



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of a Denial of a Registration  
Application for a 1985 Chevrolet D10 Military  
Blazer by the Department of Transportation to  
John and Katherine Kasberger

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Case No. TR-11-0016

FINAL DECISION

On March 30, 2011, the Division of Hearings and Appeals received an appeal pursuant to Wis. Stat. § 341.63 from John and Katherine Kasberger regarding the Denial of a Registration Application for a 1985 Chevrolet D10 Military Blazer by the Department of Transportation. Pursuant to due notice, the Division of Hearings and Appeals held a hearing on May 20, 2011, in Madison, Wisconsin. Mark J. Kaiser, Administrative Law Judge, presided. The parties filed post-hearing briefs. The last submission was received on July 18, 2011.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

John and Katherine Kasberger  
W8195 Staley Road  
Merrillan, WI 54754

Wisconsin Department of Transportation, by

Attorney Paul Nilsen  
Office of General Counsel  
P.O. Box 7910  
Madison, WI 53707-7910

The Administrative Law Judge (ALJ) issued a Proposed Decision in these matters on August 30, 2011. On September 12, 2011, the petitioners filed comments objecting to the Proposed Decision. The petitioners' primary objection to the Proposed Decision is to the assignment of the burden of proof to show that their vehicle meets federal motor vehicle safety standards (FMVSS) to the petitioners. The basis for the assignment of the burden of proof is adequately set forth in the Proposed Decision. The remainder of the petitioners' objections rehearses their arguments that their vehicle probably does meet FMVSS despite the fact that no acceptable certification exists. The petitioners' objections are not persuasive and the Proposed Decision is adopted as the final decision in this matter.

## Findings of Fact

The Administrator finds:

1. On January 4, 2010, Katherine and John Kasberger (the Kasbergers) purchased a 1985 Chevrolet D10 Military Blazer, vehicle identification number (vin) 1G8ED18J4FF211960. The Kasbergers purchased the vehicle from Alfa Heaven, a used motor vehicle dealer located in Anawa, Wisconsin.

2. Alfa Heaven had acquired the 1985 Military Blazer and applied to the Wisconsin Department of Transportation (Department) for a Wisconsin title for the vehicle in the dealership's name. The Department did issue a Wisconsin title and registration for the vehicle to Alfa Heaven (exh. 6). After the Kasbergers purchased the vehicle, Alfa Heaven electronically filed an application for a Wisconsin title and registration for the vehicle in their names (exh. R1). In response to the application, the Department did issue a title and registration for the vehicle to the Kasbergers.

3. On March 3, 2010, the Wisconsin legislature enacted 2009 Wisconsin Act 135. Act 135, among other things, created Wis. Stat. § 341.269. Wis. Stat. § 341.269 established a new category of motor vehicle registration and license plates, historic military vehicles. Vehicles registered as historic military vehicles may only be operated on public roads for limited, specified purposes such as displays and parades. Act 135 also created, Wis. Stat. § 341.10(6m), a new prohibition for motor vehicle registrations. Wis. Stat. § 341.10(6m) provides:

The department shall refuse registration of a vehicle under any of the following circumstances:

(6m) The vehicle was manufactured for use in any country's military forces and does not meet federal motor vehicle safety standards. This subsection does not apply to former military vehicles, as defined in s. 341.269(1), for which the department receives an application, and which are eligible, for registration under s. 341.269 or, with respect to a county or municipality, under s. 341.26(2m).

Act 135 became effective on October 1, 2010.

4. During the fall of 2010, the Kasbergers applied for collector plates for their D10 Military Blazer pursuant to Wis. Stat. § 341.266(2)(b). As part of the application, the Kasbergers surrendered the Wisconsin title for the vehicle to the Department. In response to the application for collector plates, the Department requested photographs of the vehicle from the Kasbergers. The photographs were required to confirm that the vehicle met the criteria for a collector vehicle. The Kasbergers did supply a set of photographs of the vehicle (exh. 1). While processing the

application for collector plates, a Department employee noticed that the fifth character in the vehicle's vin was a "D."

5. The Chevrolet D10 Military Blazer was manufactured by General Motors (GM). According to Glen Zuchniewicz, a safety standards engineer employed by GM, a "D" in the fifth spot of a vehicle's vin identifies the vehicle as one manufactured under a U.S. military contract and to specifications provided by the military (affidavit of Glen Zuchniewicz, exh. R6).

6. While waiting for the Department to process the application for collector plates, the Kasbergers submitted an application to the Department for a replacement title for the vehicle (exh. R1). On February 24, 2011, the Department issued a replacement title for the vehicle to the Kasbergers (exh. 8).

7. After noticing that the Kasbergers vehicle was a former military vehicle, the Department requested evidence from the Kasbergers that the vehicle met federal motor vehicle safety standards (FMVSS) for the year in which it was manufactured. Typically, manufacturers certify compliance with FMVSS and compliance is shown by a manufacturer's certification door label. In the instant case, there is no certification label on the door of the vehicle. This could be because the label deteriorated over time or because it never existed. Alternatively, the manufacturer can certify that a specific vehicle model met FMVSS at the time it was manufactured. In the instant case, Mr. Zuchniewicz testified that GM no longer has the build records for the 1985 Chevrolet D10 Military Blazer. Without the build records, no one at GM is able to determine whether the vehicle built for the military was manufactured to meet FMVSS.

