

SUPERIOR COURT  
Washington Unit

VT SUPERIOR COURT  
WASHINGTON UNIT  
STATE OF VERMONT

2016 DEC -6 P 3:43

CIVIL DIVISION  
Docket No. 408-7-16 Wncv

JAMES F. ROBINSON  
Appellant

FILED

v.

AGENCY OF TRANSPORTATION  
Appellee

### DECISION ON APPEAL

Following a hearing, the Commissioner of the Department of Motor Vehicles (DMV) indefinitely suspended Appellant James F. Robinson's driver's license due to a report by his physician of a disability preventing him from safely operating motor vehicles. Mr. Robinson has sought Rule 74 review here pursuant to 23 V.S.A. § 105(b). See 23 V.S.A. § 671(f) (making 23 V.S.A. §§ 105–107 applicable in this context). After reviewing the record and considering the written submissions of the parties, the court rules as follows.

#### *Background*

In a faxed letter to the DMV dated May 11, 2016, one of Mr. Robinson's physicians wrote as follows:

It has come to my attention that Mr. Robinson's endocrinologist Dr. Gilbert mistakenly approved reinstatement of James' driver's license. I am writing to request **immediate and permanent** medical suspension of Mr. Robinson's license due to his cognitive difficulties from Autism Spectrum Disorder. He recently underwent a driver examination testing [sic] at UVMMC in 11/2015 and was deemed HIGH Risk for a crash due to deficits in memory, processing speed and attention. This condition has not changed and is not expected to change ever.

Letter from Christine Mahoney, D.O., to DMV (dated May 11, 2016) (emphasis in original).

Based on that report, the DMV notified Mr. Robinson that his license would be suspended indefinitely pursuant to 23 V.S.A. § 671. Section 671(a) authorizes the DMV to suspend one's license if "the Commissioner has reason to believe that the holder thereof is a person who is incompetent to operate a motor vehicle or is operating improperly so as to endanger the public."

Mr. Robinson requested an administrative hearing. Following it, the Commissioner, through an Agency of Transportation hearing officer, essentially found the medical report supplied by Mr. Robinson's physician compelling evidence that he is not capable to driving

safely and was not persuaded by Mr. Robinson's testimony to the contrary. He concluded, "The suspension stands as issued, with no right to further administrative hearing." Mr. Robinson then sought review here.

### *Standard of Review*

Mr. Robinson faces a high bar in seeking to overturn the decision of the Commissioner. "Courts presume that the actions of administrative agencies are correct, valid and reasonable, absent a clear and convincing showing to the contrary. . . . [J]udicial review of agency findings is ordinarily limited to whether, on the record developed before the agency, there is any reasonable basis for the finding." *State Dep't of Taxes v. Tri-State Ind. Laundries*, 138 Vt. 292, 294 (1980).

### *Analysis*

On appeal, Mr. Robinson argues, as he appears to have done at the administrative hearing, that he is a good driver, he was merely overtired when he took the driving test, he now has certain glasses that improve his vision when he drives, he would do better with more practice, and the ability to drive occasionally is important to him for a variety of reasons.

In other words, he disagrees with the essential findings of the hearing officer that he is not now capable of driving safely due to his conditions and that the suspension of his driver's license should be indefinite. The only question on appeal is whether those findings have any reasonable basis in the record developed before the agency.

Both of those findings are predicated on Mr. Robinson's physician's report. The report documents his medical condition, its effects on his competence to drive, and its anticipated duration (forever). Despite any testimony from Mr. Robinson that may have been to the contrary, the physician report provides a reasonable basis for the hearing officer's findings. The commissioner's decision thus must be affirmed.

The court notes, however, that the hearing officer's statement in his decision that there is "no right to further administrative hearing" may appear confusing. It appears to have been intended to mean only that no further administrative hearing is available *in this particular proceeding* such that the case had become ripe for review in the superior court. It does not appear to have been intended to mean that Mr. Robinson's license suspension can never be challenged again. One whose license is suspended indefinitely, as Mr. Robinson's has been, has a right to request reinstatement and that potentially includes more administrative hearings:

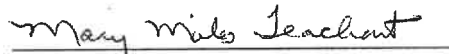
No less than six months from the date of suspension and each six months thereafter, a person upon whom such suspension has been imposed may apply for reinstatement of his or her license or right to operate or for a new license. Upon receipt of such application, the Commissioner shall thereupon cause an investigation to be made and, if so requested, conduct a hearing to determine whether such suspension should be continued in effect.

23 V.S.A. § 671(a). Thus, while there is no further administrative hearing currently available, there may be one in the future if Mr. Robinson requests reinstatement.

ORDER

For the foregoing reasons, the decision of the hearing officer is *affirmed*.

Dated at Montpelier, Vermont this 6<sup>th</sup> day of December 2016.

  
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Mary Miles Teachout  
Superior Judge