

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Trent Allen Guthmiller,

Appellant,

Supreme Court No. 20170300

v.

Director, North Dakota
Department of Transportation,

Appellee.

BRIEF OF APPELLANT

Appeal from Judgment dated June 8, 2017
Burleigh County District Court
South Central Judicial District
Honorable Bruce Romanick
Civil No. 08-2017-CV-00218

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STATEMENT OF THE ISSUE

Issue for Review

The Director erred in disqualifying Guthmiller's commercial driving privileges.

[¶1] STATEMENT OF THE CASE

[¶2] Trent Allen Guthmiller, Appellant, appeals from a district court judgment affirming an administrative disqualification of his commercial driving privileges for a period of 60 days (A. 22, 24).

[¶3] STATEMENT OF THE FACTS

[¶4] The Director of the North Dakota Department of Transportation proceeded against Guthmiller to disqualify his commercial driving privileges for a period of 60 days under N.D.C.C. § 39-06.2-10(15) (A. 4, see also Exhibit 1d and Exhibit 1b, Doc ID# 5).

[¶5] N.D.C.C. § 39-06.2-10(15) provides, “An individual is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of any combination of two serious traffic violations within a three-year period while operating a noncommercial motor vehicle, and either conviction results in a revocation, cancellation, or suspension of an operator’s license, including a commercial driver’s license.” (Emphasis added).

[¶6] “Serious traffic violation” is defined in N.D.C.C. § 39-06.2-02(30) and term “means a conviction” of an offense including a) speeding fifteen miles per hour or more above the posted speed limit, and b) reckless driving as defined under N.D.C.C. § 39-08-03. (Emphasis added).

[¶7] Here, Guthmiller had a speeding, 69 miles per hour in a 50 miles per hour posted speed limit, which occurred on February 19, 2013, and for which he was convicted on February 26, 2013, and an aggravated reckless driving, which occurred on March 14, 2015, and for which he was convicted on October 24, 2016 (A. 5).

[¶8] The speeding was for fifteen miles per hour or more above the posted speed limit, and the aggravated reckless driving was a violation of N.D.C.C. § 39-08-03. The conviction for aggravated reckless driving resulted in the suspension of Guthmiller's operator's license. N.D.C.C. § 39-06.1-10(2) and (3)(b)(2). See Exhibit 1f (Doc ID# 5).

[¶9] At the administrative hearing in this matter, Guthmiller argued he was not convicted of the two offenses within a three-year period (A. 6-9). The Hearing Officer agreed, finding that the plain language of N.D.C.C. § 39-06.2-10(15) indicates that the date of conviction is the determining factor, and recommending that Guthmiller's commercial drivers license not be disqualified (A. 10).

[¶10] The Director disagreed with the Hearing Officer, concluding the two offenses were committed within the given time frame, and disqualified Guthmiller's commercial driving privileges for 60 days (A. 11-12).

[¶11] Guthmiller appealed to the district court (A. 13). The district court concluded both interpretations of N.D.C.C. § 39-06.2-10(15), “conviction” and “commission” were reasonable, looked beyond the wording of the statute, and concluded the commission date of the two offenses controlled. The district court affirmed the decision of the Director. (A. 19-21).

[¶12] ARGUMENT

[¶13] Issue for Review

[¶14] The Director erred in disqualifying Guthmiller’s commercial driving privileges.

[¶15] “[W]e look first to the plain language of a statute for legislative intent, and the legislative intent is presumed to be clear if the language is clear and unambiguous.” Greenwood v. Moore, 545 N.W.2d 790, 794 (N.D. 1996). “Words used in a statute ‘are to be understood in their ordinary sense.’” Greenwood v. Moore, supra, quoting N.D.C.C. § 1-02-02.

[¶16] Further, “we need not explore legislative history when the Legislature has clearly and unambiguously spoken.” State v. O’Connor, 2016 ND 72, ¶ 13, 877 N.W.2d 312, citing N.D.C.C. § 1-02-05. “When the working of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” O’Connor, supra.

[¶17] Here, N.D.C.C. § 39-06.2-10(15) clearly used the word, “convicted”, and not the word, “committed”.

[¶18] Second, grammar puts the word, “convicted”, with the term, “within a three-year period”. Grammar does not put the word, “violations”, with the term, “within a three-year period”.

[¶19] Further, the word, “violations”, does not stand alone. It is part of a defined term, “serious traffic violations”. And “serious traffic violation” is defined as a “conviction”. N.D.C.C. § 39-06.2-02(30).

[¶20] Finally, N.D.C.C. § 39-06.2-10(15) uses the word “conviction” a second time when it requires that a conviction result in a loss of driving privileges.

[¶21] These statutes are unambiguous, and the Director was in error in disqualifying Guthmiller’s commercial driving privileges.

[¶22] CONCLUSION

[¶23] WHEREFORE, Guthmiller respectfully requests the Supreme Court of North Dakota to reverse the judgment of the district court and order the reinstatement of his commercial driving privileges.

Respectfully submitted October 2, 2017.

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[¶24] CERTIFICATE OF SERVICE

I hereby certify that I made service of a true copy of the foregoing
Brief of Appellant in PDF and Microsoft Word format and accompanying
Appendix of Appellant in PDF format, by email, on October 2, 2017, on:

Office of Attorney General @ dbanders@nd.gov; mtpitcher@nd.gov

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