

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Kyle Ream,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2293 C.D. 2010
	:	SUBMITTED: March 11, 2011
Department of Transportation,	:	
	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: May 25, 2011

Kyle Ream petitions for review of the order of the Secretary of Transportation denying his exceptions and making final a hearing officer's proposed report recommending denial of Ream's request for credit toward the period of suspensions of his operating privilege from the date when he submitted a Form DL-54B to renew his Pennsylvania non-driver photo identification (ID) card to an on-line messenger service provider, rather than from the subsequent date when he submitted a Form DL-16LC acknowledging the suspensions to the Department of Transportation. Ream argues that the Form DL-54B submitted to the on-line messenger service provider constitutes "an acknowledgment of suspension" under Section 1541(a) of the Vehicle Code, *as amended*, 75 Pa. C.S. §1541(a), for the purpose of commencement of credit toward the suspension period. We reject Ream's argument and affirm the Secretary's order.

After the Department issued his driver's license on March 12, 2002, Ream received nine suspensions for violating Section 1533(a) of the Vehicle Code,

as amended, 75 Pa. C.S. § 1533(a) (failure to respond to citations), and Section 1543(a), as amended, 75 Pa. C.S. § 1543(a) (driving while operating privilege is suspended or revoked). As required by Section 1540(b)(1) of the Vehicle Code, as amended, 75 Pa. C.S. § 1540(b)(1), the Department mailed him official notices of suspension to his address of record. In a notice mailed on March 7, 2003, the Department advised him:

You must return any current Pennsylvania driver's license, learner's permit or temporary driver's license (camera card) in your possession. You will not receive credit toward serving any suspension until we receive your documents. Complete the following steps to acknowledge this suspension:

1. Return your current license ... to the address below. If you do not have any of these items, complete and return one of the following:

- A DL-16LC Acknowledgment form (available at any driver license center)
- A notarized affidavit (letter) stating you are aware of the suspension of your driving privilege.

....

4. If you do not receive a receipt from us within 3 weeks of mailing your documents, call our office immediately.

Exhibit D-2; Reproduced Record (R.R.) at I-4 and I-5.¹ Subsequent notices of suspension contained similar language.

Ream's driver's license expired on August 23, 2005. Thereafter, he renewed his non-driver photo ID card on October 22, 2005 by submitting a Form

¹ Ream failed to comply with Pa. R.A.P. 2173, which requires pages of the reproduced record to "be numbered separately in Arabic figures and not in Roman numerals: thus 1, 2, 3, etc., followed ... by a small a, thus 1a, 2a, 3a, etc." We emphasize that strict compliance with the rules of appellate procedure is critical to our "swift and efficient review of a party's allegations of error." *Stefanovits v. Magrino*, 583 A.2d 841, 843 (Pa. Cmwlth. 1990).

DL-54B to Wiggins Auto Tags (Wiggins) located in Oxford, Pennsylvania. Wiggins is an on-line messenger service provider authorized to issue, *inter alia*, a photo ID card renewal. He subsequently received three more suspensions of his operating privilege for failing to respond to citations and driving while operating privilege is suspended and without a valid driver's license in violation of Section 1501(a), *as amended*, 75 Pa. C.S. § 1501(a). In official notices of suspension sent to his address of record, the Department directed Ream to "[c]omplete the enclosed DL-16LC acknowledgment form" in order to receive credit toward the suspension period. Exhibit D-2; R.R. at I-25 and I-29. None of the notices of suspension mailed before and after the expiration of his license were returned to the Department as unclaimed. Ream subsequently paid fines imposed in the citations.

On October 16, 2007, more than two years after the expiration of his driver's license, the Department received from Ream a signed Form DL-16LC acknowledging the suspensions of his driver's license. By letter dated October 25, 2007, the Department acknowledged its receipt of the Form DL-16LC and informed him that credit for the total suspension period of three years and six months commenced on October 16, 2007. On February 5, 2010, he requested an administrative hearing, contending that he was entitled to credit from October 22, 2005 when he submitted the Form DL-54B to Wiggins to renew his photo ID card.

Commencement of a suspension period is governed by Section 1541(a) of the Vehicle Code, which provides in relevant part:

The period of ... suspension of the operating privilege ... shall commence as provided for in section 1540 (relating to surrender of license). *No credit toward the ... suspension ... shall be earned until the driver's license is surrendered to the department, a court or a district attorney, as the case may be. A nonresident licensed driver or an unlicensed individual, including a*

driver whose license has expired, shall submit an acknowledgment of suspension ... to the department in lieu of a driver's license [Emphasis added.]

Section 1540(b)(3) provides that the suspension "shall be effective upon the earlier of: (i) a date determined by the department; or (ii) the date of filing or mailing of the license or acknowledgment to the department, if that date is subsequent to the department's notice to surrender the license." A party seeking credit toward the suspension period has the burden of proof and must proceed first to present evidence at an administrative hearing. 67 Pa. Code § 491.10(b)(2).

Ream admitted that he resided at the address in the Department's record, to which all of the suspension notices were mailed. He claimed, however, that he did not remember receiving any of the suspension notices mailed to that address. He testified that he first learned of the suspensions in 2003 from a police officer who stopped his car and that he handed his expired driver's license to Wiggins on October 22, 2005, stating that he "needed an ID card to take this one's spot." Notes of Testimony (N.T.) at 14; R.R. at B-14.

