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SECOND DIVISION
FEBRUARY 8, 2011

1-09-2763

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

TYRONE BROOKS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 08 CH 29303
)	
JESSE WHITE, SECRETARY OF STATE,)	
STATE OF ILLINOIS,)	Honorable
)	Nancy J. Arnold,
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Karnezis and Connors concurred in the judgment.

ORDER

Held: Secretary of State's decision to deny the reinstatement of the plaintiff's full driving privileges and, instead, grant him a restricted driving permit, was not against the manifest weight of the evidence.

Plaintiff Tyrone Brooks (Brooks), *pro se*, appeals from an order of the circuit court of Cook County affirming the decision of the Illinois Secretary of State (Secretary) which denied the reinstatement of his full driving privileges and, instead, granted him a restricted driving permit (RDP) subject to his use of a breath alcohol ignition interlock device (BAIID). In this court, Brooks seeks reversal of the Secretary's decision and the reinstatement of his driving privileges.

The record establishes that Brooks has three arrests for driving under the influence (DUI) of alcohol. The first occurred on July 30, 1994, when he was stopped by the police for speeding and

weaving in and out of his traffic lane. He refused to submit to a breath test and, consequently, received a six-month statutory summary suspension of his license.

On December 17, 2002 and January 8, 2003, Brooks was again arrested for DUI. He submitted to a breath test for the latter arrest, which revealed a blood-alcohol level of .228, almost three times the legal limit. Each of these arrests resulted in a DUI conviction, and the revocation of his driving privileges. In addition to the DUI convictions, Brooks' driving record shows that he was convicted of driving the wrong way down a one-way street, speeding 15 to 25 miles per hour over the speed limit, and driving on a suspended license.

On June 19, 2007, Brooks petitioned for relief from the revocation of his driving privileges, which were not eligible for full reinstatement until February 23, 2008. The hearing officer found that Brooks had failed to carry his burden of proving that he had overcome his chemical dependency and would be a safe and responsible driver, and thus denied the relief requested.

On May 15, 2008, Brooks again petitioned for relief. He sought full reinstatement of his driving privileges or, in the alternative, a RDP for attending Alcoholics Anonymous (AA) meetings.

On June 25, 2008, the Secretary held a hearing during which Brooks testified to his past drinking habits. During the year preceding his final arrest, he drank two or three days per week and consumed "a couple of 40 ounces," plus even more on the weekends. He would also drink hard liquor on occasion, particularly peppermint schnapps and whiskey. Overall, he considered himself to be a moderate drinker, although he noticed that his tolerance increased when he drank constantly every day. His purpose for drinking was to socialize, as he did when he was in the military service, but he never set limits on the amount and admitted to binge drinking in the past. He never blacked-out or lost control of his drinking, but would suffer from hangovers and withdrawal symptoms, and acknowledged that he had spent more money on alcohol for himself, and for others, than he should have.

Brooks also testified that he has a family history of alcoholism, and that his father died from

it. Brooks' own son had complained about his drinking, and he recalled one instance in which his drinking had caused problems in his relationship with his girlfriend. Nonetheless, he testified that alcohol never interfered with his work and described himself as a "workaholic." He never came to a point where he could not stop drinking, but considered himself an alcoholic because of his alcohol-related problems, such as losing his driving privileges. He also recognized that alcohol made his life unmanageable.

Brooks further testified that he has not consumed alcohol since his final arrest on January 8, 2003, and admitted to being an alcoholic. He joined AA in 2003 and has completed all 12 steps of the program, chaired meetings, and even sponsored another member. He attends AA and other support programs, including one for emotional depression, five times per week, and from them, he has learned to control his cravings. He intends to continue these programs for the rest of his life, and still speaks with his sponsor two to three times per week. On September 12, 2007, Brooks became a member of the Nation of Islam, whose beliefs hold that drinking defiles the body. As a result, he vows never to drink again.

Brooks claimed that he does not presently associate with people who drink unless they want help, and almost all of his friends are AA members or members of his religion. Although he claims that he no longer has the urge to drink, he cannot guarantee that he will never drink again, which is in accordance with AA teachings instructing him to take one day at a time. Brooks has also been studying at a university and intends to take up a trade and become employed. As additional proof of his recovery, Brooks submitted into evidence documentation of his treatment for alcoholism and his abstinence, as well as letters of support. However, he was classified as high-risk in the current alcohol evaluation, dated April 22, 2008, which was also submitted into evidence.

On August 5, 2008, the hearing officer found that Brooks had met his burden of proving that he had satisfactorily addressed his alcohol dependency and would be a safe and responsible driver if granted relief. However, because of his "drinking history" and "poor driving record," the officer

recommended that he be granted a RDP as a probationary device in lieu of the reinstatement of his driving privileges.

