

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Maria P. Serna-Deandrade :
 :
 v. : No. 565 C.D. 2010
 :
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Commonwealth of Pennsylvania, :
 Department of Transportation, :
 Bureau of Driver Licensing, :
 Appellant :

Juan W. Posada :
 :
 v. : No. 568 C.D. 2010
 :
 :

Commonwealth of Pennsylvania, :
 Department of Transportation, :
 Bureau of Driver Licensing, :
 Appellant :

Juan Carlos Ramirez :
 :
 v. : No. 569 C.D. 2010
 :
 :

Commonwealth of Pennsylvania, :
 Department of Transportation, :
 Bureau of Driver Licensing, :
 Appellant :

Sandra L. Gonzalez :
 :
 v. : No. 570 C.D. 2010
 :
 :

Commonwealth of Pennsylvania, :
 Department of Transportation, :
 Bureau of Driver Licensing, :
 Appellant :

Pedro A. Camargo :
 :
 v. : No. 572 C.D. 2010
 :
 :

Commonwealth of Pennsylvania, :

Department of Transportation,	:	
Bureau of Driver Licensing,	:	
Appellant	:	
	:	
Jesse Latorre	:	
	:	
v.	:	No. 573 C.D. 2010
	:	Argued: September 13, 2011
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Driver Licensing,	:	
Appellant	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: October 11, 2011

The Department of Transportation, Bureau of Driver Licensing (Department) appeals from the March 26, 2010, orders of the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, which sustained the appeals of Maria P. Serna-Deandrade, Juan W. Posada, Juan Carlos Ramirez, Sandra L. Gonzalez, Pedro A. Camargo and Jesse Latorre (collectively, Licensees) from the Department’s cancellation of their driving privileges.¹ At issue is whether the Department can properly cancel Licensees’ driver’s licenses prior to their expiration date based on Licensees’ failure either to provide a valid social security number to the Department or to submit a federal government waiver from that requirement in

¹ Due to a similarity of issues, this court consolidated the Department’s appeals by order dated June 29, 2010.

accordance with Section 1510(f) of the Vehicle Code (Code), 75 Pa. C.S. §1510(f).²
We affirm on due process grounds.

By individual notices mailed May 29, 2009, the Department informed Licensees that it now requires verification of a person's social security number for all driver's licenses it issues and that it was not able to verify with the Social Security Administration (SSA) the social security numbers that Licensees provided when they applied for their driver's licenses. The Department stated that, consequently, it was cancelling Licensees' driving privileges, effective June 19, 2009, at 12:01 a.m., pursuant to Section 1572 of the Code, 75 Pa. C.S. §1572, unless Licensees brought the proper identity documents to a Driver's License Center before June 19, 2009.³

² Section 1510(f) of the Code, 75 Pa. C.S. §1510(f) (second emphasis added), provides:

Waiver.—Notwithstanding the provisions of [Section 1510(a) of the Code, 75 Pa. C.S. §1510(a), that “an applicant shall include his Social Security number on his license application”], the department shall issue a driver's license to an otherwise eligible person who has no Social Security number if the person submits **a waiver obtained from the Federal Government** permitting him not to have a Social Security number. The department may require other identifiers, including, but not limited to, a taxpayer identification number, before issuing the license.

³ Section 1572(a) of the Code, 75 Pa. C.S. §1572(a) (emphasis in original), provides in relevant part:

(a) General rule.—

(1) The department may cancel any driver's license upon determining that one of the following applies:

(i) The licensee was not entitled to the issuance.

(Footnote continued on next page...)

