



State of New Hampshire

DEPARTMENT OF SAFETY

BUREAU OF HEARINGS

James H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03305

RULING ON "MOTION TO RECONSIDER OR FOR REHEARING"

RESPONDENT: Ian Bernard aka Ian Freeman
DOB: 8/2/80
HEARING DATE: 7/26/13
DATE OF REPORT: 09/18/13
HEARING LOCATION: Concord, N.H.
LICENSE #: 08BDI80021
DOS HEARING #: 13-8519
REFERENCE: MISUSE OF PRIVILEGES/IMPROPER DRIVING 0014
PRESIDING HEARING EXAMINER: Michael P. King, Esq.
RESPONDENT REPRESENTED BY: Marc Stevens via WEBEX
OTHER PERSONS PRESENT: Attorney Jean Kilham
Sgt. Jason Short, Keene PD

BACKGROUND:

This hearing was held on 7/26/13 and a written decision issued on 9/6/13. A "Motion to reconsider or for rehearing" was dated 9/11/13 and received via US Mail on 9/16/13.

The applicable rule is as follows:

Saf-C 203.23 Re-Opening of Cases.

(a) Whenever a hearings examiner is satisfied that good cause exists to explain why a person failed to appear at an administrative hearing at which a default decision was rendered, the hearings examiner shall strike the default judgment and reopen the case for determination on the merits.

(b) Good cause shall be as specified in Saf-C 203.22 (b).

(c) A case that has been decided other than by default shall be reopened whenever:

(1) A party alleges the existence of newly-discovered evidence which due diligence would not have discovered prior to hearing; or

(2) A party alleges any material error, omission, misconstruction of applicable statutes or rules or misrepresentations of applicable precedents.

(d) An application to reopen a case shall be in the format of a written request when submitted pursuant to (c) above. It shall outline the newly discovered evidence or an allegation and specific references of material error, omission or misconstrued statutes or rules, or misrepresentation of applicable precedents.

(e) In the case of a default judgment, a request pursuant to (a) above, shall be submitted to and received by the department no later than 15 working days from the date of the default or from the date of the condition that prevented the appearance and notification no longer existed, whichever occurs first. Requests received subsequent to the time requirement shall be denied as untimely. An application to reopen shall not suspend the applicable appeal period prescribed by statute.

(f) An application to reopen a case, when submitted pursuant to (a) above, shall outline the good cause, pursuant to (b) above, that existed which precluded the person from appearing at the administrative hearing.

(g) An application to reopen cases shall be denied if it is determined that such application:

(1) Is made solely to obtain a delay in the disposition of the case; or

(2) Is not in compliance with this section.

The applicable section of this rule as it relates to this motion is (c)(2).

The state objected to this motion by pleading dated 9/16/13.

DISCUSSION:

The respondent states that the hearings examiner "based his decision on statutes, not evidence."

The respondent oversimplifies the matter in order to attempt to bring about the desired result. In the hearings examiner's view, there was one decision to make at the hearing, i.e. did the state meet its burden of proving misuse or abuse of driving privileges. That decision was based on applying statutes and rules to the factual evidence presented by the City of Keene and the respondent. The

respondent's argument appears to be that the hearings examiner should never have reached the issue of "misuse or abuse" because the City of Keene had not proved jurisdiction. It was set forth by Mr. Stevens that before proceeding, there had to be proof that the Department of Safety had jurisdiction to make pronouncements in regard to the respondent's use of New Hampshire roadways. New Hampshire roadways did not magically appear for the use and enjoyment of properly licensed drivers. They were built with taxes and fees generated from the federal, state and local governments. Because of the cooperative nature of this enterprise, the federal, state and local governments have enacted laws and rules governing the use and enjoyment of these roads. The respondent has used these roads and, for the reasons stated in the original decision, is subject to those laws and rules when using those roads. This is not an "opt out" situation. The respondent has a choice: use the roads and follow the laws and rules, or not use the roads. A personal philosophy does not exempt him from following rules and laws simply because he says they don't apply to him. He attempts to turn this around and claims that the state has to prove that it has this authority over him. But, in so doing, he completely ignores the nature of that authority.

This goes to the heart of the argument of claiming that Mr. Stevens made "legitimate objections." The respondent and Mr. Stevens certainly can believe that the objections were legitimate, but the hearings examiner ruled, time and again, that they were not, and Mr. Stevens simply reasserted the same objection numerous times, which amounted to *argumentum ad nauseam*. It is difficult to see how an objective observer would consider this anything but a deliberate attempt to prevent the hearing from going forward on the complaint brought by the City of Keene.

The respondent continues to state that the City of Keene "had the burden of proof on jurisdiction" but merely repeating an assertion does not make it true. He cites no authority for this assertion because there is none. The issue of jurisdiction was sufficiently addressed in the original decision and nothing in the motion changes that portion of the decision.

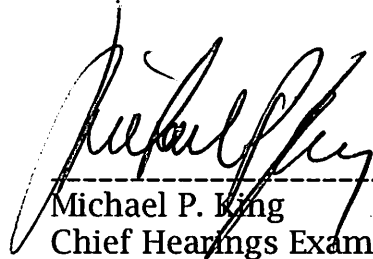
CONCLUSIONS OF LAW:

In all respects, the motion fails to state a basis upon which a rehearing or reconsideration may be granted as the respondent has failed to allege any material error, omission, misconstruction of applicable statutes or rules or misrepresentations of applicable precedents

DISPOSITION:

The "Motion to reconsider or for rehearing" is DENIED.

The respondent is hereby advised that the filing of this motion is not a predicate to a Superior Court appeal and, therefore, the 30 day period within which he may appeal started on 9/6/13 and continues.



Michael P. King
Chief Hearings Examiner

Report emailed to both parties: 09/18/2013

cc: Ian Bernard aka Ian Freeman
Atty. Kilham