

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mary Massino,	:	
Appellant	:	
	:	
v.	:	
	:	
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	No. 1624 C.D. 2012
Bureau of Driver Licensing	:	Submitted: December 21, 2012

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE COVEY

FILED: January 24, 2013

Mary Massino (Massino) appeals from the Lackawanna County Common Pleas Court’s (trial court) August 15, 2012 order denying her appeal from the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing’s (DOT’s) May 15, 2012 letter of ineligibility for an occupational limited license.<sup>1</sup> The issues for this Court’s review are: (1) whether Massino exhausted her administrative remedies, and (2) whether DOT must follow Virginia law and grant Massino an occupational limited license. We vacate the trial court’s order.

Massino, a Pennsylvania resident, held a valid Pennsylvania driver’s license that was scheduled to expire on June 19, 2012. On December 13, 2011, Massino pled guilty to driving under the influence of alcohol in Virginia. She was

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<sup>1</sup> Section 102 of the Vehicle Code, 75 Pa.C.S. § 102, defines “occupational limited license” as “[a] license, issued under this title to a driver whose operating privileges have been suspended, to permit the operation of a motor vehicle under certain conditions, when necessary for the driver’s occupation, work, trade or study.”

sentenced to Virginia’s version of an accelerated rehabilitative disposition (ARD) program,<sup>2</sup> and her driving privileges were suspended in Virginia for twelve months effective December 13, 2011. Reproduced Record (R.R.) at 22. By March 10, 2012 notice, DOT advised Massino that its pre-renewal check of the National Driver Register (NDR)<sup>3</sup> “indicated a driver license withdrawal in another state.” R.R. at 19. The notice suggested that she “take the necessary steps to clear [her] driving privilege prior to applying to renew [her] Pennsylvania driver’s license.” R.R. at 19. The notice further stated that she would “NOT be able to renew [her] driver’s license in Pennsylvania until this issue is resolved.” R.R. at 19.

Massino applied with DOT for an occupational limited license. By May 15, 2012 letter, DOT informed Massino that it was unable to process her application because her “driving privilege [was] not currently suspended” in Pennsylvania. R.R. at 21. However, DOT stated that she could resubmit her application “[u]pon receipt of an official Notice of Suspension from [DOT].” R.R. at 21. On May 22, 2012, after Massino attempted to renew her license online and was unable to do so, she emailed DOT’s customer service to ask why she was not able to renew her license. On May 23, 2012, DOT informed Massino that she was “unable to renew online due to a match in [its] system with Virginia[,]” and further advised her to “[p]lease contact Virginia for information on how to release the hold.” R.R. at 16. On June 19,

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<sup>2</sup> Virginia’s program is the Virginia Alcohol Safety Action Program (VASAP).

<sup>3</sup> Pennsylvania and all of the fifty states have converted to the [NDR] Problem Driver Pointer System (PDPS), as provided for under [f]ederal regulations. See 23 C.F.R. § 1327. The NDR was established by 49 U.S.C. § 30302, with the primary purpose of assisting the licensing officials of participating states in exchanging information about the motor vehicle driving records of individuals.

*Fowler v. Dep’t. of Transp., Bureau of Driver Licensing*, 2 A.3d 1282, 1286 (Pa. Cmwlth. 2010) (footnote omitted).

2012, Massino appealed from DOT's refusal to renew her license, or grant her an occupational limited license to the trial court.<sup>4</sup> After a hearing on August 15, 2012, the trial court denied Massino's appeal. Massino appealed to this Court.<sup>5</sup>

Initially, DOT avers that Massino's failure to file an administrative appeal from DOT's May 15, 2012 letter informing her that it could not process her occupational limited license application prohibits Massino from seeking relief from this Court, since she failed to exhaust her administrative remedies. We disagree.

Section 1553(h) of the Vehicle Code, 75 Pa.C.S. § 1553(h), provides:

Any driver who is denied an occupational limited license . . . may file with [DOT] a petition for a hearing. The hearing shall be conducted in accordance with Title 2 (relating to administrative law and procedure). [DOT] may charge a reasonable fee based on the cost to [DOT] for conducting such a hearing. . . . An appeal from a decision of an administrative hearing officer may be taken in the manner provided in 42 Pa.C.S. § 763(a) (relating to direct appeals from government agencies). Appeals under this subchapter are exempt from the provisions of section 1550(b) (relating to judicial review) and from the provisions of 42 Pa.C.S. § 933 (relating to appeals from government agencies).

