

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

EDWARD JOSEPH LARGENT,  
Plaintiff (Petitioner),

v

File No. 94-12469-AL  
HON. THOMAS G. POWER

SECRETARY OF STATE OF THE STATE  
OF MICHIGAN,  
Defendant.

Christopher L. Buday (P39~ 42)  
Attorney for Plaintiff (Petitioner)

DECISION AND ORDER

This matter comes before the Court on the Petition for Restoration of Driver's License filed by Edward J. Largent seeking review of an Order issued by the Secretary of State Hearing Officer W.M. Conklin on June 21, 1994, pursuant to a hearing conducted June 15, 1994. The Secretary of State granted what it labeled a "broader, restricted license" but, by implication, declined to fully restore the Petitioner's driving privileges. The Petitioner contests whether this restricted license is, in fact, broader than the restricted license he had before, but appeals requesting that this Court order a complete restoration of his driving privileges.

Under MCLA 257.303, the Petitioner is rebuttably presumed to be a habitual offender under the alcohol driving laws by virtue of two prior convictions in January, 1988 and in June, 1991 for alcohol driving offenses.

Since both alcohol driving convictions were prior to January 1, 1992, the action of the Secretary of State in denying a restoration of driving privileges and in granting a restricted license can be a review on the merits of the Secretary of State's decision or it can be a review to grant a restricted license based on hardship. Since the Petitioner has a restricted license as a result of the Secretary of State's action, there is no need for a hardship review of this matter.

A merit review of the Secretary of State's action requires a review of the record of the Secretary of State's proceedings in

matter. That record was handed to this Court at the time of hearing October 28, 1994 which, of course, made it impossible the Court to render a decision at that time and the matter taken under advisement.

The standard of review is whether the Secretary of State's decision was "supported by substantial, material and competent evidence on the record as a whole." A review of the record reveals two alcohol driving convictions, the last of which, June 10, 1991, was only three years prior to the date of the Secretary of State Referee hearing in this matter. The alcohol assessment Petitioner presented to the Secretary of State was optimistic, but certainly did not guarantee Petitioner's recovery from his alcoholism difficulties. In the face of the habitual presumption created by MCLA 257.303, and in view of the recency of the last alcohol driving offense and the necessarily equivocal nature of the alcohol assessment, even though its prognosis is generally positive, this Court cannot say that the Secretary of State's decision is without support by any substantial, material or competent evidence.

The issue is not whether this Court would come to the same conclusion if it had heard the witnesses and sat through the Secretary of State's hearing but, rather, whether there is any evidence in the record which supports the Referee's decision. There clearly is some evidence supporting the Referee's decision. It is, therefore, upheld.  
The petition for restoration of driver's license is denied.

IT IS SO ORDERED.

HONORABLE THOMAS G. POWER  
Circuit Court Judge

Dated: 2 /2/95