

**NOTICE**

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2019 IL App (4th) 180780-U

NO. 4-18-0780

IN THE APPELLATE COURT

OF ILLINOIS

**FILED**

September 17, 2019  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

FOURTH DISTRICT

DONALD J. KREN,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
JESSE WHITE, in His Official Capacity as Secretary of	)	No. 18MR0365
State of Illinois; and TIMOTHY J. FORMAN, Illinois	)	Honorable
Secretary of State Hearing Officer,	)	Christopher G. Perrin,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE STEIGMANN delivered the judgment of the court.  
Justices DeArmond and Harris concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The appellate court affirmed the Secretary of State’s denial of plaintiff’s application for title and registration because it was not against the manifest weight of the evidence.
- ¶ 2 In November 2017, defendant, Secretary of State Jesse White (the Secretary), denied plaintiff, Donald J. Kren (Kren), registration for a military High Mobility Multipurpose Wheeled Vehicle (Humvee). The Secretary issued Kren a title for the Humvee for “off-road use only.” In February 2018, defendant, Illinois Secretary of State Hearing Officer Timothy J. Forman (the Hearing Officer), conducted an administrative hearing on Kren’s application for title and registration. In March 2018, the Hearing Officer recommended that the decision denying Kren’s application for regular title and registration be affirmed. The Secretary entered

an order adopting the Hearing Officer's recommendation to affirm the denial of Kren's application for regular title and registration.

¶ 3 In April 2018, Kren filed a complaint for administrative review in the Sangamon County circuit court. The court held oral arguments on October 25, 2018. On October 30, 2018, the court entered an order finding (1) the Secretary's factual findings and conclusions were not against the manifest weight of the evidence and (2) the Secretary's decision denying Kren's application for a title and registration was not clearly erroneous.

¶ 4 On appeal, Kren argues (1) the Secretary erred as a matter of law by construing the Illinois Vehicle Code (Vehicle Code) to require that Kren's Humvee meet National Highway and Traffic Safety Administration (NHTSA) standards and (2) the Secretary's decision was against the manifest weight of the evidence because Kren's Humvee was originally manufactured for operation on highways. For the following reasons, we affirm.

¶ 5 I. BACKGROUND

¶ 6 In August 2017, Kren purchased the Humvee at issue in this case, a 1999 AM General M1087A2. The Humvee was previously owned by the federal government, and Kren later purchased it from the California corporation IronPlanet, Inc.

¶ 7 After purchasing the Humvee, Kren applied for a certificate of title and registration from the Vehicle Services Department of the Office of the Secretary of State (Department). The Department, through the Secretary, issued Kren a title for the Humvee, which was restricted to "off-road use only." It denied Kren's application for registration.

¶ 8 A. Administrative Proceedings

¶ 9 On January 8, 2018, Kren filed a written request for a formal hearing. Kren stated the purpose of the hearing was to “remove ‘not eligible for registration’ annotation from IL title # 17306876017 or successor.”

¶ 10 On February 15, 2018, the Hearing Officer conducted a formal administrative hearing. The following testimony was presented at the hearing. Kren stated the Department’s finding that his Humvee did not comply with federal safety and emissions standards was erroneous because it complied with federal military standards. Specifically, Kren testified that the Illinois statute mandating compliance with federal safety and emissions standards did not specify any particular set of standards. Furthermore, because all military vehicles are exempted from NHTSA standards by federal statute, imposing a requirement that they comply with NHTSA standards would render the Illinois statute concerning the registration of former military vehicles obsolete.