Thus, the statutory remedy for a driver wishing to challenge DOT's denial of an occupational limited license application is to file a request for a hearing with DOT, and thereafter appeal from the hearing officer's adverse decision to the Commonwealth Court. *See Chrisman v. Dep't. of Transp., Bureau of Driver Licensing*, 823 A.2d 1080 (Pa. Cmwlth. 2003).

However, DOT did not deny Massino's request for an occupational limited license. DOT's May 15, 2012 letter merely notified Massino that because her

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<sup>4</sup> Massino's only issue before this Court was DOT's refusal to grant her an occupational limited license.

<sup>5</sup> "This Court's scope of review of a trial court decision in a driver's license appeal is limited to a determination of whether findings of fact are supported by substantial evidence, an error of law was committed, or the court abused its discretion." *Fowler*, 2 A.3d at 1284.

license was still valid, it could not process her application. DOT acted in accordance with Section 1553(a)(1) of the Vehicle Code, 75 Pa.C.S. § 1553(a)(1), which authorizes DOT to “issue an occupational limited license . . . to a driver **whose operating privileges have been suspended . . .**” (Emphasis added). In order for DOT to process Massino’s request, it must first have a suspension on record.<sup>6</sup> Because at the time of Massino’s application DOT had not suspended or refused to renew Massino’s driving privileges, she had a full, valid license and was ineligible for limited operating privileges. Accordingly, there was no adverse decision from which Massino could request a hearing.

Section 702 of the Administrative Agency Law, 2 Pa.C.S. § 702, provides: “Any person aggrieved by an adjudication of a Commonwealth agency who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals by or pursuant to Title 42 (relating to judiciary and judicial procedure).” “Adjudication” is defined by the Administrative Agency Law as “[a]ny final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made.” 2 Pa.C.S. § 101. This Court has held that “[a] letter can constitute an [appealable] adjudication . . . if a two-prong test is met: 1) the letter must be an agency’s final order, decree, decision, determination or ruling; and 2) it must impact on a party’s personal or property rights, privileges, immunities, duties, liabilities or obligations.” *NHS Human Servs. of Pa. v. Dep’t of Pub. Welfare*, 985 A.2d 992, 995 (Pa. Cmwlth. 2009). The record is clear that DOT’s May 15, 2012 letter was merely a notice of DOT’s inability to process Massino’s occupational

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<sup>6</sup> At the time of Massino’s application, DOT only had notice that Massino’s driving privileges were “withdrawn” in Virginia which, by its March 10, 2012 notice, it advised Massino to take care of before her renewal was due.

limited license application, not a final order, decree, decision, determination or ruling. Thus, we hold that it was not an appealable adjudication.

Further, DOT's action did not impact Massino's rights. The May 15, 2012 letter of ineligibility for an occupational limited license left Massino in the position she was in when she applied for it; she had a valid license, and would continue to have one until her renewal was due on June 18, 2012. Accordingly, because DOT's May 15, 2012 letter was not an appealable agency action for which Massino could request DOT to hold an administrative hearing pursuant to Section 1553(h) of the Vehicle Code, the trial court should have dismissed her appeal.

Notwithstanding the above, if Massino had exhausted her administrative remedies in accordance with Section 1553(h) of the Vehicle Code, Massino's appeal to the trial court would have been procedurally improper. Section 1553(h) of the Vehicle Code directs that an appeal from the hearing examiner's decision must be filed with this Court, rather than the trial court. Although Section 5103(a) of the Judicial Code, 42 Pa.C.S. § 5103(a), requires improperly filed appeals to be transferred to the proper tribunal, such appeals must be timely filed. Appeals from a government agency to a court must be filed within 30 days. 42 Pa.C.S. § 5571(b). The record evidence establishes that Massino's appeal from the May 15, 2012 letter was filed on June 19, 2012, which was 5 days late. Thus, even if Massino's letter was an appealable adjudication and she had exhausted her administrative remedies, we would not have jurisdiction to hear the matter due to the untimeliness of the appeal. Because the untimely filing of an appeal is a jurisdictional defect that may not be disregarded, it may be raised by an appellate court. *Commonwealth v. Yorktowne Paper Mills, Inc.*, 419 Pa. 363, 214 A.2d 203 (1965).

Based on the foregoing, we vacate the trial court's order.<sup>7</sup>

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ANNE E. COVEY, Judge

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<sup>7</sup> Because we vacate the trial court's order, we need not address the merits of her appeal.

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ORDER

AND NOW, this 24<sup>th</sup> day of January, 2013, the Lackawanna County Common Pleas Court's August 15, 2012 order is vacated.

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ANNE E. COVEY, Judge