

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

TAYLOR BRADLEY,

Petitioner,

v.

Civil Action No.: 20-AA-6

ADAM HOLLEY, ACTING COMMISSIONER
WEST VIRGINIA DIVISION OF
MOTOR VEHICLES,

Respondent.

ORDER

Pursuant to W.Va. Code §29A-5-1, et seq., the Petitioner appeals the Decision of the Hearing Examiner and Final Order of the Chief Hearing Examiner (hereafter "Final Order") of the Office of Administrative Hearings (hereafter "OAH") entered December 18, 2019. The Final Order affirmed the *Order of Revocation* issued by the West Virginia Division of Motor Vehicles (hereafter "West Virginia DMV") revoking Petitioner's driver's license for driving under the influence of alcohol (hereafter "DUI"). An administrative license revocation hearing was conducted at the OAH on February 1, 2019, nearly eleven months before the Final Order was issued. The Petitioner timely filed his *Petition for Judicial Review* to appeal the revocation of his driving privileges.

An evidentiary hearing was conducted before this Court on February 10, 2020, to address Petitioner's *Motion for Stay Pending Disposition of Appeal* filed January 10, 2020. Petitioner asserts that the prejudice suffered by the post-hearing delay of nearly eleven months outweighed the reasons for the delay pursuant to *Reed v. Staffileno*, 239 W.Va. 538, 803 S.E.2d 508 (2017). On February 12, 2020, this Court granted a stay pending disposition of this appeal.



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The Court has studied the briefs, the pertinent legal authority, the record below, and all other matters of record herein, including the testimony at the February 10, 2020 hearing before this Court.

For the reasons set forth below, the Court does hereby **GRANT** the relief sought by the Petitioner and **REVERSES** the Final Order entered on December 18, 2019.

STANDARD OF REVIEW

Pursuant to West Virginia Code § 29A-5-4(a), a decision of an administrative agency may be reversed if the court finds that the agency's findings, inferences, conclusions, decisions and/or orders are:

- (1) In violation of constitutional or statutory/regulatory provisions; and/or
- (2) In excess of the statutory authority or jurisdiction of the agency; and/or
- (3) Made upon unlawful procedures; and/or
- (4) Affected by other error of law; and/or
- (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; and/or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

FINDINGS OF FACT

1. Petitioner was arrested for DUI on March 14, 2018 in Kanawha County, West Virginia.
2. On March 27, 2018, the West Virginia DMV entered an Order of Revocation revoking the driving privileges of the Petitioner for DUI.
3. Petitioner timely requested an administrative hearing to contest the Order of Revocation on April 17, 2018.
4. On February 1, 2019 an administrative hearing was held at the OAH.

5. At the time of the OAH administrative hearing, Petitioner worked as a handler for Federal Express, a position that did not require a driver's license to perform, and he earned \$10.00 an hour.

6. In April 2019, the Petitioner was offered a promotion and, after consulting with his attorney, he accepted the promotion to work as a courier at Federal Express, a position which requires a driver's license and which enabled him to double his hourly earnings to \$20.00 an hour.

7. On December 18, 2019, the date of the Final Order, Petitioner was still employed as a courier at Federal Express and 321 days had passed since his hearing before the OAH and the date of the Final Order.

8. Petitioner testified at the evidentiary hearing that if the Final Order revoking his driver's license would be upheld, he would be immediately fired by Federal Express because a valid driver's license is essential to his current position and his prior position was no longer available for him to return to.

9. There was no testimony explaining any reason for the delay of nearly eleven months for the OAH to render a decision; therefore, there is no justifiable excuse for such a delayed decision which, if upheld, would now result in extreme economic detriment and harm to the Petitioner so as to render him without the means to support himself.

10. Private citizens should not have to forego employment opportunities and other everyday life decisions affecting their ability to afford food, housing, medical care and other essentials while awaiting nearly eleven months for a government agency to make a decision that affects their ability to earn a living and to afford the basic necessities of life to sustain themselves.

CONCLUSIONS OF LAW AND DISCUSSION

In Syllabus Point 3 of *Dolin v. Roberts*, 173 W. Va. 443, 317 S. E. 2d 802 (1984), the Supreme Court of Appeals of West Virginia held that, “[u]nreasonable delay can result in denial of procedural due process in license suspension cases.” According to W.Va. Const. Art. III, §17, “justice shall be administered without . . . delay.”

In addressing post-hearing delay and the resulting prejudice, the Court in *Reed v. Staffileno*, 239 W.Va. 538, 803 S.E.2d 508 (2017) established the following:

On appeal to the circuit court from an order of the Office of Administrative Hearings affirming the revocation of a party’s license to operate a motor vehicle in this State, when the party asserts that his or her constitutional right to due process has been violated by a delay in the issuance of the order by the Office of Administrative Hearings, a party must demonstrate that he or she has suffered actual and substantial prejudice as a result of the delay. Once actual and substantial prejudice from the delay has been proven, the circuit court must then balance the resulting prejudice against the reasons for the delay.

The first step in the *Staffileno* test is for this Court to make a finding as to whether the Petitioner has been actually and substantially prejudiced because the OAH delayed issuance of its Final Order. If this Court finds that the Petitioner failed to prove actual and substantial prejudice as a result of the delay, then this Court’s review is complete. There is no need to balance the reasons for the delay against a non-existent prejudice. *Straub v. Reed*, 239 W. Va. 834, 851, 806 S.E.2d 768, 775 (2017).

Turning to the case at hand, based on the evidence presented, Petitioner has established that he would suffer actual and substantial prejudice as a result of the delayed OAH decision which, if upheld, would have a devastating effect on his ability to earn a living. Indeed, Petitioner testified that he would immediately be fired from a job that pays twice as much as the job he held at the time of the hearing, and further, that the prior job was no longer available for

him to return to. If the OAH decision would have been rendered in a timely fashion, Petitioner could have served his licensure suspension and maintained his previous work position which did not require a driver's license to perform. Instead, he is now faced with the prospect of having no job at all if the revocation is upheld. There was no evidence presented at the February 10, 2020 hearing to justify any delay by the OAH in issuing the decision at issue herein. Moreover, the Petitioner's case is not complicated or unique. There is simply no reason to justify the delay of the OAH decision.

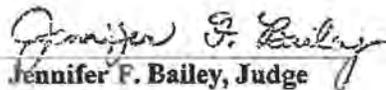
Therefore, having applied the considerations enunciated in *Staffileno, supra*, this Court finds that the actual and substantial prejudice suffered by Petitioner outweighs the reasons, or lack thereof, for the post-hearing delay of the OAH in rendering a final decision. Such a delay in this case, based upon the uncontroverted facts and the application of the law, has resulted in a denial of the Petitioner's constitutional right to due process of the law, and the decision of the OAH will not be upheld by this Court.

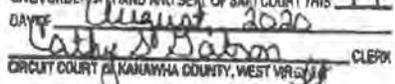
RULING

Accordingly, the court hereby **GRANTS** the relief requested in the Petition for Appeal. The Final Order affirming the West Virginia DMV's Order of Revocation issued by the OAH on December 18, 2019, is **REVERSED**.

It is further **ORDERED** that the Clerk of this Court is directed to forward a certified copy of this Order to counsel of record.

Entered this 18th day of August, 2020.


Jennifer F. Bailey, Judge

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 19
DAY OF August, 2020.

Cathy S. Gatson, CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA