

**ORIGINAL**

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

20010291

FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT  
JAN 31 2002  
STATE OF NORTH DAKOTA

Michael Isaak, )  
 )  
 Appellee, )  
 )  
 vs. )  
 )  
 David Sprynczynatyk, Director, )  
 North Dakota Department of )  
 Transportation, )  
 )  
 Appellant. )

Supreme Court Case No. 20010291

APPEAL FROM THE DISTRICT COURT  
STARK COUNTY, NORTH DAKOTA  
SOUTHWEST JUDICIAL DISTRICT  
HONORABLE RONALD L. HILDEN

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**BRIEF OF APPELLEE**

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## STATEMENT OF ISSUES

I. The District Court's decision should be upheld under § 39-20-06 NDCC, which set out the District Court's obligation for reviewing evidence presented at the administrative hearing as, ". . . The court shall affirm the decision of the director or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the director or the hearing officer. . . ." (Emphasis added).

II. The hearing officer relied upon insufficient evidence to find that Michael Isaak's driving privileges should be suspended for 365 days as a result of an alleged prior conviction.

III. The procedure used by the Department of Transportation for administrative hearings should excuse strict compliance with the specifications of error requirement as there was a broad designation in the Appellee's specifications of "other issues to be determined after review of the hearing transcript," and the Department was not prejudiced by the Appellee's actions.

## STATEMENT OF CASE

The North Dakota Department of Transportation has appealed from the District Court Judgment reversing the administrative hearing officer's decision to suspend the driving privileges of Michael Isaak for 365 days and imposed a suspension of 91 days. The Department has asked this Court to overturn the District Court's Judgment claiming the hearing officer had sufficient evidence of a prior DUI conviction in Arkansas.

## STATEMENT OF FACTS

The administrative hearing was held on the 18th day of July, 2001, suspending Michael Isaak's driving privileges for a period of 365 days. Mr. Isaak, the Appellee, argued in closing argument before the hearing officer that:

"In addition, if the . . . if there is a suspension, the suspension in this case, should only be for 90 days because there is not sufficient documentation . . . sufficient reliable documentation. In fact, there's no documentation that shows that he was ever convicted in the previous offense that's been listed by the Highway Department. . . ."

Tr. p. 26.

Exhibit No. 5 was a certified copy of the North Dakota Drivers License and Traffic Safety Division Driving Record for the Appellee showing one prior alcohol-related offense within the past five years with an attachment concerning the alleged conviction. (Tr. p. 3). The exhibit submitted by the Department is a Uniform Traffic Ticket and Complaint against Michael Isaak which shows a plea of not guilty. There is an indication of a sentence on the exhibit, but no finding of guilt. The District Court held that the evidence of the prior conviction relied upon by the hearing officer was insufficient and reduced the Appellee's suspension from 365 to 91 days.

## LAW AND ARGUMENT

The Appellant argues that § 28-32-15(4) NDCC applies to specifications of error on appeal from an administrative hearing. The specifications of error requirements under § 28-32-15(4) NDCC, as amended, is a portion of a statute that has been amended to apply to appeals of rulemaking procedure (§ 28-32-15(4) NDCC). The previous statute referred to a party to any proceeding heard by an administrative agency (§ 28-32-15(1) NDCC), and the amended law refers to appeals of rulemaking authority of agencies. In reviewing this statute, it appears to apply to rule making because in subsection 5 of NDCC § 28-32-15, it specifically mentions the rulemaking proceedings of the agency, and NDCC § 28-32-02 refers to rulemaking power. The amended statute sections 1, 2 and 3 specifically refer to rulemaking and do not refer to the appeal of hearings. The government raises the argument that the Appellee should have been more specific, yet the statute they rely upon is very vague. What is acceptable for the government should be acceptable for the citizens.

There is adequate notice in the record regarding the objection to the issue relied upon by the Appellee. In Mr. Isaak's attorney's argument to the administrative hearing officer, he stated:

"In addition, if the . . . if there is a suspension, the suspension in this case, should only be for 90 days because there is not sufficient documentation . . . sufficient reliable documentation. In fact, there's no documentation that shows that he was ever convicted in the previous offense that's been listed by the Highway Department. . . ." Tr. p. 26.

As this Court stated in Holen v. Hjelle, 396 N.W.2d 290, 293 (N.D. 1986),  
quoted by Langer v. N.D. State Highway Com'r, 409 N.W.2d 635 (N.D. 1987):

“... the proper interpretation of a ‘conviction’ for purposes of Section 39-06-27, N.D.C.C., is a final order or judgment of conviction by the Supreme Court of a sister State or any lower court of that state having jurisdiction, provided that no appeal is pending and the time for filing a notice of appeal has elapsed.”

Langer. supra at 636.

The ticket from Arkansas includes no finding by the court, final order or judgment and should not have been accepted by the hearing officer as sufficient evidence of a foreign conviction. The District Court’s obligation under § 39-20-06 NDCC, states in part:

“The court shall affirm the decision of the director or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the director or hearing officer.”

NDCC § 39-20-06.

The word “shall” is mandatory so it requires the court to rule against the agency if the evidence is insufficient. The District Court found the evidence presented was insufficient to suspend Mr. Isaak’s driving privileges for 365 days and reduced the suspension to 91 days. This was the District Court’s obligation under § 39-20-06 NDCC.

The fact that the notice of appeal and specifications of error must be filed within seven days of drivers license administrative hearings, as opposed to 30 days for other administrative hearings, does not allow an appellant to receive a certified



transcript before specifying the issues. If the petitioner had a reasonable time to file the specifications of error, more complete specifications of error could be accomplished after receipt of the transcript. The decision of the officer is not stayed so there is no prejudice to the Department.

This Court has indicated in Kobilansky v. Liffrig, 358 N.W.2d 781 (N.D. 1984), that there should be a heightened compliance with the statutory requirement for a conviction in another state. In this case, the Uniform Traffic Citation that was submitted as evidence of the alleged Arkansas conviction, clearly shows a plea of not guilty and no finding by the court as to the Appellee's guilt. The document is not signed, but initialed, and it does not tell us whether it was the judge or the clerk who initialed this citation which is another violation of the evidentiary requirements.

This Court should parallel the District Court's findings and uphold the decision of the District Court.

**CONCLUSION**

The District Court had an obligation, regardless of the specifications of error, to reverse the hearing officer, but found that the evidence was insufficient to warrant the conclusion reached by hearing officer for the Director, Department of Transportation. The documentation of the conviction was insufficient and the decision of the District Court should be upheld.

Dated this 31st day of January, 2002.

Respectfully submitted.

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the BRIEF OF APPELLEE was on the 31st of January, 2002, mailed to:

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