

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

DISTRICT COURT

Marc Lamontagne

:

:

v.

:

A.A. No. 2011 – 0068

:

R.I. Division of Motor Vehicles

:

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this appeal, Mr. Marc Lamontagne urges that Chief of the Operator Control Section of the Rhode Island Division of Motor Vehicles (DMV) erred when he accepted a recommendation of the Medical Advisory Board and refused to reinstate Mr. Lamontagne’s license to operate a motor vehicle. 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 should be affirmed; I so recommend.

FACTS & TRAVEL OF THE CASE

On June 8, 2011, in an effort to reinstate his license, Mr. Lamontagne appeared before the Division of Motor Vehicles' Medical Advisory Board. The issue had been referred to the Board, which is established by Gen. Laws 1956 § 31-10-44, because of Mr. Lamontagne's extensive record of alcohol-related driving offenses. See pages 16-23 of the record certified to the District Court by the Division of Motor Vehicles. The Board recommended against immediate reinstatement in favor of a further review in one year; the Board also recommended continued regular attendance at Alcoholics Anonymous and a certification of continued abstinence from his counselor. See page 14 of the record certified to the District Court by the Division of Motor Vehicles. This recommendation was relayed to the DMV and accepted by Dennis Gerstmeyer, Chief of Operator Control. He sent a letter to Mr. Lamontagne on June 9, 2011, adopting the recommendation of the Medical Advisory Board as the decision of the DMV. The letter reads as follows:

Dear Mr. Lamontagne:

Your motor vehicle file and records were reviewed pursuant to Rhode Island General Law and appropriate regulations and good cause appearing it has been decided that your driving privilege be disapproved at this time.

The Medical Advisory Board feels that you do not understand that you have a problem with alcoholism and that you need to regularly attend Alcoholics Anonymous meetings for one (1) year.

The Medical Advisory Board recommends review in one (1) year with documentation evidencing your regular attendance at

Alcoholics Anonymous meetings for one (1) year as well as certified documentation from your alcohol counselor evidencing your continued total abstinence from alcohol.

This represents the final order of the Division of Motor Vehicles. If aggrieved by this decision, you may seek Judicial review within ten (10) days pursuant to state statute at the Sixth District Court, Garrahy Judicial Complex, One Dorrance Plaza, Providence, RI 02903.

Very truly yours,

Dennis G. Gerstmeyer
Chief — Operator Control

See page 13 of the record certified to the District Court by the Division of Motor Vehicles.

On June 17, 2011, Mr. Lamontagne filed a complaint for judicial review in the Sixth Division District Court. In his Statement of Reasons for his appeal he outlined the reasons why he believed the further requirements of the Medical Board were in fact unnecessary. After a conference failed to resolve the instant appeal a briefing schedule was set. Thereafter, Mr. Lamontagne filed a one-page informal memorandum on August 23, 2011 and the DMV filed its Memorandum of Law on September 9, 2011.

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

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

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

³ Id., at 506-507, 246 A.2d at 215.

APPLICABLE LAW

The applicable standard 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:

...

(7) To any person when the administrator of the division of motor vehicles has good cause based on clear and convincing evidence to believe that that person does not meet a standard of physical or mental fitness for motor vehicle licensure established pursuant to § 31-10-44(b) and that the person's physical or mental condition prevents him or her from being able to operate a motor vehicle with safety upon the highway;

... .

ISSUE

The issue before the Court is whether the decision of the Division of Motor Vehicles was supported by reliable, probative, and substantial evidence in the record or whether or not it was clearly erroneous or affected by error of law.

ANALYSIS

In his complaint and his subsequent memorandum Mr. Lamontagne requests this Court to grant him relief by immediately reinstating his license See Appellant's Memorandum, passim. 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.

As stated above, Mr. Lamontagne submitted a brief memorandum in this case.

Positively, he avers that he is ready and willing to fulfill the requirement that he be a safe and sober driver. Negatively, he repeatedly challenges the integrity, honesty, and even good faith of the DMV, its employees, and its Medical Advisory Board.

Obviously, the starting point for the Board's analysis was appellant's ominous history of six alcohol-related offenses. The Board heard, but was clearly not fully satisfied by, his self-serving averments that he had modified his behavior and could now be trusted to drive safely.⁴ Out of caution, it felt an additional year of sobriety was necessary.⁵ Mr. Gerstmeyer, on behalf of the DMV, accepted this recommendation. In light of the egregious nature of appellant's driving record, I cannot find this conclusion to be arbitrary, or capricious, or clearly erroneous.

As stated above, in the review of the facts found below by the Board and the DMV, this Court's role is limited. See "Standard of Review," supra, pages 3-4. 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).

⁴ The Division of Motor Vehicles, in its Memorandum, indicates that Mr. Lamontagne has recently been charged with operating without a license in complaint number 61-11-11777. See Appellee's Memorandum of Law, at 5. Because the case has not yet been adjudicated I shall not take judicial notice of the charge and shall give the matter no weight whatsoever.

⁵ Because the Board referenced an additional year of sobriety, one may infer it fully credited his counselor's written submission that he had been sober for a year. It simply wanted more.

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

November 22, 2011