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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1796**

Jonathan Wallace Anderson, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed May 23, 2011
Affirmed
Klaphake, Judge**

Hennepin County District Court
File No. 27-CV-10-1269

Max A. Keller, Keller Law Office, Minneapolis, Minnesota (for appellant)

Lori Swanson, Attorney General, Sara Pesola Boeshans, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Klaphake, Judge; and Shumaker, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Jonathan Wallace Anderson challenges the district court's decision affirming the Commissioner of Public Safety's cancellation of his driving privileges. Appellant also asserts that he was denied his due process rights because he was not present at the medical review board's consideration of his request for a variance.

Based on our review of the record, the district court did not err by concluding that the commissioner's decision was not arbitrary and capricious, and was supported by substantial evidence. We further conclude that appellant's due process rights were vindicated by his hearing before the district court. We therefore affirm.

D E C I S I O N

In 1979, appellant permanently lost vision in his right eye and partially lost peripheral vision in his left eye following a shooting that occurred at his place of employment. Since 2000, appellant's driving privileges have been cancelled three times, in 2000, 2004, and 2009, because he failed to meet the vision requirements for licensure.¹ In 2000 and 2004, appellant successfully petitioned for a variance from the licensure requirements after he passed road tests. Appellant has also provided periodic vision assessments to the commissioner upon request. In 2009, the vision assessment showed a loss of peripheral vision from 60 degrees to 57 degrees. Based on this, the commissioner cancelled appellant's driver's license.

A person challenging the cancellation of a driver's license may bring a petition in district court pursuant to Minn. Stat. § 171.19 (2008). The district court shall "take testimony and examine into the facts of the case to determine whether the petitioner is entitled to a license or subject to revocation, suspension, cancellation, disqualification or refusal of license, and shall render judgment accordingly." *Id.* The district court must weigh evidence, judge credibility, and independently determine whether a cancellation is

¹ The rule setting forth minimum vision requirements, Minn. R. 7410.2400, was adopted and became effective in 1996. 20 SR 2122.

justified. *Madison v. Comm'r of Pub. Safety*, 585 N.W.2d 77, 82-83 (Minn. App. 1998), *review denied* (Minn. Dec. 15, 1998). This is a de novo review of the commissioner's decision. *Igo v. Comm'r of Pub. Safety*, 615 N.W.2d 358, 361 (Minn. App. 2000), *review denied* (Minn. Oct. 17, 2000). The petitioner has the burden of proving that he or she is entitled to reinstatement. *Pallas v. Comm'r of Pub. Safety*, 781 N.W.2d 163, 166 (Minn. App. 2010).

"This court will not reverse a license determination unless it finds that it is unsupported by substantial evidence or is arbitrary or capricious." *Igo*, 615 N.W.2d at 360. The determination must be supported by some evidence, and the petitioner must show that the commissioner acted unreasonably. *Id.* We review the district court's factual findings for clear error, Minn. R. Civ. P. 52.01, and its legal determinations de novo. *Pallas*, 781 N.W.2d at 167.

Appellant suggests that the district court did not conduct a de novo review because the court concluded that the commissioner did not act in an arbitrary or capricious manner. But the district court did not rely solely on the commissioner's findings; the district court held a hearing at which both appellant and the examiner who administered a driving test to appellant testified. There is no indication in the record that the district court limited the testimony of these witnesses. The ultimate decision that the district court must make after conducting a de novo review is whether the cancellation was proper; that is, whether the commissioner acted arbitrarily or capriciously by cancelling the license and whether there was substantial evidence to support the commissioner's decision.

Although the district court came to the conclusion that the commissioner was not arbitrary or capricious, the record supports the conclusion that the court made a de novo review. Further, appellant had the burden of proving that he was entitled to reinstatement of his driver's license; if, as appellant suggests, the vision assessment showing a further diminution in his peripheral vision was erroneous, appellant should have presented evidence to that effect, instead of merely asserting that he subjectively believed that his vision had not changed.

