

STATE OF MAINE
CUMBERLAND, ss

STATE OF MAINE
CUMBERLAND, SS
CLERK'S OFFICE

SUPERIOR COURT
CIVIL ACTION
Docket No. AP-05-02 ✓

2005 NOV 23 P 2:11

TE - CUM - LEMIEUX

DANIEL LEMIEUX,

Petitioner,

v.

**DECISION AND JUDGMENT
(M.R.Civ.P. 80C)**

STATE OF MAINE,
SECRETARY OF STATE,

Respondent.

This is a petition for review of final agency action filed pursuant to M.R.Civ.P. 80C by petitioner Daniel Lemieux whose motor vehicle driving privileges were suspended by the Secretary of State as a consequence of his refusal to submit to required alcohol blood level testing.

On August 31, 2004 Lemieux was arrested for operating under the influence of intoxicating liquor and determined to refuse to submit to a chemical test as required by 29-A M.R.S.A. § 2521. The Secretary of State notified Lemieux of the suspension of his right to operate a motor vehicle in Maine for a period of 18 months. Lemieux requested a hearing to review the circumstances of his suspension. A hearing was scheduled and continued twice at Lemieux's request. After hearing, the hearings office upheld the administrative suspension.

Lemieux filed a timely appeal,; however, his pleadings are somewhat confusing as to the specific issues he raises. The court assumes that he seeks to have the suspension of his license vacated.

Rather than a customary brief raising issues of law, Lemieux has filed a "Brief . . . of Daniel Lemieux, Petitioner," and a document that contains two "Statement(s) of Fact"

C/GM

and a "Statement of Issues." In addition he refers to new evidence in an affidavit of Katie Papkee, new photographs and "incorrect statements found in the transcript."

An appeal under M.R.Civ.P. 80C is limited to review of alleged errors of law. The only issue raised by Lemieux that may arguably be legal in nature is his claim of "whether the preponderance of evidence was met."

It is well established that the court cannot entertain new evidence unless a specific request has been made and allowed by the court. 5 M.R.S.A. § 1106(1) and M.R.Civ.P. 80C(e).

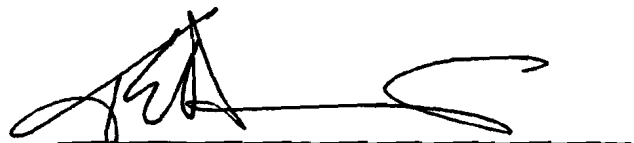
On review of the record below, the court determines that there was sufficient evidence to support the hearing officer's decision to uphold the administrative decision.

The entry will be:

Decision of the hearings officer upholding the administrative suspension is affirmed.

SO ORDERED.

DATED: November 22, 2005



Thomas E. Delahanty II
Justice, Superior Court

Date Filed 1-3-05 Cumberland Docket No. AP05-2
County

Action 80C Appeal

Daniel Lemieux State of Maine

vs.

Plaintiff's Attorney

Pro Se
47 Allen Avenue
Portland ME 04103
797-7832

Defendant's Attorney

Dale Denno, AAG
6 State House Station
Augusta, Maine 04333-006

Date of
Entry

2005	
Jan. 3	Received 1-3-05 Summary sheet filed. 80C Appeal filed.
"	Indigency Affidavit filed.
"	Plaintiff's Application to Proceed without Payment of Fees filed.
Jan. 6	On 1-6-05. As to Plaintiff's application to proceed without payment of fees, the filing fee is waived. 1-6-05 copy mailed to Daniel Lemieux
Jan. 19,	Received 1-19-05 Letter of appearance on behalf of the Secretary of State, Bureau of Motor Vehicles filed by Dale Denno, AAG.
Jan. 25	Received 1-25-05. Record filed.
"	On 1-25-05. Briefing schedule mailed. Petitioner's brief due 3-7-05.
March 7,	Received 3-7-05 Brief of Daniel Lemieux, Petitioner filed with attachment and exhibit 1-6
March 17	Received 3-17-05. Respondent's Objection to Petitioner's Request for Additional Evidence with attached exhibit A filed.
March 22,	Received 3-22-05 Copy of affidavit from Katie Papkee filed by Daniel Lemieux
" "	Copy of Petitioner, Daniel Lemieux's Motion to Compel and Produce and Mullify Dismissal by the Attorney General Office filed.
" "	Copy of Letter from Daniel Lemieux enclosing affidavit from the witness that was not available at the time of his hearing filed.
" "	Copy of Notice from Daniel Lemieux stating the Sworn Affidavit for this casw will be mailed on or about the 7th of March filed.

DANIEL LEMIEUX vs. STATE OF MAINE, SECRETARY OF STATE.

Date of
Entry

Docket No. AP-05-02

2005
Apr. 6

Received 04-04-05:
Respondent's Brief filed.

Nov. 30

Received 11-23-05:
Decision and Judgment filed.
Decision of the hearings officer upholding the administrative
administrative suspension is affirmed. So Ordered.
On 11-30-05 Copies mailed to Dale Denno, AAG and Daniel
Lemieux at 47 Allen Avenue, Portland, Maine 04103
Ms. Deborah Firestone, Goss Mimeograph, The Donald Garbrecht
Law Library, Loislaw.Com, Inc.