

State of Indiana
Bureau of Motor Vehicles

In the Matter of [REDACTED]) Case No. 16-CD-016
DL # [REDACTED])
Petitioner)

FINAL ORDER

1. This matter comes before me following receipt of a request for reconsideration of the Recommended Order issued by Administrative Law Judge (“ALJ”) Steven Sams on September 20, 2016.
2. By letter dated July 5, 2016, Petitioner [REDACTED] (“[REDACTED]”) requested administrative review of the Indiana Bureau of Motor Vehicles’ (“BMV”) June 11, 2016 decision to disqualify his Commercial Driver’s License (“CDL”).
3. This matter was referred to ALJ Sams for review under Ind. Code § 4-21.5-3-7(a). A hearing was held on September 14, 2016, at which [REDACTED] appeared in person and *pro se*. The BMV was represented by attorney Kyle Bonick.
4. The hearing was recorded. Witnesses were sworn. The BMV proffered witness testimony and offered BMV Exhibits 1, 2, and 3 into evidence. [REDACTED] testified on his own behalf, but did not offer any physical evidence.
5. Hearing evidence established:
 - a. [REDACTED] was convicted of Operating While Intoxicated under Allen Superior Court cause number 02D04-0105-CM-003441 on August 3, 2001;
 - b. [REDACTED] received a CDL Class B Learner’s Permit August 20, 2009. This endorsement was upgraded to a CDL Class A License on July 21, 2010. [REDACTED] has held the CDL endorsement continuously since that time;
 - c. [REDACTED] was arrested for Operating Per Se With Alcohol Concentration of 0.08 or Above on November 29, 2015;
 - d. The Allen County Prosecutor filed criminal charges against [REDACTED] under cause number 02D06-1511-CM-004575;
 - e. The Court found there was probable cause for [REDACTED] arrest based on alcohol test results indicating a 0.21 BAC and ordered the immediate suspension of his license as required by Indiana Code § 9-30-6-8(c);

- f. The BMV suspended [REDACTED] driving privileges as recommended by the Court upon receipt December 9, 2015;
 - g. [REDACTED] pleaded guilty to Operating Per Se With Alcohol Concentration of 0.08 or Above, a Class A misdemeanor, on June 6, 2016;
 - h. The Court entered judgment of conviction and sentenced [REDACTED] according to the terms of his plea. No additional driving privilege suspension was ordered as part of the sentence;
 - i. The BMV entered the conviction onto [REDACTED] driving record June 10, 2016 after receiving the Court's Abstract of Judgment;
 - j. On June 11, 2016, the BMV mailed [REDACTED] notification his Commercial Driver's License ("CDL") would be disqualified for one year, beginning June 22, 2016, as required by law. The CDL disqualification notice included [REDACTED] ability to seek administrative review of the BMV's decision;
 - k. On June 23, 2016, the BMV received a letter from [REDACTED] requesting a hearing to review his CDL disqualification.
6. Section 383 of the Federal Motor Carrier Safety Administration's regulations addresses, among other items, Commercial Driver's License Standards, Requirements and Penalties, and Disqualification of Drivers. *See* 49 CFR § 383. Section 383.51 specifically addresses driver disqualification; pursuant to Indiana Code § 9-24-6.1-2, the BMV adopted regulations for CDL holders to comply with 49 CFR § 383 through 49 CFR § 399, adopting 49 CFR § 383.51 as Indiana law. Table 1 to 49 CFR § 383.51 *requires* that a CDL holder be disqualified from operating a commercial vehicle for a period of one (1) year upon a first conviction for being under the influence of alcohol while operating a motor vehicle, regardless of whether the individual was operating a commercial motor vehicle ("CMV") during commission of the offense. *See* 49 CFR § 383.51(a)(5) (emphasis added). For a second conviction of operating while intoxicated while operating a non-CMV, a CDL holder is disqualified from operating a CMV for life.
7. Because [REDACTED] did not hold a CDL Class A or Class B endorsement to his driving privileges until 2009, the 2001 OWI conviction is not included when calculating disqualification of [REDACTED] CDL. Thus, [REDACTED] disqualification is one (1) year, rather than the lifetime suspension required for CDL holders upon a second conviction of operating while intoxicated.
8. [REDACTED] believes the CDL disqualification should be backdated to November 29, 2015, the date of the offense to correspond to his driving privilege suspension by the Court.
9. Under Indiana law, the Court was obligated to suspend [REDACTED] driving privileges following a probable cause finding for operating while intoxicated. The BMV was required

by law to apply this suspension. [REDACTED] driving privileges were reinstated upon conviction June 6, 2016, pursuant to the terms of the plea agreement.

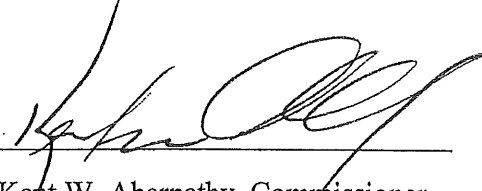
10. Both federal and state law direct the BMV to disqualify commercial vehicle driving privileges for a CDL holder upon a first conviction for operating while intoxicated. The federal regulation, adopted by Indiana statute, explicitly orders the disqualification upon conviction.

11. Accordingly, I find sufficient findings of fact and conclusions of law in the record to substantiate the ALJ's Recommended Order which affirmed the BMV decision to disqualify [REDACTED] commercial driving privileges following conviction June 6, 2016.

12. Therefore, I AFFIRM the ALJ's Recommended Order.

SO ORDERED.

11/22/16
Date


Kent W. Abernathy, Commissioner
Indiana Bureau of Motor Vehicles

Written notice of this order shall be provided to:

[REDACTED]
Indiana Bureau of Motor Vehicles