

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL JAMES HEIMLER,

Petitioner-Appellee,

v

SECRETARY OF STATE,

Respondent-Appellant.

UNPUBLISHED

November 15, 2002

No. 235174

Oakland Circuit Court

LC No. 2001-030281-AL

Before: Murphy, P.J., and Markey and R. S. Gribbs*, JJ.

PER CURIAM.

Respondent appeals by leave granted the circuit court's order reversing the hearing officer's decision denying petitioner's request for reinstatement of his driver's license. We reverse.

Petitioner received four alcohol-related driving convictions between 1985 and 1996, with the last conviction occurring on May 13, 1996. Petitioner's driver's license was administratively revoked on June 26, 1996. On July 11, 1997, the Driver License Appeal Division (DLAD) granted a temporary restricted license from July 10, 1997 through July 9, 1999. The order stated, "[w]hen petitioner appears for the next DLAD hearing he/she must present documentary evidence of weekly AA attendance, or weekly attendance at a recognized support group supervised by a licensed counselor or substance abuse therapist."

Petitioner did not appear before the DLAD until January 10, 2001 -- approximately eighteen months after his restricted license expired. At the hearing, petitioner testified that he no longer attended AA. When asked why he was not involved in AA, petitioner stated that he does things differently than he used to, and that he changed jobs and has different hobbies. Petitioner was asked if he had any knowledge of the AA steps to recovery. Petitioner could not articulate these steps. Petitioner denied that he is an alcoholic. However, he did acknowledge that he had had a drinking problem. Petitioner used to drink all time during the week and on the weekends.

Petitioner testified that he has two friends who drink alcohol and a roommate who consumes alcohol. However, petitioner stated that he does not go out with his friends when they are drinking and his roommate does not have alcohol in the house.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Petitioner also testified that his last drink was on March 17, 1996. Later in the hearing, petitioner stated it was on March 17, 1995. However, on February 23, 1996, he was arrested for an alcohol-related driving offense.

Petitioner presented a November 2000 substance abuse evaluation that stated that petitioner was diagnosed as alcohol dependent in remission with over four years of abstinence. The report stated that petitioner's prognosis was good for continued abstinence. This report also stated that petitioner's last reported use of alcohol was in March 1995. The report recommended AA, as needed. The report noted that petitioner made the necessary lifestyle changes to remove alcohol use from his life. The report concluded that any risks associated with restoration of driving privileges appeared to be minimal.

Petitioner also presented a lab urinalysis report and three letters. The letters were from a friend, co-worker, and roommate indicating that petitioner had been sober for a period of 4½ to 5 years.

The hearing officer denied petitioner's request for reinstatement of his driving privileges on the ground that petitioner failed to establish by clear and convincing evidence that his substance abuse problem was under control and was likely to remain under control, as required by 1999 AACCS, R 257.313. The circuit court set aside the hearing officer's decision on the ground that it was not based on competent, material, and substantial evidence on the whole record and was an abuse of discretion. While the circuit court was disturbed that petitioner did not follow the requirements of the department, the court found that petitioner presented evidence that he had been sober for at least 4½ years.

A circuit court can set aside the Secretary of State's decision only if the circuit court finds that at least one of the statutory criteria is met. MCL 257.323(4). The statutory criteria include the following:

- (d) Not supported by competent, material, and substantial evidence on the whole record.
- (e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion. . . . [MCL 257.323(4).]

When reviewing a circuit court's review of administrative agency action, we must determine whether the circuit court applied the correct legal principles and whether the circuit court misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings. *Boyd v Civil Service Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996). This standard is indistinguishable from the clearly erroneous standard of review. *Id.* at 234-235. A finding is clearly erroneous when, after reviewing the whole record, we are left with the definite and firm conviction that a mistake has been made. *Id.* at 235.

Respondent contends that the circuit court erred in setting aside the hearing officer's decision. We agree and reverse the circuit court's decision for the reason that it clearly erred in finding that the hearing officer's decision was not supported by competent, material, and substantial evidence and was an abuse of discretion.

“‘Substantial evidence’ is evidence that a reasonable person would accept as sufficient to support a conclusion.” *Dowerk v Oxford Charter Twp*, 233 Mich App 62, 72; 592 NW2d 724 (1998). “Substantial evidence” requires more than a scintilla of evidence, but less than a preponderance of the evidence. *Id.*

There was evidence that contradicted petitioner’s assertion that he had not consumed alcohol since March 17, 1995. On February 23, 1996, petitioner was arrested for an alcohol-related driving offense. On the other hand, there was no evidence that contradicted the March 17, 1996 date. However, petitioner’s inability to articulate an understanding of the AA principles, the program that he was involved with in order to obtain a restricted license, supported a conclusion that he did not demonstrate a long-term commitment to a support program. Petitioner’s inability to commit to a support program, along with the fact that petitioner has friends who drink alcohol and lives with a person drinks alcohol, showed that he did not demonstrate by clear and convincing evidence that his alcohol problem would likely stay under control.

Even though the circuit court might have reached a different result if in the hearing officer’s position, a hearing officer’s decision should be affirmed if it is supported by the requisite evidence. *Kester v Secretary of State*, 152 Mich App 329, 335; 393 NW2d 623 (1986). The hearing officer’s decision was clearly supported by substantial evidence, and the circuit court’s ruling constituted clear error and a misapprehension and misapplication of the substantial evidence test.

The circuit court also found that the hearing officer’s decision was an abuse of discretion. To reverse a decision as an abuse of discretion, the result must be so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or an exercise of passion or bias. *Marrs v Bd of Medicine*, 422 Mich 688, 694; 375 NW2d 321 (1985). After reviewing the record, we find that the hearing officer’s decision was clearly not an abuse of discretion. Therefore, the circuit court’s ruling setting aside the hearing officer’s decision for an abuse of discretion was clearly erroneous.

Respondent also contends that the circuit court erred in refusing to allow the hearing officer to take notice of petitioner’s failure to comply with the prior DLAD order that stated that petitioner must present documentary evidence of weekly AA attendance, or weekly attendance at a recognized support group. Given our reversal of the circuit court’s decision, we need not address this argument.

Reversed.

/s/ William B. Murphy

/s/ Jane E. Markey

/s/ Roman S. Gibbs