¶ 11 Kren further stated that the Secretary’s finding that his Humvee was not “originally manufactured for operation on highways” was erroneous because it was designed for use over all types of roads. In support of his testimony, Kren submitted the following documents as exhibits: (1) an Illinois Department of Transportation vehicle inspection report, (2) an AM General Operator’s Manual for series M998 models (Operator’s Manual), (3) a 1994 NHTSA guidance letter, (4) e-mail correspondence between Kren and Susan Lowe of the Defense Logistics Agency (DLA) (a combat support agency within the United States Department of Defense), (5) a 1988 NHTSA guidance letter, (6) a document titled “Military Standard: Safety Standards for Military Ground Vehicles” (MIL-STD-1180B), and (7) a document titled “United States Government Certificate to Obtain Title to a Vehicle” (SF-97). We discuss each of these documents as they relate to the issues in this case; we address them in turn.

¶ 12

*1. The IDOT Report*

¶ 13 The Illinois Department of Transportation vehicle inspection report indicated the agency inspected Kren’s Humvee on February 5, 2018. According to the report, the vehicle passed inspection for all tested systems, including brakes, exhaust system, frame, fuel system, lighting devices and reflectors, safe loading, steering mechanism, suspension, tires (non-steering axle), tires (steering axle), wheels and rims, windshield, and windshield wipers.

¶ 14

*2. The Operator’s Manual*

¶ 15 In pertinent part, the Operator’s Manual states that “[t]he 1-1/4 ton, 4x4, M998 series vehicles are tactical vehicles designed for use over all types of roads, as well as cross-country terrain in all weather conditions.” The Operator’s Manual further addresses the differences between the M998 series and other AM General Humvees, including Plaintiff’s M1097A2, stating the differences “do not affect the basic purpose, performance, or special limitations of the vehicles.” Under the heading “Purpose of the Vehicle,” the Operator’s Manual states that the M1097A2 is “used to transport equipment, materials, and/or personnel,” and “is capable of transporting a two-man crew and eight passengers.”

¶ 16

*3. The 1994 NHTSA Letter*

¶ 17 The 1994 NHTSA guidance letter explains that NHTSA excuses vehicles from compliance with its Federal Motor Vehicle Safety Standards (FMVSS) if they are manufactured in accordance with contractual specifications of the armed forces of the United States. The letter further states that “the U.S. armed forces may sell military vehicles to the public at the end of their useful military life without having to bring them into conformity with the FMVSS.”

¶ 18

*4. The E-Mail*

¶ 19 In the 2017 e-mail correspondence between Kren and Lowe of the DLA, Kren inquired of Lowe:

“Is the ‘Off Road Use Only’ stamp on the SF-97s only advisory in nature, and is it the official position of the DLA that the state licensing authorities have the discretion to license these vehicles for on road use? Or was it the DLA’s intention to legally and permanently exclude them from road use?”

Lowe responded as follows:

“The SF 97 effectively serves as a proof of ownership because [United States Department of Defense] vehicles are not registered through a state. The form’s name actually is ‘The United States Government Certificate to Obtain Title to a Vehicle.’ How states react to the form and what type of title/license plates etc., they elect to provide is a matter for the states to decide.

As you probably know, these vehicles do not meet several of the Federal Motor Vehicle Safety Standards. The FMVSS is administered by the National Highway Traffic Safety Administration and applies to the manufacture and sale of new motor vehicles. The DoD has a specific exemption from NHTSA to have these type of vehicles manufactured for the DoD. Under 49 CFR section 571.7(c), vehicles manufactured pursuant to military specifications and sold directly to the U.S. military are exempted from the requirement to comply with the FMVSS. This exclusion was based on a determination that compliance with safety standards could affect the capability of a vehicle to fulfill its military mission.

When DoD ultimately sells surplus vehicles that do not meet FMVSS, all purchasers are required to acknowledge this fact and are required to sign hold

harmless agreements. DLA issues a SF 97, which is an official certificate of the United States government that facilitates an individual's ability to obtain a title from a state licensing authority. In accordance with Office of the Secretary of Defense policy found in DODM (DOD Manual) 4160.21-V4, (page 196), 'off road use only' must be annotated on the SF 97 for these type of vehicles. The DoD has determined that this is a prudent measure when vehicles do not meet the FMVSS in order to alert state licensing authorities of the nature of the vehicle. The General Service Administration also imposes this limitation on these types of vehicles when they are provided to GSA donation customers. However, the ultimate decision on whether a state will license these vehicles for on-road use is a decision within discretion of state licensing authorities based on state law.

