

STATE OF INDIANA
BUREAU OF MOTOR VEHICLES

In the Matter of [REDACTED], DL# [REDACTED],
Petitioner.

ORDER OF REMAND

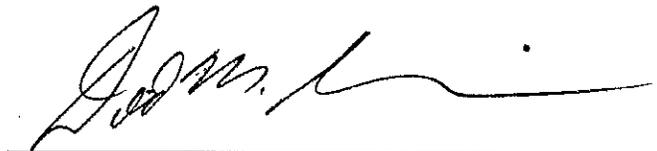
1. This matter comes before me as a result of a Notice of Appeal filed by Petitioner [REDACTED] [REDACTED] ("[REDACTED]") by letter of December 12, 2013 seeking administrative review of a decision by the Driver Record Management Division of the Indiana Bureau of Motor Vehicles ("BMV") to impose a driving privilege suspension for "Failure to File Insurance-Bureau" (suspension 10) and "Repeat Insurance Violation" (suspension 19) upon [REDACTED].
2. This matter was referred to Administrative Law Judge Pamela Walters, Esq. per Indiana Code § 4-21.5-3-27(a) for review and the issuance of a Recommended Order, which was completed on January 14, 2014.
3. On January 24, 2014, the Driver Record Management Division ("DRM") of the BMV filed an objection to the Recommended Order per Indiana Code § 4-21.5-3-29(d).
4. The gist of this case is that [REDACTED] claims he was operating a moped at the time of the incident which gave rise to his suspension. He argues that since he is not required to obtain insurance for a moped, he should not have been suspended for failure to do so.
5. The Recommended Order states that "[t]he certified court abstract submitted did not indicate the type of vehicle operated" and therefore "unless the certified court abstract can be amended to reflect that it was indeed a scooter, this ALJ can not for certain state that a scooter was involved in the offense."

6. However, as the DRM's Objection correctly points out, within the record of proceedings is a copy of the "Affidavit for Probable Cause" signed by the arresting officer, Josh Orme of the Indiana State Police, regarding the incident in question. Although it is a copy, it is signed under penalties of perjury and it carries the stamp of the Clerk of the Harrison Superior Court. I see no reason why it would not be considered probative evidence here. The Affidavit describes the vehicle being driven by [REDACTED] as an "Orange 2012 Tao Tao Scooter" near the top of the Affidavit, and at the bottom of the page, under "vehicle type," Officer Orme checked the box for "Other" and hand wrote the word "Scooter." This description generally matches the description of the scooter in the Certificate of Origin for a Vehicle submitted by [REDACTED]. It would appear to support [REDACTED]'s appeal.
7. DRM is to be commended for pointing this out, in light of the fact that the Recommended Order would have upheld the DRM's initial decision to suspend [REDACTED].
8. As the Recommended Order does not discuss Officer Orme's Affidavit of Probable Cause, it is not clear whether it was considered by the ALJ, or if so, why it was not given weight.
9. Therefore, per my authority under Indiana Code § 4-21.5-3-29(b), I am hereby REMANDING this matter back to the ALJ with instructions to review Officer Orme's Affidavit of Probable Cause and amend or supplement the Recommended Order with a discussion of whether, and to what extent, I should consider that document in making my ruling on this matter.

SO ORDERED.

2-10-2014

Date



Donald M. Snemis, Commissioner
Indiana Bureau of Motor Vehicles

Written notice of this order shall be provided to:

~~Charles P. Walters, Esq.~~

BMV Driver Record Management

Pamela Walters, Esq.