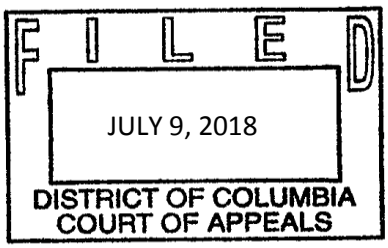
DISTRICT OF COLUMBIA COURT OF APPEALS

No. 15-AA-833

BERHANU GEBREMESKEL, PETITIONER,

v.

DISTRICT OF COLUMBIA TAXICAB COMMISSION, RESPONDENT.



On Petition for Review of an Order of the
District of Columbia Office of Administrative Hearings
(C-1517500252)

(Submitted January 25, 2018 Decided July 9, 2018)

Before BECKWITH, EASTERLY, and MCLEESE, *Associate Judges*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Petitioner Berhanu Gebremeskel seeks review of penalties imposed by the Office of Administrative Hearings (OAH) for violations of regulations of the District of Columbia Taxicab Commission (DCTC). (After the order on review, the DCTC was renamed the Department of For-Hire Vehicles. D.C. Law 21-124, § 401 (a), 63 D.C. Reg. 7076, 7086 (2016).) We uphold the finding of liability but vacate and remand for consideration of any mitigating evidence Mr. Gebremeskel may wish to present in support of a request for reduced fines.

I.

After a hearing, an OAH Administrative Law Judge (ALJ) found the following facts. In May 2014, Mr. Gebremeskel, an owner and operator of a vehicle for hire licensed in Virginia, picked up a passenger at Union Station. The passenger then asked Mr. Gebremeskel to stop by the passenger's office in the District. Mr. Gebremeskel complied.

While Mr. Gebremeskel waited for the passenger to return to the vehicle, a DCTC officer approached Mr. Gebremeskel. During the inspection, the DCTC

officer saw the passenger get back into the vehicle. The DCTC officer noted that the manifest reflected only a passenger pick-up at Union Station and discharge in Arlington, Virginia. Mr. Gebremeskel also failed to provide the DCTC officer with proof of insurance.

DCTC regulations require operators of vehicles for hire to (1) have proof of insurance, (2) show proof of insurance when requested, and (3) carry an accurate and complete manifest. 31 DCMR §§ 823, 900.11-12 (2016). DCTC regulations also permit vehicles for hire licensed in Virginia "to pick up passengers in the District for transport directly to" Virginia "on a prearranged basis only." *Id.* § 828.1 (a). As a result of the DCTC officer's observations, Mr. Gebremeskel received five notices of infraction (NOIs): for being an unlicensed operator in an unlicensed vehicle for hire from outside the District; failing to complete a manifest; and failing to have and to show proof of insurance. *Id.* §§ 823, 828, 900.11-12.

At the hearing, the ALJ gave Mr. Gebremeskel the option to change his plea from deny to admit with explanation. The ALJ explained that changing the plea would allow Mr. Gebremeskel to offer facts and testimony about what happened, in the hope that the ALJ would lower or suspend the fines at issue. The ALJ went on to say that if Mr. Gebremeskel kept his plea of deny, the ALJ would impose the full fine if the District proved its case. Mr. Gebremeskel maintained his plea of deny.

The ALJ issued a final order holding Mr. Gebremeskel liable for four out of the five charged infractions. The ALJ found that Mr. Gebremeskel was an unlicensed operator of an unlicensed vehicle, because Mr. Gebremeskel picked up a passenger in the District and ended the trip, albeit temporarily, at another location in the District. The ALJ also found Mr. Gebremeskel failed to properly maintain a manifest, because Mr. Gebremeskel did not record the intermediate stop in the District. Finally, the ALJ found Mr. Gebremeskel liable for failing to provide proof of insurance when requested by the DCTC officer, but dismissed the NOI issued to Mr. Gebremeskel for failure to have insurance, because Mr. Gebremeskel offered proof of insurance at the hearing. The ALJ imposed the full fine of $2,125, stating that she had no flexibility to consider possible mitigating factors because Mr. Gebremeskel had pleaded deny.

II.

For the first time in this court, Mr. Gebremeskel claims to have handed an insurance document to the DCTC officer. We are limited, however, to the information in the record before the ALJ, and therefore cannot consider Mr. Gebremeskel's claim. *See generally, e.g.*, *F.W. Woolworth Co. v. District of Columbia Bd. of Appeals & Review*, 579 A.2d 713, 715 n.2 (D.C. 1990) (court on review is limited to factual record before ALJ).

The Legal Aid Society of the District of Columbia argues on Mr. Gebremeskel's behalf that the ALJ erred by refusing to consider a reduced fine solely because Mr. Gebremeskel had denied liability. The District does not contest that the ALJ erred, but contends that the error was harmless because Mr. Gebremeskel failed to adequately raise the issue of mitigation. We agree that the ALJ erred by refusing to consider reduction of the fine simply because Mr. Gebremeskel denied liability. The applicable regulation permits modification of a fine "based on a consideration of all relevant mitigating and aggravating factors," without limiting that authority to cases in which liability is admitted. 31 DCMR § 704.11 (c) (2016).

We do not agree that the error was harmless. At the hearing, Mr. Gebremeskel attempted to explain the circumstances of the charged infractions, by providing information that could reasonably have been viewed as mitigating. It is true that Mr. Gebremeskel did not explicitly indicate that he was seeking reduction of the fines, but we do not view that as fatal to Mr. Gebremeskel's claim. Even assuming that such an explicit indication would ordinarily be required, the ALJ erroneously told Mr. Gebremeskel that she would not consider reduction of the fines if Mr. Gebremeskel denied liability. In light of that erroneous ruling, it would be unfair to fault Mr. Gebremeskel for failing to explicitly request a reduction in the fines. Moreover, we have no way to determine what additional evidence Mr. Gebremeskel might have provided had the ALJ not ruled that Mr. Gebremeskel could not request a reduction in the fines. Finally, even on the current record it is not clear whether the ALJ would have been inclined to grant a reduction in the fines had she understood that she had the discretion to do so. Remand is therefore required, for the parties to present evidence relevant to whether the ALJ should reduce the fines based on mitigating circumstances. *Cf., e.g.*, *Berkley v. D.C. Transit, Inc.*, 950 A.2d 749, 758 (D.C. 2008) (remanding because ALJ erroneously and confusingly explained burden of proof and obligations of pro se litigant to present evidence).

For the foregoing reasons, we vacate the order of the OAH and remand the case for further proceedings.

ENTERED BY DIRECTION OF THE COURT:

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Clerk of the Court

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