



**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 REHEARING**

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 was 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 was adequately set forth in the Proposed Decision. The remainder of the petitioners' objections rehearsed their arguments that their vehicle probably does meet FMVSS despite the fact that no acceptable certification exists. The petitioners' objections were not persuasive and on November 1, 2011, a Final Decision adopting the Proposed Decision was issued in this matter.

On November 16, 2011, the petitioners filed a Petition for Rehearing. On December 2, 2011, an order granting the petition was issued. The basis for granting the Petition for rehearing was new evidence cited by the petitioners. The parties were then given an opportunity to file written argument on the new evidence. The petitioners filed affidavits in support of its petition on December 23, 2011. On January 27, 2012, the Department filed its response to the petitioners' arguments.

The new evidence offered by the petitioners was a document they discovered titled "Department of Defense Interface Standard" and subtitled "Safety Standards for Military Ground Vehicles." For purposes of the record, this document has been admitted as Exhibit 51. The document provides that the category of vehicles to which the Kasbergers' vehicles belong should be built to meet FMVSS. This unequivocal statement supports the petitioners' position that their vehicle meets FMVSS. Without a certification label, one can still not be absolutely certain that the petitioners' vehicle meets the FMVSS; however, this new evidence is sufficiently strong that it establishes a presumption that the petitioners' vehicle does meet the FMVSS and shifts the burden to the Department to show that the vehicle does not meet FMVSS. The Department has not done so. The Final Decision in this matter is amended to reverse the Department's denial.

#### 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' vehicle is a pick-up truck designed to carry fewer than ten passengers and has a gross weight rating (GVWR) of 8800 pounds (exh. 50). 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 did meet those standards. After the Final Decision was issued in this matter, the Kasbergers became aware of the existence of a government document titled "Department of Defense Interface Standard" and subtitled "Safety Standards for Military Ground Vehicles." This document establishes standards for some military vehicles, including the one owned by the Kasbergers. The document provides:

The application of specific requirements within the FMVSS's, military vehicles designed to (a) carry 10 passengers or less and (b) have a gross weight rating (GVWR) of less than 10,000 pounds, shall comply with those requirements which apply to "passenger cars."

Exh. 51, page 6, paragraph 5.4

This new evidence establishes that the Department of Defense intended that the Kasbergers' vehicle be built to meet FMVSS. The Department has not shown that the Kasbergers' vehicle fails to meet any provision of FMVSS.

#### 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 manufacturer's 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 at the time of application. 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 did not satisfy their burden of proof and the Department's denial was affirmed.

After the final decision was issued, the Kasbergers became aware of new evidence that supported their position that their vehicle did meet FMVSS. The Kasbergers presented a document that unequivocally states the category of vehicles into which the Kasbergers' vehicle falls were to be built to meet FMVSS. This new evidence is sufficiently strong that it establishes a presumption that the petitioners' vehicle does meet the FMVSS and shifts the burden to the Department to show that the vehicle does not meet FMVSS. In its response to the Kasbergers' new evidence, the Department pointed out other sections of the manual that provided that the vehicles should be built to meet FMVSS "as long as compliance does not degrade essential military characteristics" (for example, exh. 51, page iii). The Department; however, is unable to point to any specific federal safety standard that the Kasbergers' vehicle does not meet. The Kasbergers have satisfied their burden to show that their vehicle meets FMVSS and should be titled and registered by the Department as a collector vehicle.

### 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 presented

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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.

sufficient evidence to establish a presumption that their vehicle meets FMVSS. The Department did not present evidence to rebut this presumption.

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 REVERSED.

Dated at Madison, Wisconsin on February 20, 2012.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By: \_\_\_\_\_  
David H. Schwarz  
Administrator

**NOTICE**

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.