

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the OHV
Registration, Operation and Trespass
Civil Citation No. 72005 Issued to Bradley
Joseph Siiter

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came before Administrative Law Judge Steven M. Bialick for a Prehearing Conference held by telephone conference call on February 25, 2015, pursuant to a Notice of Prehearing Conference and Notice of Hearing that was issued on February 4, 2015. Conservation Officer Matt Frericks (CO Frericks) appeared on behalf of the Department of Natural Resources (Department) without counsel. Bradley Joseph Siiter (Appellant) appeared on his own behalf without counsel.

On February 25, 2015, the parties agreed to treat the Prehearing Conference as the formal hearing on the civil citation that was issued to Appellant. Sworn testimony was taken and arguments were presented during the hearing. The record closed on February 25, 2015, upon adjournment of the hearing.

STATEMENT OF THE ISSUES

1. Whether Appellant violated Minn. Stat. § 84.9256, subd. 1(a) (2014) by operating an all-terrain vehicle (ATV) along or on a public road right-of-way without a valid driver's license.
2. Whether \$100 is the appropriate civil penalty if Appellant violated Minn. Stat. § 84.9256, subd. 1(a).

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that Appellant violated Minn. Stat. § 84.9256, subd. 1(a), and that a civil penalty of \$100 is appropriate. Therefore, the Administrative Law Judge recommends that the commissioner of the Department (Commissioner) affirm the citation and \$100 civil penalty issued to Appellant.

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On October 18, 2014, at approximately 2:25 p.m., CO Frericks was on Depot Location Road, in Biwabik, Minnesota, facing northwest, when he saw an ATV come around the corner. The ATV was being driven on a public road which is part of a public road right-of-way.¹

2. CO Frericks later saw the ATV on Appellant's property, located at 6213 Depot Location Road, in Biwabik, Minnesota, and he went to talk to Appellant.²

3. Appellant was the person CO Frericks saw driving the ATV.³

4. CO Frericks got Appellant's name from Appellant, and he checked to see if Appellant had a valid driver's license.⁴

5. Appellant did not have a valid driver's license on October 18, 2014.⁵

6. On October 18, 2014, Appellant was operating an ATV on a public road right-of-way without a valid driver's license.

7. On October 18, 2014, CO Frericks gave Appellant a civil citation which assessed a \$100 civil penalty for operating an ATV on a public road right-of-way without a valid driver's license.⁶

8. By letter marked "2nd copy Dec," and postmarked on December 8, 2014, Appellant appealed the citation.⁷

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. This matter is properly before the Administrative Law Judge and the Commissioner pursuant to Minn. Stat. §§ 14.50; 84.775, subd. 2; 116.072, subd. 6 (2014).

2. Minn. Stat. § 84.9256, subd. 1(a) requires a person who operates an ATV along or on a public road right-of-way to have a valid driver's license.

¹ Testimony (Test.) of CO Frericks.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Test. of CO Frericks; OHV Registration, Operation and Trespass Civil Citation No. 72005.

⁷ Letter and envelope from Appellant, postmarked December 8, 2014.

3. Conservation officers are legally authorized to issue civil citations to persons who violate Minn. Stat. § 84.9256, subd. 1(a), and to impose a statutory penalty of \$100 for a first violation of that statute.⁸

4. Minn. Stat. § 84.775, subd. 2 allows a person who receives a citation for a violation of Minn. Stat. § 84.9256, subd. 1(a) to appeal the citation under the provisions of Minn. Stat. § 116.072 (2014), if the recipient of the citation requests a hearing in writing within 30 days after receipt of the citation. Minn. Stat. § 84.775, subd. 2 also provides that, if a hearing is not requested within the 30-day period, the citation becomes a final order not subject to further review.

5. The letter from Appellant postmarked December 8, 2014, in which he appealed the citation, was not timely because it was sent after the 30-day period mandated by Minn. Stat. § 84.775, subd. 2.

6. Appellant violated Minn. Stat § 84.9256, subd. 1(a) by operating an ATV on a public road right-of-way without a valid driver's license.

7. Pursuant to Minn. Stat. § 116.072, subd. 6(c), the Administrative Law Judge may not recommend a change in the amount of the proposed penalty unless the judge determines that the amount of the penalty is unreasonable.

8. The penalty amount of \$100 is not unreasonable, and it is the appropriate civil penalty for Appellant's violation of Minn. Stat. § 84.9256, subd. 1(a).

9. For purposes of Minn. Stat. § 116.072, subd. 6(d), Appellant's request for hearing was not solely for purposes of delay and was not frivolous.

Based on the Conclusions of Law, and for the reasons set forth in the Memorandum below, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that OHV Registration, Operation and Trespass Civil Citation No. 72005 and the \$100 civil penalty issued to Appellant be **AFFIRMED**.

Dated: March 13, 2015

s/Steven M. Bialick

STEVEN M. BIALICK
Administrative Law Judge

Reported: Digitally Recorded

⁸ Minn. Stat. § 84.775, subd. 1 (2014).

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order until at least five days after receipt of the Report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner, and the Commissioner will consider the comments. The final order of the Commissioner may be appealed in the manner provided in Minn. Stat. §§ 14.63-.69 (2014).

MEMORANDUM

In an appeal of a civil citation, the burden of proof is on the Department to prove by a preponderance of the evidence that the person receiving the citation violated the law.⁹

In this case, Appellant received a citation for driving an ATV along or on a public road right-of-way without a valid driver's license. It is undisputed that Appellant was driving the ATV on the day the citation was issued and that he did not have a valid driver's license on that day.¹⁰ In addition, CO Frericks testified that he clearly saw that the ATV was being driven on a public road which was part of a public road right-of-way.¹¹

Appellant claims that he was driving the ATV on private property and city property, and that he was not driving on a public road or public right-of-way.¹²

CO Frericks' testimony was more credible than Appellant's testimony, and the Department has proven by a preponderance of the evidence that Appellant violated Minn. Stat. § 84.9256, subd. 1(a) by operating an ATV on a public road right-of-way without a valid driver's license.

In addition, Appellant's letter appealing the citation was postmarked December 8, 2014, which was more than 30 days after his receipt of the citation. Minn. Stat. § 84.775, subd. 2, provides that if a hearing is not requested in writing within 30 days after receipt of the citation, the citation becomes a final order not subject to further review.

The citation and \$100 civil penalty issued to Appellant should be **AFFIRMED**.

S.M.B.

⁹ Minn. R. 1400.7300, subp. 5 (2013).

¹⁰ Test. of CO Frericks; Test. of Appellant.

¹¹ Test. of CO Frericks.

¹² Test. of Appellant; letter from Appellant postmarked December 8, 2014.