DLA has no opinion or official position on the SF 97; we issue it to comply with DoD regulations.”

¶ 20

#### *5. The 1988 NHTSA Letter*

¶ 21

In the 1988 NHTSA guidance letter, NHTSA evaluated a request from AM General for reconsideration of its prior determination that military vehicles, including the model at issue in this case, were “motor vehicles” for purposes of the notification and remedy provisions of the National Traffic and Motor Vehicle Safety Act (Safety Act). It was the position of AM General that Humvees, such as Kren's, were not motor vehicles for purposes of the Safety Act. NHTSA responded with the following:

“[T]he sole legal criterion that the [Safety] Act establishes to determine its jurisdiction is whether a vehicle is manufactured primarily for use on the public roads. \*\*\* [W]e concluded that the [Humvees] in question spend 60% of their

operational life on primary and secondary roads, and that therefore they have been manufactured primarily for use on such public roads.”

¶ 22

*6. The MIL-STD-1180B*

¶ 23

Finally, the foreword to MIL-STD-1180B states, in pertinent part:

“Although vehicles and equipment manufactured for, and sold directly to, the Armed Forces of the United States in conformity with contractual specifications are specifically exempted from the provisions of the Federal Motor Vehicle Safety Standards (FMVSS), it is the established policy of the Army to comply with the intent of those standards as long as compliance does not degrade essential military characteristics. With the same limitation, compliance with applicable provisions of (Federal) Motor Carrier Safety Regulations (MCSR) is an Army requirement.”

Paragraph 3.1.2 of the same document states:

“High mobility tactical wheeled vehicles are expressly designed and built to Government specifications for the purpose of handling cargo while negotiating very rough terrain. All axles are driven and, generally, the vehicles are amphibious. They are capable of operating in deep mud or snow, are often articulated, and are seldom capable of maintaining normal highway speeds. They are usually operated in convoy on public highways. The relatively few high mobility vehicles capable of highway speeds and operated without escort comply with the same Basic Issue Items (BII) regulations as do limited mobility vehicles.”

¶ 24 During the Department's cross-examination of Kren, he admitted the Humvee did not have airbags and that he did not have a certificate of origin stating the vehicle was manufactured in accordance with the standards that would allow him to operate it in Illinois or any other state. Kren stated the Humvee was not required to have air bags because it is classified as a "heavy truck" and that he was not issued a certificate of origin because certificates of origin are not issued for military vehicles. Kren stated he was aware of the Hummer, a vehicle also manufactured by AM General and modeled after Humvees. He acknowledged the Hummer is manufactured for the general public for use on the public roads and is equipped with airbags. Counsel for the Department then asked Kren as follows:

"What documentation do you have that shows that when I, as a private citizen, were to purchase this [Humvee] from AM General the way it was manufactured for the Federal Government that would allow me to drive it down a road as the same way I could drive a Hummer? Documentation that specifically shows that this meets all the requirements?"

Kren replied, "I have documents to show," but did not specify the documents to which he was referring.

¶ 25 The Department presented the testimony of Susie Warnsing, an employee with the Department who stated she was familiar with Kren's application for title and registration of his Humvee. Warnsing testified the Department issued Kren a title for his Humvee that was limited to off-road use "[b]ecause of the type of vehicle that it is." Based on the documentation Kren provided, she discovered the Humvee was manufactured for the federal government, which was the basis for the Department's determination the Humvee was not manufactured for use on public highways. She had previously denied applications for registration for other vehicles



similar to Kren's on the same basis, and Kren had not presented any certification from any federal agency stating his Humvee was manufactured for use on public highways. Furthermore, Warnsing stated Kren's documentation showing the Humvee was manufactured according to military standards was not applicable to the issue of the Humvee's eligibility for registration in Illinois.

