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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

DEC 22 2015

STATE OF NORTH DAKOTA

Jody James Jangula,)
)
 Appellant,)
)
 v.)
)
 North Dakota Department of)
 Transportation,)
)
 Appellee.)

Supreme Ct. No. 20150286
District Ct. No. 08-2015-CV-00739

**APPEAL FROM THE DISTRICT COURT
JUDGMENT DATED JULY 30, 2015
BURLEIGH COUNTY, NORTH DAKOTA
SOUTH CENTRAL JUDICIAL DISTRICT**

HONORABLE JAMES S. HILL

BRIEF OF APPELLEE

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STATEMENT OF ISSUE

[¶1] Whether Jangula's chemical blood test results were properly received into evidence?

STATEMENT OF CASE

[¶2] On January 4, 2015, Trooper Michael Hayen (Trooper Hayen) of the North Dakota Highway Patrol arrested Jody James Jangula (Jangula) for driving a vehicle while under the influence of intoxicating liquor (DUI). Transcript ("Tr.") at Exhibit ("Ex.") 1b. A Report and Notice, including a temporary operator's permit, was issued to Jangula after chemical blood test results indicated Jangula's alcohol concentration was .226 percent by weight. Id. The Report and Notice notified Jangula of the Department's intent to suspend his driving privileges. Id.

[¶3] In response to the Report and Notice, Jangula requested an administrative hearing. Tr. Ex. 1l. The hearing was held on February 19, 2015. Tr. 1; Tr. Ex. 2. In accordance with N.D.C.C. 39-20-05(2) the hearing officer considered four broad issues, as follows:

- (1) Whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle while under the influence of intoxicating liquor in violation of N.D.C.C. section 39-08-01 or equivalent ordinance;
- (2) Whether the person was placed under arrest;
- (3) Whether the person was tested in accordance with N.D.C.C. section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and;
- (4) Whether the test results show the person had an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

Tr. 1; Tr. Ex. 2.

[¶4] Following the hearing, the hearing officer issued her findings of fact, conclusions of law, and decision suspending Jangula's driving privileges for a period of two years. Tr. 36-37; App. 18. Jangula requested judicial review of the hearing officer's decision. App. 22-23.

STATEMENT OF FACTS

[¶5] The facts regarding Trooper Hayen's contact with and subsequent seizure of Jangula, his grounds for arresting Jangula for being in actual physical control of a vehicle, and Jangula's chemical blood testing are not in dispute and can be found in the hearing officer's decision. See App. 18. Following the analysis and return of Jangula's blood test results, Trooper Hayen issued a Report and Notice. App. 2; Tr. 5, l. 23 – Tr. 6, l. 23. Jangula timely requested an administrative hearing regarding the Department's proposed suspension of his driving privileges. App. 10-12. The hearing was held on February 19, 2015. Tr. 1, ll. 5-6.

[¶6] At the hearing, the Department offered Exhibit 1, which included the Analytical Report of Jangula's chemical blood test. Tr. 18, ll. 18-19. The hearing officer admitted Exhibit 1 into evidence over Jangula's objection that the analytical report was not certified or authenticated, and that neither N.D.C.C. § 39-20-07(8) nor Rule 902 N.D.R.Evid. were complied with. Tr. 18, l. 20 – Tr. 19, l. 10.

PROCEEDINGS ON APPEAL TO DISTRICT COURT

[¶7] Jangula requested judicial review of the Hearing Officer's Decision by the Burleigh County District Court in accordance with N.D.C.C. § 39-20-06. App. 22-

23. On appeal, Jangula argued the hearing officer erred in admitting the Analytical Report of his blood sample into evidence because it was not properly certified or authenticated. Id. The district court affirmed the hearing officer's decision. App. 29. Specifically, the district court determined Jangula's Analytical Report was properly certified and authenticated and that the Department met the admissibility requirements under N.D.C.C. § 39-20-07 for admitting the test results into evidence. App. 26-29.

[¶8] Judgment was entered on July 30, 2015. App. 31. Notice of Entry of Judgment was provided on August 4, 2015. App. 32-33. Jangula appealed the Judgment to this Court. App. 34. On appeal, the Department requests this Court affirm the Judgment of the Burleigh County District Court and the Hearing Officer's Decision suspending Jangula's driving privileges for a period of two years.

