

IT IS FURTHER RESOLVED that this Resolution be spread upon the minutes of this meeting, and that a copy thereof be delivered to each of Chauncey's brothers, his sister, his daughter and his son.

May 20, 1995

MEMORIAL RESOLUTIONS COMMITTEE

By: Kenneth E. Hankins, Jr.  
Chair

Rudolf M. Wertime  
Member

LeRoy S. Maxwell  
Member

HERSHEY VS. COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF TRANSPORTATION, C.P., Franklin County  
Branch, Misc. Vol. BB, Page 121

*Civil Action-Suspension Appeal- Failure to include Social Security Number on license camera card*

1. Except as provided in subsection (f), an applicant for a driver's license shall include his Social Security number on his license application. Section 1510(a) of the Vehicle Code
2. Waiver- Notwithstanding the provisions of subsection (a), the department shall issue a driver's license to an otherwise eligible person who has no Social Security number if the person submits a waiver obtained from the Federal Government permitting him not to have a Social Security number. The department may require other identifiers, including, but not limited to, a taxpayer identification number, before issuing the license. Section 1510(f) of the Vehicle Code.
3. In this Commonwealth, driving is a privilege and not a right.
4. The Department of Transportation has the burden of establishing a prima facie case that the cancellation of a motorist's license was appropriate under the Vehicle Code.
5. Under 42 U.S.C. Section 405(c)(2)(C)(i), the Social Security Administration explicitly allows state governments to request that individuals provide their Social Security number for various purposes, including administering driver license and vehicle registration.

*Matthew X. Haeckler, Esquire, Assistant Counsel, Attorney for the Commonwealth of Pennsylvania, Department of Transportation.*

*Barry K. Hershey, Petitioner, appearing pro se.*

**OPINION AND ORDER**

HERMAN, J., March 22, 1995:

On June 10, 1994, the petitioner, Barry Hershey, received an official notice from the Pennsylvania Department of Transportation, Bureau of Driver Licensing (hereinafter "the Department") that his license was being canceled under section 1572 of the Vehicle Code effective July 15, 1994 for his failure to include a Social Security number on the license camera card. The petitioner filed a timely appeal from the notice and a hearing was held before the undersigned on September 26, 1994. Thereafter, the petitioner, proceeding *pro se*, submitted a brief to the court, as

did counsel for the Department, which were received by November 14, 1994. This matter is ready for decision.

### FINDINGS OF FACT

By letter dated February 3, 1993, the Department denied the petitioner's request to renew his driver's license because he had not included a Social Security number on the application. (Commonwealth exhibits #1-7, 1-8). Between that date and March 6, 1994, the petitioner and several members of the Licensing section of the Department exchanged correspondence regarding the interpretation of section 1510 of the Vehicle Code which pertains to the Department's use of a prospective licensee's Social Security number in the licensing process. On March 22, 1994, the Department issued a camera card and temporary license to the petitioner. The petitioner undertook to have his photograph taken for the camera card, but once again did not provide a Social Security number on the application. (Commonwealth exhibit #1-4). On June 10, 1994, the Department mailed the petitioner a letter stating that he had failed to comply with section 1572 of the Vehicle Code. The petitioner's license was canceled and this appeal followed. (Commonwealth exhibit #1-1, petitioner's exhibit #1).

The petitioner, born February 11, 1959, was issued a Social Security number upon his father's application when the petitioner was a minor. On February 3, 1992, the petitioner filed an "Affidavit of Revocation and Rescission" in the Franklin County Office of the Prothonotary. By this Affidavit, the petitioner purported to declare that he is not subject to the provisions of the Internal Revenue Code as enforced by the Internal Revenue Service, and to revoke the Social Security number previously established in his name by his father. At the license cancellation hearing, the petitioner testified that he mailed a copy of the Affidavit to then Secretary of the Department of the Treasury Nicholas Brady on February 3, 1992, and then again on May 21, 1992 and August 14, 1992, each time offering the Secretary a set period of time within which to respond to the Affidavit. As of the date of the license cancellation hearing, the petitioner had received no correspondence from the Department of the Treasury or from Mr. Brady.

### DISCUSSION OF THE LAW

Section 1572(a) of the Vehicle Code provides in pertinent part:

- (1) The department may cancel any driver's license upon determining that one of the following applies: . . . (ii) The person failed to give the required information or committed fraud in making the application or in obtaining the license.

The relevant provisions of section 1510 of the Vehicle code are as follows:

- (a) . . . Except as provided in subsection (f), an applicant [for a driver's license] shall include his Social Security number on his license application...
- (f) Waiver. - Notwithstanding the provisions of subsection (a), the department shall issue a driver's license to an otherwise eligible person who has no Social Security number if the person submits a waiver obtained from the Federal Government permitting him not to have a Social Security number. The department may require other identifiers, including, but not limited to, a taxpayer identification number, before issuing the license.

The petitioner argues he is unable to include a Social Security number on his license application because he does not have such a number. He claims he voided the number by sending the Treasury Department his "Affidavit of Revocation and Rescission." He also argues that since participation in the Social Security system is voluntary, the statute's use of the terms "waiver" and "permitting" is logically inconsistent because one cannot obtain a waiver from an administrative agency which lacks the authority to mandatorily impose itself on a citizen of the United States.