¶ 26 The Department argued its findings that (1) Kren failed to establish that his Humvee met federal safety and emissions standards and (2) the Humvee was not originally manufactured for use on public highways were not erroneous. In support of its arguments, the Department submitted into evidence a letter from Daniel J. Dell'Orto, Executive Vice President of AM General, dated June 29, 2017. The letter states:

“AM General LLC does not sell, endorse, or support the sale of HMMWVs to the public or to private entities, except in very limited circumstances in furtherance of ultimate sales to the U.S. or foreign governments. HMMWVs are neither required nor designed to meet all U.S. Federal Motor Vehicle Safety Standards (FMVSS), a requirement for commercially designed and manufactured vehicles operated on U.S. public roadways. For instance, HMMWVs are not equipped with air bags. Nor do they meet Federal emissions standards. Unlike commercially designed and manufactured vehicles, HMMWVs do not have Vehicle Identification Numbers (VINs), a seventeen-character alphanumeric unique identifier. Instead, HMMWVs have a much shorter identification number as required under U.S. Department of Defense acquisition regulations.”

¶ 27 B. Findings and Recommendations of the Hearing Officer

¶ 28 In a written order dated March 26, 2018, the Hearing Officer found that the facts regarding the Humvee's history were not in dispute. He further found that Kren's vehicle inspection report and his testimony that he had personally witnessed other Humvees being driven on public roads were not persuasive as evidence that Kren's Humvee was roadworthy and safe to drive on the public highways. The Hearing Officer noted as follows:

“While there is no doubt [Humvees] are built to withstand the rigors of combat, this ability to maintain integrity during the course of combat does not, unfortunately, translate to their being able to be used on the highways as a passenger vehicle. Further, while there being no doubt that [Kren] has spent a considerable amount of time in researching these vehicles, nonetheless [Kren] is not trained as an engineer and lacks the requisite knowledge to offer his opinion regarding the road worthiness of this particular vehicle.”

¶ 29 The Hearing Officer stated further that accepting Kren's contention that vehicles manufactured according to military standards satisfy the Illinois requirement that a vehicle meet federal safety and emissions standards would “create an exception to the plain language of the statute” requiring the Secretary “to substitute his judgment for that of NHTSA.” The Hearing Officer also found that the letter from AM General's Executive Vice President showed that “while these vehicles are manufactured to military specifications, those specifications differ from, and do not include the specifications required to be met by the State of Illinois in order for these vehicles to be driven on Illinois highways.” Accordingly, the Hearing Officer determined Kren “failed to carry his burden of proving that the denial of his application for regular vehicle title and registration for [his Humvee] is arbitrary, unfair, or capricious and should be reversed.”

¶ 30 The Hearing Officer concluded that (1) Kren’s vehicle “is one which was not originally manufactured for operation on the public highways,” (2) Kren “failed to carry his burden of showing why an exception to the title and registration law should be made for his vehicle,” and (3) “[t]he application for a regular title and registration filed by [Kren] should be denied.” The Hearing Officer recommended to the Secretary that the action of the Department in denying the application for a regular title and registration filed by Kren be affirmed.

¶ 31 The Secretary entered an order adopting the findings of fact, conclusions of law, and recommendations of the Hearing Officer.

¶ 32 C. Proceedings in the Circuit Court

¶ 33 On April 30, 2018, Kren filed a complaint for administrative review in the Sangamon County circuit court naming the Secretary and Hearing Officer as defendants. The complaint alleged the Secretary’s decision denying his application for a regular title and registration of his Humvee was contrary to law and should be reversed.