The May 29, 2009, notices specifically delineated the identity documents required to be brought by both United States (U.S.) and non-U.S. citizens. Non-U.S. citizens, like Licensees here, were required to bring a Social Security card, a valid passport, all original BCIS/INS documents, written verification of attendance from school (student status only), and written verification from an employer (employment status only). (Official Notices, 5/29/09, at 1; R.R. at 104a, 120a, 137a, 153a, 171a and 191a.) Further, these notices provided: “To obtain detailed information regarding ‘identity/residency requirements’, you can visit www.dmv.state.pa.us, click on ‘Identity/Security’ then click on ‘Documents needed for proof of identity and residency.’” (*Id.*) Depending on an individual’s immigration status, a Social Security card, letter from the SSA indicating that the SSA did not yet make a decision or a SSA rejection letter are among the “[r]equired [d]ocuments” listed on the website, as indicated. See Fact Sheet, Identification and Legal Presence Requirements for Non-United States Citizens, available at http://www.dmv.state.pa.us/pdotforms/fact_sheets/pub195nc.pdf (last visited December 14, 2010, and September 20, 2011).

On June 18, 2009, the Department mailed individual notices to Licensees, postponing the effective date of the cancellation of their driving privileges, and stating in pertinent part: “When a new date is established, the Department will mail you an additional notice of cancellation **containing all of the requirements to avoid the cancellation, and containing a new later effective date.**” (Additional

(continued...)

(ii) The person failed to give the required or correct information

Notices, 6/18/09, at 1; R.R. at 103a, 119a, 136a, 152a, 170a and 190a.) (Emphasis added.) Thereafter, on November 3, 2009, the Department mailed individual notices to Licensees in both English and Spanish indicating that the Department was cancelling their licenses, effective December 15, 2009, at 12:01 a.m., that these notices were final orders of cancellation and that Licensees had thirty days to appeal from the date of the notices. (Notices, 11/3/09; R.R. 99a-102a, 115a-18a, 132a-35a, 148a-51a, 166a-69a and 186a-89a.) **Contrary to the Department's statements in its June 2009 notices, however, the November 2009 notices did not contain any of the requirements to avoid cancellation.** In fact, the November notices provided as a cursory matter that the cancellations were effective on December 15, 2009, at 12:01 a.m. and that they were final orders of cancellation.

Licensees appealed from the Department's cancellation of their licenses, and Senior Judge Norman Ackerman held a hearing on these matters on January 29, 2010. At this hearing, the Department presented evidence that Licensees had not supplied valid social security numbers when applying for their licenses; instead, they had apparently supplied taxpayer identification numbers.⁴ For their part, Licensees testified, either on their own or through interpreters, that they were not U.S. citizens and that the Department had previously accepted taxpayer identification numbers in lieu of social security numbers with respect to their applications for and renewals of their driver's licenses. Licensees further indicated that they were confused by what

⁴ The Department points out in its principal brief on appeal that security measures have been drastically altered since September 11, 2001. (Department's Principal Brief at 15.) The Department further asserts that it was not until 2002 that it began verifying social security numbers. (*Id.* at 17.) However, the Department does not appear to be arguing that Licensees purposefully supplied the wrong information.

they considered to be a change in Department procedure and that they did not know they needed a waiver from social security requirements. Upon questioning by Judge Ackerman, Department counsel responded that he did not know if the Department had changed its procedure. (N.T., 1/29/10, at 7.)⁵

Upon consideration of the evidence before him, Judge Ackerman continued the matter for two months, in order to allow Licensees to obtain the appropriate documentation, which the court conceived to be either a social security

⁵ Moreover, the Department's explanation to Licensees as to how to obtain a waiver was less than illuminating, as illustrated by the following exchange:

PAULA CAMARGO [speaking on behalf of her father, Pedro]: Can I ask him [Department counsel] a question?

MR. WERLINSKY [Department counsel]: It's up to the Court.

PAULA CAMARGO: How does one obtain a waiver?

MR. WERLINSKY: That would be an administrative question best placed to the agency that issued a waiver to my client on an administrative level.

THE COURT: Say that again.

MR. WERLINSKY: It's not a legal question. It's a question I don't have the information to answer.

THE COURT: A waiver would have to be obtained, however, through the Social Security Department.