STANDARD OF REVIEW

[¶9] "An appeal from a district court decision reviewing an administrative license suspension is governed by the Administrative Agencies Practice Act, Chapter 28-32, N.D.C.C." McPeak v. Moore, 545 N.W.2d 761, 762 (N.D. 1996). "This Court reviews the record of the administrative agency as a basis for its decision rather than the district court decision." Lamb v. Moore, 539 N.W.2d 862, 863 (N.D. 1995) (citing Erickson v. Dir., N.D. Dep't of Transp., 507 N.W.2d 537, 539 (N.D. 1993). "However, the district court's analysis is entitled to respect if its reasoning is sound." Kraft v. State Bd. of Nursing, 2001 ND 131, ¶ 10, 631 N.W.2d 572.

[¶10] This Court's review "is limited to whether (1) the findings of fact are supported by a preponderance of the evidence; (2) the conclusions of law are sustained by the findings of fact; and (3) the agency's decision is supported by the conclusions of law." McPeak, 545 N.W.2d at 762 (citing Zimmerman v. N.D. Dep't of Transp. Dir., 543 N.W.2d 479, 481 (N.D. 1996)).

[¶11] Findings by an administrative agency are sufficient if the reviewing court is able to understand the basis of the fact finder's decision. In re Boschee, 347 N.W.2d 331, 336 (N.D. 1984). A court must not make independent findings of fact or substitute its judgment for that of the agency. Bryl v. Backes, 477 N.W.2d 809, 811 (N.D. 1991). Rather, a reviewing court determines only "whether a reasoning mind reasonably could have determined that the factual conclusions reached were proved by the weight of the evidence from the entire record." Id. (citation omitted).

[¶12] "When an 'appeal involves the interpretation of a statute, a legal question, this Court will affirm the agency's order unless it finds the agency's order is not in accordance with the law.'" Harter v. N.D. Dep't of Transp., 2005 ND 70, ¶ 7, 694 N.W.2d 677 (quoting Phipps v. N.D. Dep't of Transp., 2002 ND 112, ¶ 7, 646 N.W.2d 704). The "[i]nterpretation of a statute is a question of law fully reviewable on appeal." State v. Fasteen, 2007 ND 162, ¶ 8, 740 N.W.2d 60.

LAW AND ARGUMENT

The proper foundation was laid for the admission of Jangula's chemical blood test results.

[¶13] "Section 39-20-07, N.D.C.C., governs admissibility of blood test results." City of West Fargo v. Hawkins, 2000 ND 168, ¶ 15, 616 N.W.2d 856. Section 39-20-07, in relevant part, provides:

Upon the trial of any civil . . . proceeding arising out of acts alleged to have been committed by any individual . . . in actual physical control of a motor vehicle while under the influence of intoxicating liquor . . . , evidence of the amount of alcohol concentration . . . in the individual's blood . . . at the time of the act alleged as shown by a chemical analysis of the blood . . . is admissible. For the purpose of this section:

...

5. The results of the chemical analysis must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the director of the state crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state crime laboratory or the director's designee. The director of the state crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical analysis and determine the qualifications of individuals to conduct such analysis, and shall issue a certificate to all qualified operators who exhibit the certificate upon demand of the individual requested to take the chemical test.

...

8. A certified copy of the analytical report of a blood or urine analysis referred to in subsection 5 and which is issued by the director of the state crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical analysis performed under this chapter. The certified copy satisfies the directives of subsection 5.

N.D.C.C. § 39-20-07 (emphasis added).

[¶14] In this case, Jangula alleges the proper foundation for the admission of his chemical blood test for intoxication was, not laid because there purportedly was no evidence that the Analytical Report (Tr. Ex. 1d – 1f) was certified or authenticated, and that “neither N.D.C.C. § 39-20-07(8) nor Rule 902,

N.D.R.Evid. were complied with.” Appellant’s Br. ¶ 11. Jangula relies on Peterson v. N.D. Dep’t of Transp., 518 N.W.2d 690, 696 (N.D. 1994) to support his argument. Jangula’s argument is meritless as is his reliance on Peterson.

[¶15] In Peterson, three appellants asked for administrative hearings in response to notices that the Department intended to suspend their driving privileges for allegedly displaying or possessing altered driver’s licenses. 518 N.W.2d at 691. The hearing officer suspended the appellants’ driving privileges and a district court subsequently affirmed the suspensions. Id. at 692.

[¶16] The Court reversed the administrative suspension of the appellants’ driving privileges. Id. at 696. The Court noted that the only evidence relied upon by the Department appeared to be unsigned and uncertified documents from an unspecified Minnesota agency. Id. at 691. Counsel for the DOT “candidly admitted at oral argument that she [did] not know where the documents came from, although she speculated that they were sent by either the Moorhead police department or the Minnesota driver’s licensing authority.” Id. at 692.