¶ 34 On July 20, 2018, Kren filed a brief in opposition to the Secretary’s final administrative decision. In his brief, Kren argued (1) the Secretary’s decision should be reversed as against the manifest weight of the evidence because Kren’s Humvee was originally manufactured for use on highways and (2) the Secretary erred as a matter of law in applying NHTSA standards to Kren’s Humvee. In their brief in support of the Secretary’s final administrative decision, the Secretary and Hearing Officer (Defendants) argued (1) their findings were consistent with the manifest weight of the evidence and (2) their finding that Kren failed to meet his burden of establishing that his vehicle qualified for an exception to the title and registration laws was supported by the record and therefore not clearly erroneous. In his reply, Kren argued he did not seek an exception to Illinois title and registration law because his

Humvee complied with existing law. He asserted the Secretary (1) erred as a matter of law in considering only NHTSA and not other federal standards in evaluating Kren's Humvee and (2) ignored proof that Kren's Humvee was manufactured for operation on public highways.

¶ 35 On October 25, 2018, the circuit court conducted a hearing on Kren's complaint for administrative review. There is no report of proceedings or bystander's report from the hearing in the record on appeal. On October 30, 2018, the circuit court entered an order affirming the Secretary's decision and finding (1) the Secretary's factual findings and conclusions were not against the manifest weight of the evidence and (2) the Secretary's decision denying Kren's application for title and registration was not clearly erroneous.

¶ 36 This appeal followed.

¶ 37 II. ANALYSIS

¶ 38 On appeal, Kren argues (1) the Secretary erred as a matter of law in construing the Vehicle Code (625 ILCS 5/1-100 to 5/20-402 (West 2016)) to require that Kren's Humvee meet NHTSA standards and (2) the Secretary's decision to deny Kren's application for regular title and registration was against the manifest weight of the evidence because Kren's Humvee was originally manufactured for operation on highways. We discuss only the latter issue because we find it to be dispositive in this case.

¶ 39 A. Standards of Review

¶ 40 The Administrative Review Law (735 ILCS 5/3-101 to 3-113 (West 2016)) governs judicial review of the Secretary's denial of an application for title and registration. 625 ILCS 5/3-402(B)(7)(d) (West 2016). In these cases, we review the agency's decision rather than that of the circuit court. *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 272 (2009). Our standard of review depends upon whether the question presented is one of fact, law, or a mixed

question of fact and law. *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 216 Ill. 2d 455, 471 (2005); *Jankovich v. Illinois State Police*, 2017 IL App (1st) 160706, ¶ 30.

¶ 41 We review an agency’s conclusions of law *de novo*. *Jankovich*, 2017 IL App (1st) 160706, ¶ 31. Under the *de novo* standard, we perform the same analysis the administrative agency would perform. *Crittenden v. Cook County Comm’n on Human Rights*, 2012 IL App (1st) 112437, ¶ 46. We will reverse an agency’s factual determinations only if they are against the manifest weight of the evidence. *Jankovich*, 2017 IL App (1st) 160706, ¶ 31. A factual finding is against the manifest weight of the evidence only when the opposite conclusion is readily apparent or the findings are unreasonable, arbitrary, or not based on the evidence. *Peach v. McGovern*, 2019 IL 123156, ¶ 50.

¶ 42 B. Manufactured for Operation on the Public Highways

¶ 43 Kren argues the Secretary’s factual finding that his Humvee “was not originally manufactured for operation on the public highways,” was against the manifest weight of the evidence because (1) he presented AM General and NHTSA documents showing his Humvee was originally manufactured for operation on highways and (2) his federal certificate for the Humvee contains no off-road use limitation.

¶ 44 1. *The Applicable Law*

¶ 45 Section 3-402 of the Vehicle Code states, “Every motor vehicle \*\*\* when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this chapter \*\*\*.” 625 ILCS 5/3-402(A) (West 2016). “Highway” is defined as “[t]he entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel \*\*\*.” *Id.* § 1-126. Section 3-401 of

the Vehicle Code states that it is unlawful to drive an unregistered vehicle on any highway if the vehicle is required to be registered. *Id.* § 3-401(a). Furthermore, “[a] vehicle may not be registered by the Secretary \*\*\* unless that vehicle: (1) was originally manufactured for operation on highways.” *Id.* § 3-401(c-1)(1). A former military vehicle may be registered provided that “a title for the vehicle has been issued by the Secretary and the vehicle is eligible for registration without regard to its status as a military vehicle.” *Id.* § 3-804.3(d).