MR. WERLINSKY: Through the appropriate agency. That's correct. And I would invite the petitioner to contact that agency.

(N.T., 1/29/10, at 6-7.) (Emphasis added.)

card, a letter from the SSA indicating that the SSA did not yet make a decision with respect to an individual licensee's case or a rejection letter. (*Id.* at 21.) Judge Ackerman also put into effect a supersedeas allowing Licensees to continue to drive until the date of the next hearing. (*Id.* at 22-23.) Even so, both Latorre and Posada indicated that they had the appropriate documentation to show to the Department.⁶ Immediately after Judge Ackerman entered his order, Department counsel agreed to take Latorre's and Posada's information and intercede administratively on their behalf, (*id.* at 27-28), but this intercession was ultimately to no avail. (N.T., 3/26/10, at 14-15.)

A second, *de novo* hearing was held before Senior Judge Esther R. Sylvester on March 26, 2010. At that time, Judge Sylvester held that the Department could not cancel Licensees' driving privileges except on expiration and renewal. Although she accepted the Department's documents into evidence, she did not take evidence from Licensees, presumably because she ruled in their favor as a matter of law. Accordingly, Judge Sylvester sustained Licensees' appeals from the cancellation of their driver's licenses and rescinded the cancellations.⁷ The Department's appeals to this court followed.⁸

⁶ For example, Latorre stated, "the Social Security Administration letter that says I cannot get a Social Security number—I think this is a waiver. It's already in the system. It's already in PennDOT, in the main office, every single document." (N.T., 1/29/10, at 13.) Further, Posada communicated, through his interpreter, that he, too, possessed a waiver. (*Id.*, at 11, 28.)

⁷ In her opinion issued pursuant to Pa. R.A.P. 1925(a), Judge Sylvester stated, *inter alia*, that the Department allowed Licensees both to obtain and renew their licenses based on their taxpayer identification numbers for many years. (Trial Ct. Op., 6/16/10, at 6.) Judge Sylvester also cited *Kocher v. Bickley*, 722 A.2d 756 (Pa. Cmwlth. 1999), as proof that the Department had a prior course of conduct in accepting taxpayer identification numbers in lieu of social security numbers when granting learner's permits. (Trial Ct. Op., 6/16/10, at 5.) However, we do not believe that **(Footnote continued on next page...)**

In its principal brief on appeal, the Department argues that it acted properly by cancelling Licensees' licenses immediately rather than waiting for the renewal process. Specifically, the Department asserts that section 1510 of the Code prohibits it from issuing a license where an applicant has not submitted a social security number or a waiver from social security requirements, and section 1572 of the Code permits the Department to cancel the license of a person who was not entitled to the issuance or who failed to give the required or correct information.⁹ The Department also asserts that Judge Sylvester abused her discretion by predetermining this matter and failing to consider the parties' evidence and that, contrary to Judge Sylvester's conclusion, *Kocher* does not stand for the proposition that the Department had a policy of accepting taxpayer identification numbers in lieu of social security numbers.

(continued...)

Kocher, a case that dealt with exemption from social security based on religious beliefs, constitutes proof of the Department's purported course of conduct in accepting taxpayer identification numbers instead of social security numbers.

⁸ Our scope of review of a common pleas court's decision in a case involving license cancellation is limited to determining whether the court made findings of fact unsupported by substantial evidence, committed an error of law or abused its discretion. *Department of Transportation, Bureau of Driver Licensing v. Hoover*, 543 A.2d 191, 194 n.1 (Pa. Cmwlth. 1988).

⁹ Even so, the Department acknowledges that the requirements of The REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 314, which necessitates that driver's license applicants supply a social security number and that the states confirm those numbers with the SSA, are prospective only. (Department's Principal Brief at 15 n.5.) Regardless, the Department maintains that its authority under sections 1510 and 1572 of the Code to cancel licenses that were obtained without a valid social security number remains unchanged.

