEL OF THE CASE

In Rhode Island, persons who wish to drive motor vehicles carrying persons or property for compensation must first obtain a chauffeur's license. See Gen. Laws 1956 § 31-10-5. Mr. McIntyre applied for such a license, and his application was referred to Mr. Peter F. Parker II, Coordinator of the Office of Business and Commercial Services, for hearing on June 19, 2015.

In his decision, issued on June 26, 2015, Mr. Parker denied Appellant's application —

When considering whether to grant an applicant a license to transport passengers for compensation the consideration of whether the applicant represents an imminent threat to public safety is at the forefront of said determination which is adjudged by objectively ascertainable standards. The standards which are considered are the nature and gravity of the charges, the likelihood of recidivism as well as the time between violations and the time since the last violation.

A review of the applicant's record shows that he has been

convicted of drug related offenses on numerous occasions. Three of these convictions were charged as felonies and in the 2005 case resulted in a 10 yr. sentence which included the applicant's incarceration. The applicant has been convicted of Driving Under the Influence on three separate occasions two of which have been charged as a second offense. When an applicant has been convicted of criminal offenses involving drugs and in particular when those offenses also involve the impairment of the applicant when operating a motor vehicle it is particularly troubling when considering the possibility that this person could be responsible for the safety of passengers.

In conclusion, the nature and gravity of the offenses must be said to be high. Additionally, the likelihood of recidivism is also high as the applicant has reoffended on numerous occasions in some instances resulting in the violation of previous sentences that had been imposed. The time between offenses is minimal as demonstrated by the violation of suspended sentences on the record and the imposition of the 2nd offense DUI charges. Finally, the time since the last offense has been a mere three years.

It is therefore the judgment of this office that Mr. McIntyre's application for a chauffeur license be denied at this time.

Decision of Division of Motor Vehicles, at 3. As we see, the denial was rested on Mr. McIntyre's significant driving record and his significant criminal record.

Aggrieved by this decision, Mr. McIntyre filed a complaint for judicial review in the Sixth Division District Court on July 10, 2015. After a conference failed to resolve the instant appeal a briefing schedule was set.

Thereafter, Mr. McIntyre filed a one-page informal memorandum on September 3, 2015 and the DMV filed its Memorandum of Law on September 9, 2015.

II STANDARD OF REVIEW

The standard of review which this Court must employ is enumerated in Gen. Laws 1956 § 42-35-15(g), a provision of the Rhode Island Administrative Procedures Act (APA), which provides as follows:

(g) Standard of review. The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the administrative findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

This standard is akin to the standard of review found in Gen. Laws 1956 § 42-35-15(g), the State Administrative Procedures Act (APA).

Under the APA standard, the District Court “* * * may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are ‘clearly erroneous.’”¹ Thus, the Court will not substitute its judgment for that of the DMV as to the weight of the evidence on questions of fact.² Stated differently, the findings of the DMV will be upheld even though a reasonable mind might have reached a contrary result.³

III APPLICABLE LAW

The applicable standard to grant or deny a chauffeur’s license is that enunciated in Gen. Laws 1956 § 31-10-3:

31-10-3. – Persons ineligible for licenses. — (a) The division of motor vehicles shall not issue any license under this chapter:

...

(8) To any person when the administrator of the division of motor vehicles has good cause to believe that the operation of a motor vehicle on the highways

¹ Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980)(g)(5) citing Gen. Laws 1956 § 42-35-15.

² Cahoone v. Board of Review of the Dept. of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

³ Id., at 506-507, 246 A.2d at 215.

by that person would pose an imminent safety risk to the general public as determined by objectively ascertainable standards

Thus, under this subsection, the test is whether the applicant would pose an “imminent safety risk to the general public” if the application (for a chauffeur’s license) were to be granted.

IV ANALYSIS

In his complaint and his subsequent memorandum Mr. McIntyre requests this Court to grant him relief by reinstating his license. Of course, pursuant to the Administrative Procedures Act, the role of the District Court is limited to determining whether the decision of the DMV was made upon unlawful procedure, is contrary to law, is clearly erroneous, or is arbitrary or capricious. For the reasons that follow, I find none of these standards have been met.

The DMV, in the person of Mr. Parker, ruled that both his driving record and his criminal record, taken together, were disqualifying — that they made Mr. McIntyre, in the language of § 31-10-3(8), an imminent safety risk. Was such an inference reasonable? I think it was.

The highlights of his record, enumerated on pages 1 and 2 of the

decision show that Mr. McIntyre had two drunk-driving charges in 2010 and one in 2012. The 2012 charge was associated with a felony charge of Possession of a Controlled Substance and a misdemeanor charge of eluding a police officer.

Previously, in 2006, Mr. McIntyre was convicted and imprisoned for Possession of Over One Ounce of a Controlled Substance (Cocaine). It is worth noting, that when Mr. Parker ruled, Mr. McIntyre was still subject to the probationary element of that same sentence. It is perhaps unnecessary to state that this was a very serious charge.

As stated above, Mr. McIntyre submitted a brief memorandum in this case. He avers that he is a safe driver who has turned away from his prior habits and lifestyle. He urges that he is (still) a young man who has endeavored to turn his life around. In the record, one may find letters of reference from his associates corroborating this assertion. At the conference conducted in this matter, the undersigned found no reason to doubt the sincerity of this claim.

Nevertheless, we must also remember that the DMV bears an onerous burden in matters like these — to act in the public interest to

insure public safety. As stated above, this Court's role (when considering administrative appeals from the DMV is limited. See "Standard of Review," ante, at 4-5. See also Link v. State, 633 A.2d 1345, 1348 (R.I. 1993)(opining, construing prior law — which was also "substantively identical" to the APA procedure — that the District Court's role was to review the trial record to determine if the decision was supported by competent evidence). On this record, I cannot state that the DMV's ruling was clearly erroneous in light of Mr. McIntyre's driving and criminal histories. Of course, he is free to re-apply at a later time.

V CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the Division of Motor Vehicles was made upon lawful procedure and was not affected by error of law. Gen. Laws 1956 § 42-35-15(g)(3),(4). Furthermore, said decision is neither arbitrary nor capricious and is not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Gen. Laws 1956 § 42-35-15(g)(5),(6).

Accordingly, I recommend that the decision of the Division of Motor Vehicles be AFFIRMED.

_____/s/_____
Joseph P. Ippolito
MAGISTRATE

February 26, 2016