¶ 46 The Illinois Administrative Code provides that the Secretary “shall refuse registration” if the Secretary determines “that the vehicle is not manufactured or designed for general highway use and operation.” 92 Ill. Adm. Code 1010.230(a) (2018). In making that determination, the Secretary may consider, *inter alia*, “[t]hat said vehicle was not designed, manufactured, marketed and sold by said manufacturer through retail vehicle dealers, for general street and highway use and operation.” 92 Ill. Adm. Code 1010.230(b)(3).

¶ 47 *2. This Case*

¶ 48 The Secretary’s determination that Kren’s Humvee was not originally manufactured for operation on public highways was not against the manifest weight of the evidence. First, Kren’s reliance on the 1988 NHTSA guidance letter is misplaced. In that letter, NHTSA stated Humvees “spend 60% of their operational life on primary and secondary roads, and that therefore they have been manufactured primarily for use on such public roads.” However, that determination was made in the context of NHTSA’s consideration of whether the Humvees constituted “motor vehicles” for purposes of the notification and remedy provisions of the Safety Act (Pub. L. No. 89-563, 80 Stat. 718) (repealed 1994)). The 31-year-old NHTSA guidance letter, which applied only to the particular circumstances for which it was prepared, has

no bearing on whether Kren's Humvee was originally manufactured for operation on public highways for purposes of Illinois law.

¶ 49 Neither is the fact that Kren's SF-97 did not contain an "off-road use only" limitation relevant to the Secretary's determination. In her e-mail correspondence with Kren, Lowe specifically stated that the purpose of the SF-97 is to "effectively [serve] as a proof of ownership because [Department of Defense] vehicles are not registered through a state." She further indicated that the ultimate decision as to whether a state will license such vehicles is "within [the] discretion of state licensing authorities based on state law." DLA's failure to denote "off-road use only" on any SF-97, pursuant to its own regulations, does not serve as evidence that Kren's Humvee was originally manufactured for operation on public highways under Illinois law. Kren's SF-97 merely serves as proof that he owns the Humvee.

¶ 50 Finally, Kren's Humvee indisputably was not "designed, manufactured, marketed and sold by said manufacturer through retail vehicle dealers, for general street and highway use and operation." 92 Ill. Adm. Code 1010.230(b)(3). We acknowledge this is just one of unlimited factors the Secretary may consider to determine whether the Humvee was originally manufactured for operation on public highways. However, Kren admitted the Humvee was manufactured according to contractual specifications for the military and sold to the federal government, and that it was never marketed or sold by AM General through retail dealers. Furthermore, MIL-STD-1180 states that the class of vehicles to which Kren's Humvee belongs is "expressly designed and built to Government specifications for the purpose of handling cargo while negotiating very rough terrain." Moreover, AM General states in the Operator's Manual that the purpose of Kren's model is to "transport equipment, materials, and/or personnel." Though Kren may claim his Humvee is capable of operation on public highways, it is clear the

*original* purpose of this tactical vehicle is to transport cargo and military personnel in the execution of military missions, typically in convoy with an escort. This is not the general street use contemplated by the legislature or the Secretary's regulations, and we cannot say the Secretary's findings were against the manifest weight of the evidence.

¶ 51 Because this finding alone affirmatively supports the Secretary's denial of regular title and registration, we need not address Kren's additional argument that the Secretary erred in construing the Vehicle Code to require that his Humvee meet NHTSA standards. Accordingly, we affirm the circuit court's judgment affirming the Secretary's decision.

¶ 52 III. CONCLUSION

¶ 53 For the reasons stated, we affirm the circuit court's judgment affirming the Secretary's decision.

¶ 54 Affirmed.