As a general matter, we agree that section 1572 of the Code permits the Department to cancel a license where it determines that the licensee was not entitled to the issuance or failed to give the correct or required information. *See, e.g., Dick v. Department of Transportation, Bureau of Driver Licensing*, 3 A.3d 703, 710 (Pa. Cmwlth.) (Department properly cancelled licensee's driver's license based on license suspension in another state), *appeal denied*, ___ Pa. ___, 14 A.3d 829 (2010); *Hershey v. Department of Transportation, Bureau of Driver Licensing*, 669 A.2d 517, 520 (Pa. Cmwlth. 1996) (Department properly cancelled licensee's driver's license for failure to supply social security number where licensee did in fact possess social security number);¹⁰ *Department of Transportation, Bureau of Driver Licensing v. Hoover*, 543 A.2d 191, 196 (Pa. Cmwlth. 1988) (Department properly cancelled licensee's driver's license based on license suspension in another state). However, our agreement that section 1572 of the Code authorizes the Department to cancel a driver's license in certain circumstances, such as where the Department does not have the information required by section 1510, does not dictate that, in this situation, cancellation is warranted. In fact, after review of this record, we are satisfied that just the opposite result is called for here.

Although the Department argues that Judge Sylvester did not consider the evidence it presented at the hearing on March 26, 2010, a review of the transcript reveals that Judge Sylvester accepted the Department's certified documents into the

¹⁰ Hence, we deemed licensee's argument that he was unable to obtain a waiver from the federal government because no such waiver exists to be irrelevant.

record at that time. Further, in her opinion issued pursuant to Pa. R.A.P. 1925(a), Judge Sylvester quite saliently noted:

[I]n the Notices of Cancellation sent to [Licensees], PennDOT never once mentioned that [Licensees] could obtain a waiver of the social security requirement. At a minimum, justice would require that PennDOT inform [Licensees] of all the steps they could take to maintain their licenses. The first time any of the [Licensees] were told they could obtain a waiver was in court on January 29, 2010 [before Judge Ackerman].

(Trial Ct. Op., 6/16/10, at 6.) We agree with Judge Sylvester that the Department's failure to afford Licensees the requisite notice before cancellation of their licenses precluded the Department from cancelling their licenses under both Article 1, Section 1 of the Pennsylvania Constitution and the Fourteenth Amendment to the United States Constitution. *See Turk v. Department of Transportation, Bureau of Driver Licensing*, 983 A.2d 805, 818 (Pa. Cmwlth. 2009).¹¹

We explained in *Turk* that a driver's license may not be suspended, revoked or recalled absent due process. We also explained that, "[w]here a constitutionally protected property or liberty interest is at stake, due process requires sufficient notice of the conduct that forms the basis for a deprivation so that the [licensee] may adequately prepare a defense." *Id.* (quoting *Harrington v. Department of Transportation, Bureau of Driver Licensing*, 563 Pa. 565, 575, 763

¹¹ In its reply brief, the Department asserts that Licensees have asserted "due process" as a new issue. However, the trial court specifically addressed this matter in its June 16, 2010, opinion issued pursuant to Pa. R.A.P. 1925(a), prior to the Department's filing of its principal brief with this court on September 9, 2010.

A.2d 386, 392 (2000)). Here, to provide adequate notice, the Department needed to set forth what, exactly, Licensees failed to provide, i.e., what constitutes a waiver from the federal government permitting Licensees not to have a social security number.

However, neither the May 29, June 18, nor November 3, 2009, notices issued by the Department contained sufficient information for Licensees to adequately defend against the Department's cancellation of their licenses. Not one of these notices specifically mentioned the necessity of a waiver from social security requirements under Section 1510(f) of the Code, explained what such a waiver was, where to get it, or how long it would take to get. Moreover, as this court explained,

the “test for the adequacy of notice in accordance with procedural due process standards is not whether the licensee can correct the information contained in defective notices through diligent investigation, but rather whether the notices contain sufficient information and explanation to allow the licensee to defend against the charges contained therein.”