We review the district court's decision de novo. *Id.* The commissioner may not issue a license to a person suffering from a physical disability that will prevent the person from "exercising reasonable and ordinary control over a motor vehicle." Minn. Stat. § 171.04, subd. 1(11) (2008). The commissioner must issue a driver's license if the applicant passes a vision screening test. Minn. Stat. § 171.13, subd. 2(a)(1) (2008). If the applicant is not entitled to issuance of a license, the commissioner may cancel the driver's license. Minn. Stat. § 171.14 (2008). The commissioner is empowered to adopt rules to administer this subdivision. Minn. Stat. § 171.13, subd. (2)(c) (2008).

Specific vision standards are set forth in the rules promulgated pursuant to the statutes. An applicant with a visual field of less than 105 degrees can be issued a restricted license, Minn. R. 7410.2400, subp. 5(B) (2009), but the commissioner "will" cancel the driver's license of an "applicant [who] has visual field of less than 100 degrees in the horizontal diameter with either one usable eye or with both eyes." Minn. R. 7410.2400, subp. 7(C) (2009). Appellant has 57 or 60 degrees of visual field in one eye, depending on which medical report one relies on, and no vision in the other.

Appellant applied for a medical review board variance from these requirements, which is permissible if the applicant can establish that he or she can operate a motor vehicle safely. *See* Minn. R. 7410.3000, subp. 2 (2009). The members of the review board agreed that appellant could receive a license subject to certain restrictions and subject to passing a driving examination. Appellant was permitted to take a driving examination, which, in the judgment of the examiner, he did not pass. *See* Minn. Stat. § 171.04, subd. 1(8), (11) (“The department shall not issue a driver’s license . . . to any person who is required . . . to take a vision, knowledge, or road examination, unless the person has successfully passed the examination” or “to any person when, in the opinion of the commissioner, the person is afflicted with or suffering from a physical . . . disability that will affect the person in a manner as to prevent the person from exercising reasonable and ordinary control over a motor vehicle”). On this substantial evidence, we conclude that the commissioner’s decision to uphold the cancellation of appellant’s driver’s license was not arbitrary and capricious.

Due Process

Appellant asserts that he was denied his due process rights because he was not permitted to appear in front of the medical review board. A driver’s license is a protected property interest that cannot be removed by the government without due process of law. U.S. Const. amend. XIV, § 1; *Riehm v. Comm’r of Pub. Safety*, 745 N.W.2d 869, 877 (Minn. App. 2008), *review denied* (Minn. May 20, 2008). Procedural due process requires that the injured party be afforded a prompt and meaningful review of the government action; the extent of the review depends on the facts of the situation. *Id.* The

party asserting a denial of procedural due process must demonstrate prejudice. *Id.* Finally, in order to evaluate whether a party has been afforded procedural due process, a court considers (1) the private interest affected by government action; (2) the risk that the party was erroneously deprived of a protected interest through a lack of procedural safeguards; and (3) the governmental interest implicated, including the function involved and any administrative or cost burdens. *Id.* at 877-78 n.3 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903 (1976)).

Under the medical review procedure, an applicant for a variance is required to submit a “complete medical history relating to the condition in question, together with good medical reasons why a variance should be granted.” Minn. R. 7410.3000, subp. 2. The applicant is thus responsible for submitting a complete record. To the extent that appellant claims that the board lacked relevant information, it was his responsibility to ensure that the board had a complete record. Second, the medical review board makes a recommendation, not a decision, which is forwarded to the commissioner for action. *Id.* The board’s actions alone do not result in cancellation.

After the commissioner makes a decision, the applicant is entitled to petition for a court hearing for a de novo review of the commissioner’s decision. Minn. Stat. § 171.19. This provides the applicant with a prompt and meaningful review of the government action, and this is precisely what occurred here. Appellant has not demonstrated that he was deprived of procedural due process.

Affirmed.