The Department argues that if a motorist does not supply a Social Security number on his license application, the alternatives available to him under section 1510(f) are to submit a waiver from the Social Security Administration and any other identifiers requested by the Department. They argue that the Department's interpretation of the Vehicle Code is entitled to deference since it is the administrative agency charged with enforcement of that Code, and there exists only a privilege and not a right to drive under Pennsylvania law.

The Department further argues that the petitioner has failed to establish his success in repudiating the Social Security number previously assigned to him, and the Court must find the number remains valid absent an affirmative indication to the contrary from the Federal government. The Department also argues the petitioner has not produced any legal authority for the proposition that a citizen can revoke a Social Security number once it has been assigned to him.

In this Commonwealth, driving is a privilege and not a right. *Commonwealth v. Wolf*, 534 Pa. 283, 632 A.2d 864 (1993). The Department of Transportation has the burden of establishing a prima facie case that the cancellation of a motorist's license was appropriate under the Vehicle Code. *Department of Transportation, Bureau of Driver Licensing v. Hoover*, 116 Pa. Commw. 538, 543 A.2d 191 (1988).

The petitioner acknowledged at the hearing that at one time a Social Security number was established in his name, and he sets forth this number on the Affidavit of Revocation and Rescission. (Petitioner's exhibit #35). However, the petitioner has not demonstrated he effectively revoked this number, or whether any revocation procedure exists which would apply to him. He has not shown it is possible to completely nullify a Social Security number once it has been assigned to an individual by the Federal government. We have been unable to discover a provision in the Social Security Act or the Code of Federal Regulations which sets forth a procedure whereby a Social Security account holder may have his number obliterated from government records.

Our research indicates that certain individuals who are self-employed may apply for an exemption from the need to pay Social Security taxes in return for waiving their rights to all benefits under the Social Security Act. Members of certain religious groups may be granted an exemption from coverage if they meet specific criteria. However, the Act contains no provisions which allow for the total removal of such a person's previously-established Social Security number and account from the government's records. 42 U.S.C. § 411.

The Social Security Administration employs an aggressive policy aimed at having as many people participate in the Social

Security system as possible. 42 U.S.C. § 405 (c)(2)(B)(i). Furthermore, under 42 U.S.C. § 405(c)(2)(C)(i), the Administration explicitly allows state governments to request that individuals provide their Social Security number for various purposes, including administering driver licensing and vehicle registration. The petitioner alleges that the mailing of his Affidavit on three occasions to the Secretary of the Department of the Treasury, from which he received no reply, constituted revocation of his number. However, absent any statutory authority, and in light of the aforementioned recruitment policy, we cannot conclude that this strategy had any legal significance.

We also note that the petitioner's Affidavit focused largely on the Internal Revenue Code and the Internal Revenue Service, and was mailed to the Department of the Treasury. The Social Security Administration is administered by the Department of Health and Human Services, and the petitioner did not produce any evidence that he has contacted either of these agencies directly.

The petitioner contends that the waiver requirement of section 1510 (f) is not appropriate in this case and cannot fairly be applied to him. He claims that a waiver, by definition, can only be obtained by someone who has been compelled to obtain a Social Security number because it is mandatory or by someone who has voluntarily participated in the program of national insurance. The petitioner claims by virtue of his act of rescission he falls into neither of these categories and therefore cannot obtain a waiver.

Regardless of the technical appeal of this argument, we have already found that the petitioner had a Social Security number assigned to him, and he provided no evidence that his attempted revocation and rescission had any legal effect. In addition, he conceded at the hearing that he has not made any inquiries regarding whether it is possible for him to obtain documentation from the Federal government which would omit the term "waiver" and simply state that he is a person who has neither a Social Security number nor account. He admitted he is reluctant to pursue that approach because he believes any form he would need to complete would require him to reveal information about himself

which he does not want the government to know. (Notes of transcript of proceedings of appeal from license suspension, September 26, 1994, pp. 25-26, 29). It is clear he is not willing to do whatever is necessary to find a practical solution to the problem at hand.

The petitioner has failed to grasp that a person's *belief* that he lacks a Social Security number is not relevant under section 1510(f); that provision specifically requires a motorist to obtain documentation from the Federal government that *it* does not maintain a number or account in an individual's name or consider him covered by the Social Security system. A written statement from the motorist will not suffice. Without official certification, we must presume the petitioner's Affidavit did nothing to alter his status as an account holder with the Social Security Administration.

The petitioner has not shown that he is unable to comply with the relevant sections of the Vehicle Code, and his non-compliance requires us to find that the Department's cancellation of his license was appropriate. His appeal will be dismissed and the license cancellation upheld.

For the reasons stated herein an appropriate Order of Court will be entered as part of this Opinion.

#### ORDER OF COURT

NOW this 22nd day of March, 1995, the petition for appeal of Barry K. Hershey from the cancellation of his driver's license is hereby DISMISSED.

1 OUT OF 10  
LAWYERS  
SUFFERS FROM  
THE ILLNESS OF  
ALCOHOLISM/  
ADDICTION  
AND MAY LOSE A  
FAMILY,  
A CAREER OR A  
LIFE.

9 OUT OF 10  
LAWYERS  
COULD HELP  
SAVE  
A FAMILY, A  
CAREER AND A  
LIFE.

WHICH GROUP  
ARE YOU IN?  
WHAT ARE YOU  
DOING ABOUT IT?

ALCOHOLISM/  
ADDICTION IS A  
TREATABLE  
DISEASE  
NO LAWYER HAS  
TO BE  
DISBARRED.  
NO LAWYER HAS  
TO DIE FROM IT.

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