Turk, 983 A.2d at 818 (quoting *Dunn v. Department of Transportation, Bureau of Driver Licensing*, 819 A.2d 189, 193 (Pa. Cmwlth. 2003)). Under that standard, the notices here were clearly defective.¹²

¹² The Department apparently recognized that its first notice was inadequate because, as previously set forth, it sent out a second notice informing Licensees that the original cancellation date was postponed and that it would send out a new notice containing all of the requirements to avoid cancellation, but then failed to cure the defect in the third notice. *Cf. Turk*, 983 A.2d at 819 (wherein recall notice to licensee informed her of the length of the recall, the reason for the recall and the statutory authority for the recall).

Further, this defective process was not cured by the two hearings before the trial court. First, as previously set forth, even Department counsel appeared confused by exactly what documents were required to prove a waiver or what a waiver was. Second, despite Judge Ackerman’s valiant attempts to comprehend and communicate the waiver documents required, when Latorre and Posada, with Judge Ackerman’s permission, gave the information they deemed relevant to Department counsel, the documentation was not what the Department “was looking for,” as ultimately reflected at the hearing before Judge Sylvester.¹³ Therefore, we simply cannot say that the hearings Licensees received cured the defects in the process afforded them, as happened in both *Grindlinger v. Department of Transportation, Bureau of Traffic Safety*, 300 A.2d 95, 96 (Pa. Cmwlth. 1973), and, more recently, in *Turk*.¹⁴ Further, we note even the Department acknowledges that Licensees

¹³ Therefore, absent further notice of what they are supposed to present to the Department in terms of a waiver, Latorre and Posada are in the same position as the other licensees in this case. We note that, at the March 26, 2010, hearing, Department counsel stated:

The citizenship status documents present a problem. And this gentleman [Posada] presented me with a packet, and I have the packet that he gave me, and I sent everything up, even though he had duplicates of certain documents. He sent a copy. He provided me with a photocopy of his passport with an expiration date of May 28, 1996. He gave me two copies—strike that—three copies of that and also gave me another copy of a passport with an expiration date of December 2006. I believe what my client **was looking for** was something with a current date.

(N.T., 3/26/10, at 14-15.) (Emphasis added.) However, at the first hearing, Department counsel indicated what the Department was looking for was a “waiver.”

¹⁴ In *Grindlinger*, this court held that a *de novo* hearing before the trial court cured the Department’s failure to afford a licensee notice and opportunity to be heard at an administrative hearing prior to suspension of his license. In *Turk*, we held that a licensee was amply prepared to present evidence at both supersedeas and *de novo* hearings, but that, at the *de novo* hearing, she **(Footnote continued on next page...)**

“presumably” meet all of the Code’s other requirements. (Department’s Reply Brief at 5 n.2.)¹⁵

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

(continued...)

declined to present physician testimony ostensibly relevant to her defense. The outcomes in these cases do not control the matter at bar.

¹⁵ Concerned with its charge, the Department turns a blind eye to the fact that Licensees have “approximately sixty combined years of driving,” (Licensees’ Brief at 2), and that, “[a]side from one driver’s ‘stop sign violation,’ they have violated no traffic laws.” (*Id.*) The Department’s actions clearly prejudice these Licensees who “depend upon their licenses in order to make their livings and care for their families.” (*Id.*) We note that the Department’s extensive delay in cancelling Licensees’ driver’s licenses based on their purported failure to provide the requisite information appears itself to be a violation of due process. *See Rothstein v. Department of Transportation, Bureau of Driver Licensing*, 922 A.2d 17, 22-23 (Pa. Cmwlth. 2006).

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ORDER

AND NOW, this 11th day of October, 2011, the orders of the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, dated March 26, 2010, are hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge