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State Transp. Dept. v. Kalani-Keegan Appellant's Reply Brief Dckt. 40149

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, TRANSPORTATION
DEPARTMENT,

Appellant/Petitioner,

vs.

MARINA KALANI-KEEGAN

Respondent.

SUPREME COURT DOCKET
NO. 40149-2012

KOOTENAI COUNTY DOCKET
CASE NO. CV2011-8174

APPELLANT'S REPLY BRIEF

APPEAL FROM THE DISTRICT COURT OF THE
FIRST JUDICIAL DISTRICT FOR KOOTENAI COUNTY

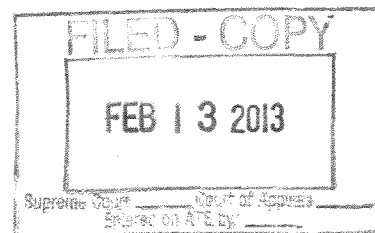
THE HONORABLE JUDGE JOHN STEGNER

SUSAN K. SERVICK
Special Deputy Attorney General
618 N. 4th Street
Coeur d'Alene, ID 83814

ATTORNEY FOR APPELLANT

GREG D. HORNE
Attorney at Law
PO Box 477
Coeur d'Alene, ID 83816

ATTORNEY FOR RESPONDENT



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Coeur d'Alene, ID 83816

ATTORNEY FOR RESPONDENT

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This is the reply brief of the Petitioner State of Idaho, Transportation Department (ITD). Petitioner requests this Court to reverse the decision of the hearing officer and uphold the suspension of Respondent Marina Kalani-Keegan (Kalani-Keegan) driver's license.

I. ARGUMENT

The hearing officer was wrong when the hearing officer concluded that the required documents were not forwarded to ITD. The hearing officer compounded the error when he disregarded the substantial undisputed evidence presented by ITD in its Motion for Reconsideration. Because of the error committed by the hearing officer, the ruling was appealed by ITD. As demonstrated, the action by the hearing officer was in violation of the statutory provisions, in excess of his authority, not supported by substantial evidence, arbitrary, capricious and an abuse of discretion and violated the substantial rights of ITD to a fair proceeding.

A. RELIANCE UPON THE DECISION OF THE DISTRICT COURT IS MISPLACED.

In the response to this appeal, the briefing of Kalani-Keegan relies almost entirely on the decision of the District Court. Throughout the Respondent's Brief, Kalani-Keegan cites the ruling of the District Court (which upheld the hearing officer) and requests that this Court uphold the reasoning of the District Court. This argument is without merit.

Generally, in an appeal of a Petition for Judicial Review the Supreme Court reviews the agency's underlying decision. The Idaho Supreme Court is *not bound* by the decision of the District Court. As the Court has stated many times:

In an appeal from the decision of the District Court acting in its appellate capacity under IDAPA, this Court reviews the agency record **independently** of the District Court's decision [emphasis added].

Howard v. Canyon County Bd. of Comm'rs, 128 Idaho 479, 480, 915 P.2d 709, 710 (1996); *Marshall v. Idaho Dep't of Transp.*, 137 Idaho 337, 340, 48 P.3d 666, 669 (Ct.App.2002); *Williams v. Idaho Dep't of Transp.*, 153 Idaho 380, 283 P. 3d 127 (Ct. App. 2012); *Peck v. Idaho Dep't of Transp.*, 278 Idaho 37, 278 P.3d 439 (Ct. App. 2012). Likewise, because the District Court was acting in an appellate capacity, the Supreme Court reviews this agency record, independently of the District Court's decision.

Kalani-Keegan argues that the legal issues raised and decided by the District Court are controlling here. Kalani-Keegan argues that issues not raised to the District Court will not be considered for the first time on appeal, citing *Lawton v. City of Pocatello*, 126 Idaho 454, 464, 886 P.2d 330, 340 (1994) and *Post Falls Trailer Park v. Fredekind*, 131 Idaho 634, 962 P.2d 1018 (1998). This argument is also without merit.