8. The Kasbergers were unable to provide evidence satisfactory to the Department that their vehicle met FMVSS. By letter dated March 10, 2011, the Department notified the Kasbergers that it was denying the application for registering their vehicle as a collector vehicle and was issuing a corrected title for the vehicle. The corrected title is branded "HMV Eligible Only," meaning that the vehicle is only eligible to be titled as a historic military vehicle pursuant to Wis. Stat. § 341.269 (exh. R2). The Department also refunded the registration fee the Kasbergers paid for collector plates for their vehicle.

9. No evidence was presented at the hearing demonstrating that the Kasbergers' vehicle does not meet FMVSS; however, there was also no evidence presented that it does. The lack of evidence is not the fault of the Kasbergers or Alfa Heaven. The evidence that would normally satisfy the Department, an FMVSS certification label or a manufacturer's certification for this model no longer exists. The only remaining alternative to prove compliance with FMVSS is inspection and certification by a National Highway Traffic Safety Administration registered importer or person similarly qualified to conduct compliance tests. Although the cost of such testing for the Kasbergers' vehicle is not in the record, presumably it would be unreasonably expensive to have a vehicle as old as the Kasbergers' vehicle tested.

## Discussion

Pursuant to Wis. Stat. § 341.10(6m), the Department shall refuse registration of a motor vehicle that was manufactured for use in any country's military forces unless the vehicle meets FMVSS for the year in which the vehicle was manufactured. There is no dispute that the Kasbergers' vehicle was manufactured for use by the U.S. military. The only dispute is whether it meets FMVSS. The evidence that would normally satisfy the Department, an FMVSS certification label or a manufacturer's certification for this model no longer exists. Tom Zatloukal, the owner of Alfa Heaven, expended a commendable amount of effort to show that many of the parts on the Kasbergers' vehicle are identical to parts on nonmilitary 1985 Blazer models, which meet FMVSS. However, Mr. Zatloukal was unable to perform a complete analysis of the Kasbergers vehicle.

The testing necessary to demonstrate compliance with FMVSS is extensive. Manufacturers subject one vehicle of a specific model to the testing and then certify all other vehicles of the same model were manufactured to the same standards. It is essentially impossible for an individual to prove a vehicle meets FMVSS without the manufacturers certification sticker or the manufacturer's build records. However, the fact that something can not be proven does not relieve a party from its burden of proof. The Department has unambiguous requirements for registering a motor vehicle for use on public highways. If an applicant can not satisfy those requirements, a Wisconsin title can not be issued. The Kasbergers made the unfortunate decision to apply for collector plates for their vehicle after the new registration law became effective. As applicants for registration of their vehicle, the Kasbergers have the burden to present evidence that their vehicle is eligible for the registration category for which they applied. The Kasbergers were unable to satisfy the Department. Accordingly, the Department denied their application for collector plates and indicated that, at this time, the only registration the vehicle is eligible for is historical military vehicle.

The Kasbergers requested a hearing to review the Department's denial. Pursuant to Wis. Admin. Code § HA 1.12(3)(b), in proceedings before the Division of Hearings and Appeals the burden of proof should be assigned consistent with normal rules of procedure used in courts. In this case, the Kasbergers are the party seeking to alter the *status quo* and, therefore, have the burden of proof. The Kasbergers have the burden of proof to show that the Department's action should be reversed. In his opening statement at the beginning of the hearing, the administrative law judge stated that the petitioners had the burden of proof in this matter. The Kasbergers did not object to the assignment of the burden of proof.<sup>1</sup> The Kasbergers have not satisfied their burden of proof and the Department's denial must be affirmed.

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<sup>1</sup> Consistent with the assignment of the burden of proof, the petitioners presented their evidence first at the hearing. The fact that the Kasbergers proceeded first at the hearing further indicates that they understood and accepted that they had the burden of proof in this matter.

### Conclusions of Law

The Administrator concludes:

1. Pursuant to Wis. Admin. Code § HA 1.12(3)(b), the Kasbergers have the burden of proof to show that their vehicle is eligible for the titling and registration for which they applied. Eligibility to be titled and registered as a collector vehicle includes providing evidence that the vehicle meet FMVSS for the year that it was manufactured. The Kasbergers have not presented sufficient evidence to show that their vehicle does meet FMVSS. Accordingly, the Department of Transportation's denial of their application for registration as a collector vehicle must be affirmed.

2. The Division of Hearings and Appeals has authority pursuant to Wis. Stat. § 342.26, to issue the following order.

### Order

The Administrator orders:

For the reasons set forth above, the Department's denial of the Kasbergers application for registration of their 1985 Chevrolet D10 Military Blazer as a collector vehicle is **AFFIRMED**.

Dated at Madison, Wisconsin on November 1, 2011.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By: \_\_\_\_\_

David H. Schwarz  
Administrator

## NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
  
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. The Division of Hearings and Appeals shall be served with a copy of the petition either personally or by certified mail. The address for service is:

DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705-5400

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.