The Department presented Ream's certified driving and suspension records (Exhibits D-1 and D-2), a document titled, "On-Line Messenger Service Center Program Overview and Application Process" (Exhibit D-3), and the on-line messenger service center contract between the Department and Wiggins (Exhibit D-3). On-line messenger service providers are authorized to provide "some face-to-face driver licensing and vehicle registration services via mainframe connection with the Department through one or more sites." Exhibit D-3; R.R. at J-2. A photo ID card renewal is listed as one of the transactions that the on-line messenger service providers are authorized to conduct. *Id.*; R.R. at J-4. The on-line messenger service providers are not authorized to issue an acknowledgment of suspension. *Id.* The Department's administrative assistant, Janet Danner, testified

that the on-line messenger service providers do not have access to information necessary to process an acknowledgment of suspension. She further testified that unlike the "on-line" messenger service providers, messenger service providers "hand-carry" work to the Department for processing. N.T. at 60; R.R. at B-60.

The hearing officer found that the on-line messenger service providers do not have access to suspension history information in the Department's system and that Ream's renewal of his Photo ID card after the expiration of his driver's license was insignificant because one could have a photo ID card or a driver's license or both at any given time. Concluding that the period of Ream's suspensions commenced on October 16, 2007 when he submitted the Form DL-16LC to the Department acknowledging the suspensions, the hearing officer recommended that Ream's request for credit be denied. The Secretary of Transportation denied Ream's exceptions, adopted the hearing officer's proposed report and made the report final. Ream's appeal to this Court followed.

Ream argues that credit toward the suspension period commenced when he submitted the Form DL-54B to Wiggins to renew his photo ID card. Ream maintains that he was not required to use any particular form prescribed by the Department, such as a Form DL-16LC, to acknowledge the suspensions after the expiration of his driver's license, and that the filing of the Form DL-54B constituted "an acknowledgment of suspension" under Section 1541(a) of the Vehicle Code. Claiming that the Department's witness, Danner, testified that a Form DL-54B filed at the Department's facility is accepted as an acknowledgment of suspension, Ream insists that it is "illogical" to refuse to give credit when the same form is filed at the on-line messenger service center. Ream's Brief at 11. Ream also disputes that the on-line messenger service providers do not have access

to the driver's suspension history.²

In the notices of suspension sent to Ream's address of record before the expiration of his driver's license, the Department directed him to surrender his driver's license or to file a Form DL-16LC or a notarized affidavit to acknowledge the suspensions. He was informed that no credit toward the suspension could be earned until he submitted one of those items. After his license was expired, the Department enclosed a Form DL-16LC with the suspension notices and directed him to file the form to obtain credit toward the suspensions. The mailing of a suspension notice to the licensee's address of record raises a rebuttable presumption that he or she received the notice. *Kulick v. Dep't of Transp., Bureau of Driver Licensing*, 666 A.2d 1148 (Pa. Cmwlth. 1995). Ream's mere denial of his receipt of the suspension notices is insufficient to rebut that presumption. *Id.*

The purpose of requiring a licensee to acknowledge a suspension is "to ensure that the driver has notice of the suspension." *Smith v. Pa. Dep't of Transp.*, 740 A.2d 284, 286 n.5 (Pa. Cmwlth. 1999). The mere expiration of a driver's license does not constitute a constructive surrender of the license and, consequently, the licensee must still acknowledge the suspension even after his or her license has expired. *Realmuto v. Dep't of Transp.*, 637 A.2d 769 (Pa. Cmwlth. 1994).

The Form DL-54B submitted to Wiggins cannot be considered an

² The Secretary of Transportation is the ultimate fact-finder in this proceeding and may accept or reject the testimony of any witness in whole or in part. *Realmuto v. Dep't of Transp.*, 637 A.2d 769 (Pa. Cmwlth. 1994). This Court's review of the Secretary's order in this appeal is limited to determining whether the Secretary committed an error of law or whether his findings are not supported by substantial evidence. *Id.* In reviewing the Secretary's findings, this Court must consider the evidence in a light most favorable to the party who prevailed before the Secretary. *Reed v. Dep't of Transp.*, 872 A.2d 202 (Pa. Cmwlth. 2005).

acknowledgment of suspension. As Ream conceded at the hearing, the Form DL-54B did not contain any statement acknowledging the suspensions of his driver's license. In addition, Wiggins' access to the Department's system was "limited to only that information necessary for the purposes outlined" in the contract between the Department and Wiggins, which did not include the processing of an acknowledgment of suspension. Exhibit D-3; R.R. at J-12. Moreover, the record does not support Ream's assertion that Danner testified that a Form DL-54B submitted to the Department's facility acts as an acknowledgment of suspension, triggering commencement of the suspension period. She testified only that unlike the on-line messenger service providers, the Department's employees have full access to a driver's record and that when the record indicates that the driver's license of an individual applying for a photo ID card renewal has been suspended, they should inform the individual that he or she "needed to acknowledge" the suspension. N.T. at 65; R.R. at B-65.

Although he allegedly became aware of the suspensions when the police officer stopped his car in 2003, he neither surrendered his license nor filed a proper form to acknowledge the suspensions. He instead "knowingly drove on the suspension[s]." N.T. at 31; R.R. at B-31. He did not acknowledge the suspensions until he filed the Form DL-16LC with the Department on October 16, 2007. Hence, the Secretary correctly determined that credit toward the suspensions of his driver's license commenced on October 16, 2007.

Accordingly, the order of the Secretary of Transportation is affirmed.

BONNIE BRIGANCE LEADBETTER,
President Judge