The Secretary adopted the hearing officer's recommendation, denied Brooks' petition for reinstatement of his full driving privileges, and granted the issuance of a RDP for the purpose of attending three support/recovery meetings per week. The RDP was issued for a probationary period of 12 months, and was also contingent on Brooks' compliance with the BAIID Program and the BAIID Multiple Offender Program.

On August 12, 2008, Brooks filed a *pro se* complaint in the circuit court of Cook County, seeking administrative review of the Secretary's decision. On September 18, 2009, the circuit court affirmed the Secretary's decision. Brooks now seeks reversal of the Secretary's decision.

Initially, we observe that the brief filed by Brooks does not comply with the supreme court rules governing appellate court review, including his failure to set forth a cohesive argument or legal authority. Ill. S. Ct. R. 341(h) (eff. Sept. 1, 2006). Nonetheless, our jurisdiction to entertain the appeal is unaffected by the insufficiency of his brief, as long as we understand the issue Brooks intends to raise, and where, as here, we have the benefit of the cogent brief filed by the opposing party. See *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001).

That said, we note that our review of this administrative proceeding is limited to the decision of the Secretary, not that of the circuit court. *Jennings v. White*, 363 Ill. App. 3d 637, 642 (2005). Here, the Secretary denied Brooks' petition for reinstatement of full driving privileges, and instead, granted him a 12-month probationary RDP subject to his compliance with the BAIID programs. In this court, Brooks essentially takes issue with that limitation and seeks the reinstatement of his full driving privileges.

As noted by the Secretary, Brooks has raised various reasons for his request, many of which were not presented at the administrative hearing. In his notice of appeal, Brooks claimed that the reinstatement was necessary so that he could see his physician 75 miles away, attend school, and visit

his son in jail. In his brief, he cites the need to get to physical therapy twice a week and to attend college four days a week. On review, this court may only address matters that were before the hearing officer (*Green v. Edgar*, 151 Ill. App. 3d 163, 167 (1986)), and since Brooks failed to present these additional considerations at the administrative hearing, they will not be considered on review (*Jennings*, 363 Ill. App. 3d at 642).

Turning to the decision reached by the Secretary, we will not interfere with his exercise of discretionary authority unless it is done so in an arbitrary and capricious manner, or the decision is contrary to the manifest weight of the evidence. *Cisneros v. White*, 337 Ill. App. 3d 93, 103 (2003). The Secretary's decision is arbitrary and capricious if he relied on factors that the legislature did not intend for him to consider, failed to consider an issue, or offered an explanation for the decision that runs counter to the evidence or is so implausible that it could not possibly be the result of the exercise of administrative expertise. *Clark v. White*, 343 Ill. App. 3d 689, 693 (2003). A decision is against the manifest weight of the evidence only where the opposite conclusion is clearly evident. *Clark*, 343 Ill. App. 3d at 694.

Under the Illinois Vehicle Code, a person whose driving privileges have been revoked is not entitled to their restoration (625 ILCS 5/6-208(b) (West 2008)), and it is ultimately within the discretion of the Secretary as to whether they should be restored. 92 Ill. Adm. Code 1001.400(a), amended at 28 Ill. Reg. 12123 (eff. Sept. 1, 2004). Where, as here, a person has two DUI convictions within a 20-year period, he may only apply for restoration of his license after five years have passed from the date of the most recent revocation. 625 ILCS 5/6-208(b)(2)(A) (West 2008). Even then, the Secretary may issue a probationary RDP instead of a full reinstatement of driving privileges if the petitioner has a poor driving record or has been evaluated as a moderate risk or higher by an alcohol evaluation. 92 Ill. Adm. Code 1001.420(I), amended at 31 Ill. Reg. 6185 (eff. May 1, 2007). Additionally, for any person who has two or more DUI convictions, the Secretary must require the use of an ignition interlock device on their vehicle. 625 ILCS 5/6-205(h) (West

2008).

In this case, the record shows that Brooks is a recovering alcoholic with three DUI arrests, two DUI convictions within a 20-year period, a conviction for driving on a revoked or suspended license, and other driving-related convictions. The hearing officer found that Brooks is in remission from his alcoholism, that he has completed his recommended treatment and established an adequate ongoing support/recovery system, and that he is sincere about remaining abstinent. However, it was duly noted that Brooks was classified as high-risk in a recent alcohol evaluation, and, thus, the Secretary had the discretion to deny him full reinstatement of his driving privileges and grant him an RDP instead. 92 Ill. Adm. Code 1001.420(I). Given Brooks' history of alcohol abuse, his sub-par driving record, and the high-risk alcohol evaluation, we find that the Secretary's decision to deny full reinstatement was not against the manifest weight of the evidence. *Clark*, 343 Ill. App. 3d at 694. In addition, Brooks does not point to, and we do not find, anything in the record suggesting that the Secretary exercised its discretionary power on that matter in an arbitrary and capricious way. *Clark*, 343 Ill. App. 3d at 693. We therefore have no basis for reversing the Secretary's decision and thus, we affirm the order of the circuit court of Cook County.

Affirmed.