In the *Lawton* case, the appeal to the Supreme Court was based upon a jury trial in a personal injury lawsuit. In the *Fredekind* case, the appeal to the Supreme Court concerned the magistrate court's determination of a motion for summary judgment in a landlord tenant dispute. The appeal issues in these cases do not apply here because neither case involved an appeal of a Petition for Judicial Review under the provisions of IDAPA.

In the instant appeal, the focus of the review of the Supreme Court is on the agency record, not the decision of the District Court. As discussed in ITD opening brief, the review by the Supreme Court is on the decision of the hearing officer and whether the hearing officer made a proper decision based upon the record before him.

**B. THE FINDINGS OF THE HEARING OFFICER ARE CLEARLY
ERRONEOUS, NOT SUPPORTED BY SUBSTANTIAL EVIDENCE
AND THEREFORE UNFAIR TO ITD.**

In this appeal, the focus is properly on the findings of the hearing officer. This Court must defer to the findings of the hearing officer *unless* the findings are clearly erroneous. See, *Castaneda v. Brighton Corp.*, 130 Idaho 923, 926, 950 P.2d 1262, 1265 (1998); *Marshall*, 137 Idaho at 340, 48 P.3d at 669. As discussed in ITD'S opening brief, the hearing officer's findings were clearly erroneous in that the findings were not legally or factually correct.

In addition, the substantial rights of ITD were violated by the unfair decision making process of the hearing officer. All parties to a proceeding for an Administrative License Suspension (ALS) proceeding have substantial rights to a legally and factually fair process by the hearing officer. The parties have a right to expect the hearing officer will make finding of fact based upon evidence actually presented to the hearing officer. The parties also have a right to expect that incorrect decisions by the hearing officer will be corrected by a properly supported Motion for Reconsideration. Here, the substantial right of ITD was violated by the errors committed by the hearing officer.

C. ATTORNEY FEES AGAINST ITD ARE NOT JUSTIFIED.

Kalani-Keegan also requests an award of attorney fees on appeal. This argument is also without merit. Idaho Code Section 12-117(1) provides for an award of attorney fees only if certain conditions are met. The statute provides:

(1) Unless otherwise provided by statute, in any administrative or civil judicial proceeding involving as adverse parties a state agency, a city, a county or other

taxing district and a person, the court shall award the prevailing party reasonable attorney's fees, witness fees and reasonable expenses, if the court finds that the party against whom the judgment is rendered acted without a reasonable basis in fact or law.

Recently, in *Peck v. State of Idaho, Department of Transportation*, 278 Idaho 37, 278 P.3d 439 (Ct. App. 2012), the Petitioner (Peck) requested an award of attorney fees against ITD. The Court rejected the argument and stated:

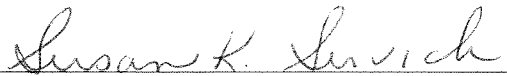
Peck states, " Notwithstanding the most recent rounds of appellate Court interpretation and legislative amendments to Idaho Code § 12-117, Peck seeks to maintain the possibility to recover attorney fees against the State of Idaho, Department of Transportation, pursuant to Idaho Code § 12-117...." This attorney fees statute pertaining to civil actions does not allow a court to award attorney fees on judicial review of an administrative decision. *St. Luke's Magic Valley Reg'l Med. Ctr., Ltd. v. Bd. of Cnty. Comm'rs of Gooding Cnty.*, 150 Idaho 484, 490, 248 P.3d 735, 741 (2011). Consequently, no attorney fees may be awarded to either party.

Id. Likewise, this Court must decline to award attorney fees in this case.

II. CONCLUSION

ITD respectfully requests that this Court reverse and remand the decision of the hearing officer and impose the impose suspension of the respondent's driver's license.

Dated February 11, 2013.

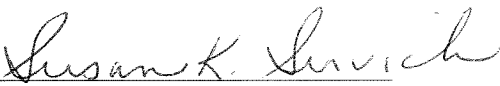

Susan K. Servick

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the **REPLY BRIEF** was transmitted,
February 11, 2013 by the following method, to:

GREG D. HORNE
Attorney at Law
PO Box 477
Coeur d'Alene, ID 83816
Fax: 208-667-9631

Fax
 US Mail


Susan K. Servick
Susan K. Servick