[¶17] The Court observed that “DOT’s position is apparently that any document placed in a driver’s file becomes a ‘regularly kept record.’” Id. at 693. The Court noted, however, that “DOT does not cite, nor are we aware of, any statute defining unsigned, uncertified documents as ‘regularly kept records.’” Id. at 694. The Court added that “DOT has failed to cite any persuasive support for its assertion that these documents are ‘regularly kept records of the director’ merely because they have been placed in a driver’s file.” Id.

[¶18] The Court summarized the relevant facts and concluded as follows:

The documents admitted in this case are unsigned and uncertified; they bear no seal, letterhead, or other indication of official capacity; the separate “supplements” could have been prepared on any typewriter or word processor; and the record contains no evidence establishing where the documents came from. In short, these documents bear no reliable, verifiable indicia that they are in fact true and correct copies of Minnesota police records. Although the Legislature has liberalized some evidentiary requirements in administrative driver’s license suspension proceedings [see Salter v. Hjelle, supra], we do not believe the Legislature intended the procedural rules to become so lax as to allow admission of what is essentially an anonymous letter merely because it has found its way into a driver’s file at DOT. Under these circumstances, we conclude that these documents are not self-authenticated as “regularly kept records of the director.”

Id. at 694-95 (emphasis added.)

[¶19] The Court concluded that the authenticity of the documents also had not been established by extrinsic evidence, observing “admission of the unsigned, uncertified police records in this case is inconsistent with our decision in Langer v. N.D. State Highway Comm’r, 409 N.W.2d 635 (N.D. 1987).” Peterson, 518 N.W.2d at 695.

[¶20] Here, on the other hand, Forensic Scientist Jeremiah N. Smith (Smith) identified himself on the Toxicology Alcohol/Volatiles Analytical Report (Analytical Report) as a “designee of the Director of the North Dakota Office of Attorney General, Crime Laboratory Division.” App. 4-5 (notes). Smith notes the Analytical Report is a true and correct copy of the original on electronic file at the Attorney General’s Office. Id. The Analytical Report also bears the seal of the North Dakota Office of Attorney General, Crime Laboratory Division. See App. 4. Smith also is identified on the “List of Individuals Certified to Conduct Blood Alcohol Analysis (August 1, 2012)” as being certified to conduct the blood alcohol

analyses. Tr. Ex. 9, p. 2. Jangula failed to introduce any evidence to dispute Smith's certification that he was the Director's designee.

[¶21] In Painte v. Dir., Dep't of Transp., 2013 ND 95, 832 N.W.2d 319, the Supreme Court held that a similar statement or declaration by a crime lab employee who designated herself as a "designee of the Director of the State Crime Laboratory" was sufficient for foundational purposes under N.D.C.C. § 39-20-07(5)&(8). And unlike the case in Painte, here, Jangula's record on appeal provides a listing of the director's designees which conclusively shows that Smith has been appointed as a "designee of the Director of the State Crime Laboratory" by Hope Olson the Director of the State Crime Laboratory. See Ex. 15, p. 24 (January 25, 2013). The proper foundation for the introduction of Jangula's chemical test for intoxication was laid.

CONCLUSION

[¶22] The Department respectfully requests this Court affirm judgment of the Walsh County District Court and affirm the hearing officer's decision revoking Jangula's driving privileges for two years.

Dated this 22nd day of December, 2015.

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STATE OF NORTH DAKOTA)
) ss.
 COUNTY OF BURLEIGH)

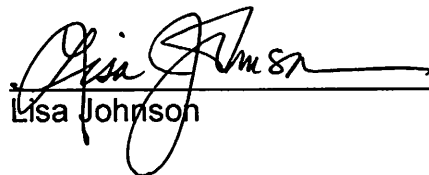
[[1] Lisa Johnson states under oath as follows:

[[2] I swear and affirm upon penalty of perjury that the statements made in this affidavit are true and correct.

[[3] I am of legal age and on the 22nd day of December, 2015, I served the attached **BRIEF OF APPELLEE** upon Jody James Jangula, by and through his attorney, Chad R. McCabe, by placing a true and correct copy thereof in an envelope addressed as follows:


Chad R. McCabe
Attorney at Law
402 East Main Ave., Suite 100
Bismarck, ND 58501

and depositing the same, with postage prepaid, in the United States mail at Bismarck,
North Dakota.



Lisa Johnson

Subscribed and sworn to before me
this 28th day of December, 2015.



Notary Public

