

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-09-50/
JHM - KEN - 5/7/2010

TERENCE B. DOYLE,

Petitioner

v.

ORDER

SECRETARY OF STATE,

Respondent

This matter is before the court on petitioner's M.R. Civ. P. 80C petition for review of administrative action by the Secretary of State Bureau of Motor Vehicles.

Effective September 4, 2009, pursuant to 29-A M.R.S.A. § 2521(6), based on a report from a Waterville police officer that Doyle was operating a motor vehicle while under the influence of alcohol on August 16, 2009, and then refused to submit to and complete a chemical test to determine his blood-alcohol level and drug concentration, petitioner's drivers license was suspended for a 275-day period. Upon his request for an administrative hearing, a hearing notice was issued for a hearing to be conducted Wednesday, September 16, 2009, at the Augusta office. Prior to that time, in a letter dated August 26, 2009, retained counsel notified the Bureau of his entry of appearance and requested a work permit for the petitioner. On the day and time of the hearing, petitioner was unable to appear, but counsel appeared on his behalf. Prior to the start of the hearing, counsel withdrew the request for the hearing, apparently, because of an understanding that a hearing would not be necessary if the arresting officer appeared, which did occur. The order of the examiner indicates that the request for hearing was withdrawn, a request for stay pending judicial review was denied, and the matter is now before the court

Because this matter is clearly determined by the waiver of the petitioner of his request for hearing at the administrative agency level, which would have been authorized to provide him relief on his request, the administrative remedies have not exhausted and the court must deny his petition for review. *York Hospital v. Dep't of Human Servs.*, 2005 ME 41, § 30, 869 A.2d 729, 736 (no procedural due process violation where party withdrew request for administrative hearing); *Brown v. Unemployment Ins. Comm'n*, 2005 W.L. 339676 (Me. Super. Ct. Cole, J., Sept. 27, 2005) (denying motion to take additional evidence in part because petitioner failed to appear at an administrative hearing).

The entry will be:

The petition for M.R. Civ. P. 80C review is DENIED.

DATED: *May 7, 2010*



Donald H. Marden
Justice, Superior Court

Date Filed 10/15/09 Kennebec County Docket No. AP-09-50

Action Petition For Review
80C

MARDEN

Terence B. Doyle vs. Bureau of Motor Vehicles

Plaintiff's Attorney

Terence B. Doyle - Pro Se
PO Box 615
302 Main Street
Jackman, ME 04945

Defendant's Attorney

Donald Macomber, AAG
6 State House Station
Augusta, Maine 04333-0006

Date of Entry

- 10/17/09 Petition for review and attachments, filed 10/15/09.
- 10/28/09 Letter entering appearance, filed. s/Macomber, AAG (filed 10/26/09)
Respondent's Opposition to Petitioner's Pro Se Motion for Stay, filed.
s/Macomber, AAG
- 11/10/09 Certified Record, filed. s/Macomber, AAG (11/6/09)
- 11/10/09 **NOTICE AND BRIEFING SCHEDULE ISSUED**
Copies to party/atty.
- 12/14/09 Petitioner's Brief, filed. s/Doyle, Pro Se
- 1/27/10 Respondent's Brief with Incorporated Motion for Enlargement of Time to
File Brief Nunc Pro Tunc, filed. s/Macomber, AAG
- 4/8/10 Letter informing the court that there is no objection to the court's
consideration without oral argument, filed. s/Macomber, AAG
- 5/7/10 ORDER, Marden, J.
The petition for M.R.Civ.P.80C reveiw is DENIED.
Copies to party/counsel
Copies to repositories